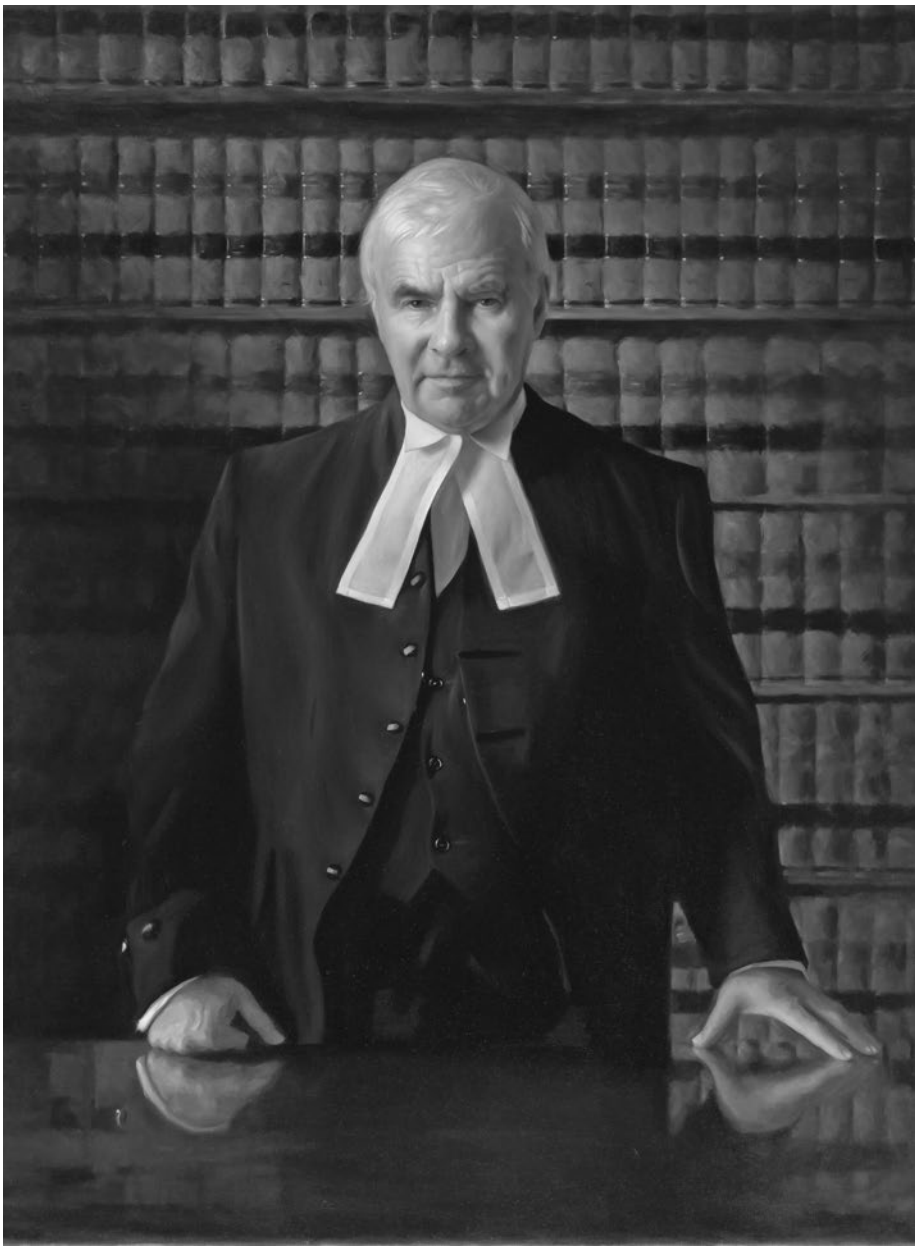
House of Commons
Chambre des communes
CANADA

SELECTED DECISIONS OF SPEAKER PETER MILLIKEN



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Peter Milliken

House of Commons
Chambre des communes
CANADA

Selected Decisions
of
Speaker Peter Milliken
2001–2011

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Selected Decisions
of
Speaker Peter Milliken

House of Commons

Thirty-Seventh Parliament

First Session—January 29, 2001 to September 16, 2002
Second Session—September 30, 2002 to November 12, 2003
Third Session—February 2, 2004 to May 23, 2004

Thirty-Eighth Parliament

First Session—October 4, 2004 to November 29, 2005

Thirty-Ninth Parliament

First Session—April 3, 2006 to September 14, 2007
Second Session—October 16, 2007 to September 7, 2008

Fourtieth Parliament

First Session—November 18, 2008 to December 4, 2008
Second Session—January 26, 2009 to December 30, 2009
Third Session—March 3, 2010 to March 26, 2011

Speaker of the House

Hon. Peter Milliken, M.P.
January 29, 2001 to June 1, 2011

Deputy Speakers and Chairs of Committees of the Whole

Robert (Bob) Kilger, M.P.
January 30, 2001 to October 3, 2004

Hon. Charles (Chuck) Strahl, P.C., M.P.
October 5, 2004 to April 2, 2006

Hon. William Alexander (Bill) Blaikie, P.C., M.P.
April 5, 2006 to November 17, 2008

Andrew Scheer, M.P.
November 21, 2008 to June 1, 2011

Deputy Chairs of Committees of the Whole

Réginald Bélair, M.P.
January 30, 2001 to September 16, 2002
September 30, 2002 to November 12, 2003
February 2, 2004 to May 23, 2004

Marcel Proulx, M.P.
October 7, 2004 to November 29, 2005

Royal Galipeau, M.P.
April 5, 2006 to September 14, 2007
October 18, 2007 to September 7, 2008

Denise Savoie, M.P.
November 21, 2008 to December 4, 2008
January 26, 2009 to December 30, 2009
March 3, 2010 to March 26, 2011

Assistant Deputy Chairs of Committees of the Whole

Eleni Bakopanos, M.P.
January 30, 2001 to September 16, 2002
September 30, 2002 to November 12, 2003

Betty Hinton, M.P.
February 2, 2004 to May 23, 2004

Hon. Jean Augustine, P.C., M.P.
October 7, 2004 to November 29, 2005

Andrew Scheer, M.P.
April 5, 2006 to September 14, 2007
October 18, 2007 to September 7, 2008

Barry Devolin, M.P.
November 21, 2008 to December 4, 2008
January 26, 2009 to December 30, 2009
March 3, 2010 to March 26, 2011

Introduction

The *Selected Decisions of Speaker Peter Milliken* is the eighth in a series of volumes which brings together, in a comprehensive collection, the significant modern rulings of Speakers of the House of Commons. Earlier volumes contained the decisions of Speakers Lucien Lamoureux (1966-1974), James Jerome (1974-1979), Jeanne Sauvé (1980-1984), Lloyd Francis (1984), John Bosley (1984-1986), John A. Fraser (1986-1994) and Gilbert Parent (1994-2001). The present volume contains 228 decisions from the period 2001 to 2011 during which Mr. Speaker Milliken presided over the House.

Mr. Speaker Milliken was first elected to Parliament in 1988 and was re-elected in 1993, 1997, 2000, 2004, 2006, and 2008. He was first elected Speaker of the House in late January 2001, at the beginning of the Thirty-Seventh Parliament, the third Speaker to be elected by secret ballot of his peers. He was re-elected Speaker three times—a record—at the beginning of the Thirty-Eighth (2004), Thirty-Ninth (2006), and Fortieth (2008) Parliaments. It is worthy of note that in the Thirty-Ninth and Fortieth Parliaments, he became only the second Speaker elected from an opposition party, the other being Mr. Speaker Jerome. On October 12, 2009, he became the longest-serving Speaker of the House of Commons in our history.

Through numerous decisions and other interventions during the Parliaments in which he served, Mr. Speaker Milliken gained a well-deserved reputation for his procedural expertise and wisdom, and for interventions characterized by an intelligent sense of humour. His rulings were widely praised for their fairness.

During Mr. Speaker Milliken's first term, several important changes were made to the procedures of the House. Arguably, the most significant of these accorded the Speaker broad discretion in the selection of motions in amendment to bills at report stage. While serving three minority Parliaments, he was obliged to exercise the casting vote of the Chair an unprecedented five times. At the time of his retirement in 2011, a total of 15 casting votes had occurred since Confederation. It was also over this lengthy period of minority Parliaments, from 2004 to 2011, that his extensive procedural knowledge, fed by his lifelong interest in the traditions and usages of the House, proved its worth. He frequently navigated a careful course in the midst of partisan struggles

that saw historic clashes between the Government and Opposition, often over privilege matters. As in all of his rulings, Mr. Speaker Milliken's focus was the protection of the rights and privileges of the House and its Members.

With regard to the collective rights of the House, two *prima facie* questions of privilege were especially significant to our understanding of those rights: the first related to the House's Order to produce documents relating to the detention of combatants by Canadian Forces in Afghanistan and a second regarding the Standing Committee on Finance's Order for the production of documents related to cost estimates for a variety of Government policy initiatives. Events arising from the latter case subsequently led to the adoption by the House, on March 25, 2011, of a motion of non-confidence in the Government and the dissolution of the Fortieth Parliament.

Prior to the vote, the last over which Mr. Speaker Milliken would preside, he was praised by Members from all sides of the House. The then Government House Leader (John Baird) paid homage to Mr. Speaker Milliken's career, predicting that he would be remembered as perhaps "the best Speaker the House of Commons has ever had."[1] The Leader of the Official Opposition (Michael Ignatieff) at the time said of him, "Mr. Speaker, you have taught us all, sometimes with a modest rebuke, sometimes with the sharp sting of focused argument, to understand, to respect and to cherish the rules of Canadian democracy, and for that your citizens will always hold you in highest honour."[2] The decisions published here are part of the legacy of a remarkable speakership which will certainly continue to figure prominently in any history of the House of Commons.

It is the purpose of this volume to present in structured form highlights of Mr. Speaker Milliken's outstanding procedural legacy. Each of the selected decisions is presented here in a uniform format, that includes a brief account of the procedural or political background surrounding the issue raised, followed by a summary of the resolution of the matter. The entire text of the decision as delivered by Mr. Speaker Milliken or one of his fellow Presiding Officers is then presented, along with any necessary footnote references. Each decision within a given chapter has a descriptive header which indicates the primary procedural issue being decided; in some cases, a postscript explaining a pertinent outcome or subsequent action is also included. The decisions are grouped within 10 chapters, each of which begins with a brief introductory

passage. In all but two of the chapters, the sequence of decisions is by order of date delivered within groupings of like subject-matter headings. In the remaining two chapters, the sequence is strictly chronological.

There are a number of search methods by which particular decisions can be located. At the back, the volume contains both a chronological listing of all decisions and a detailed analytical index. In addition, readers are encouraged to refer to the introductions to the various chapters and to scan the descriptive headers located at the top of each decision to determine whether the subject matter or even a particular aspect of that subject matter would encourage them to view the entire decision. It should be remembered that this volume, like others in the series, represents a *selection* of key decisions. In all, Mr. Speaker Milliken and his fellow Presiding Officers were required to adjudicate on more than 900 occasions during the period of time covered by this volume.

Many people have contributed to the completion of this volume. I would like to acknowledge the roles played by Deputy Clerk Marc Bosc and Clerk Assistant Bev Isles who led the project team with energy and grace. I wish to recognize them and their team and to thank them for their professionalism and their tireless efforts. In particular, I wish to acknowledge the contribution of many procedural clerks, particularly in the Table Research Branch who, under the guidance of the Deputy Principal Clerk, prepared the initial selection and compilation of the rulings and undertook the revision, verification and editing of the contents of this work. Special mention should also be made of the assistance of Translation Services, along with Parliamentary Publications and the publications team (with its Deputy Principal Clerk) who published the text.

It was for me a privilege and a pleasure to work closely with Mr. Speaker Milliken, first as Deputy Clerk and then as Clerk from 2005 to his retirement. His knowledge of parliamentary procedure was encyclopedic and he showed unstinting dedication to the institution of Parliament. But he was no utopian theorist: Peter Milliken saw the Speaker as a servant of the House. Elected to preside over the deliberations of the House, he knew he could only do so while he enjoyed the trust of Members and the House's confidence in the fairness of his decisions. Most significantly, Mr. Speaker Milliken recognized that the peculiar circumstances of minority parliaments left him to face

challenges that most of his predecessors never had to deal with. Notably, he faced challenges that emerged when, frustrated by the failure to find solutions to political problems, Members tried to transform those problems into procedural issues. Mr. Speaker Milliken faced those situations with clear-headed realism, rendering, when necessary, decisions that sought to distinguish between the political and the procedural, to leave each to its appropriate realm—always with a view to protecting the primacy of Parliament.

Ottawa, 2013

Audrey O'Brien
Clerk of the House of Commons

1. *Debates*, March 25, 2011, p. 9266.
2. *Debates,* March 25, 2011, p. 9246.

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Chapter 1 — Parliamentary Privilege

Introduction

Members of Parliament individually and the House as a collectivity enjoy certain rights and immunities without which Members could not carry out their duties and the House could not fulfil its functions. These various rights and immunities, while not admitting of ready classification, are referred to as "parliamentary privilege". Whenever Members feel that their rights as Members have been infringed upon or that a contempt against the House has been committed, they rise on a question of privilege to voice their complaints. In presenting their case, Members are stating that the breach they are complaining of is of such importance that it demands priority over all other House business. It is the role of the Speaker to judge if that claim is well founded; that is, if on a *prima facie* basis, or as far as can be judged by first disclosure, it deserves privileged consideration.

In order to assess the claim, the Speaker first hears a description of the problem from the Member raising the question of privilege. Although not obliged to do so, the Speaker may also hear comments from other Members, as Mr. Speaker Milliken often did. While in theory, debate on a question of privilege properly begins only after the Speaker has decided that a *prima facie* question of privilege exists, in practice, there may be extensive discussion beforehand and, most often, the Speaker's decision determines the issue. Formal debate on a question of privilege properly begins only if the Speaker has decided that a *prima facie* question of privilege exists. In reaching such a decision, the Speaker reviews the facts and the arguments presented by Members, as well as the relevant rules, authorities and precedents. The Speaker's decision may also consider factors other than the merits of the case itself: factors such as the terms of the motion the Member seeks to move to remedy the situation; whether the issue was raised at the first opportunity; whether the notice, if required, was given; and whether the question was raised at the appropriate time during proceedings. In the vast majority of questions of privilege, the Speaker decides that a *prima facie* case has not been made. This was also true during Mr. Speaker Milliken's tenure.

During his speakership, Mr. Speaker Milliken rendered more than 160 decisions on matters related to parliamentary privilege. The 47 Speaker's rulings included in this chapter are grouped into two broad categories: those relating to the rights of the House and those relating to the rights of individual Members. The decisions are listed chronologically within each category. Other decisions appear in other chapters where they have a direct relevance.

Mr. Speaker Milliken presided over both majority and minority parliaments and during both Liberal and Conservative governments, frequently navigating a careful course in the midst of partisan struggles. The Thirty-Eighth, Thirty-Ninth and Fortieth Parliaments saw historic clashes between the Government and Opposition, often over privilege matters. As in all of his rulings, Mr. Speaker Milliken's focus was the protection of the rights and privileges of the House and its Members.

With regard to the collective rights of the House, two *prima facie* questions of privilege were especially significant to our understanding of those rights: the first related to the House's Order to produce documents relating to the detention of combatants by Canadian Forces in Afghanistan and the second regarding the Standing Committee on Finance's Order for the production of documents related to cost estimates for a variety of Government policy initiatives. Events arising from this latter case subsequently led to the adoption by the House of a motion of non-confidence in the Government and the dissolution of the Fortieth Parliament.

Other *prima facie* questions of privilege concerning the rights of the House included those related to: the Government's disclosure of the contents of a bill prior to its introduction; the use of the title "Member of Parliament" by non-Members; and the disclosure of confidential information. In addition, there were also several *prima facie* questions of privilege concerning matters of contempt. These included questions regarding a Member touching the Mace; motions to find two different Officers of Parliament in contempt (the first for having misled a committee, and the second for having breached the provisions of the *Conflict of Interest Code*); and, on two occasions, allegations that Ministers had deliberately misled the House.

The second section of the chapter focuses on the individual rights of Members. Those questions of privilege found *prima facie* were argued from the perspective that Members had been impeded in carrying out their duties. One arose from a British Columbia court ruling that there was no legal support for extending the privilege for exempting Members from being summoned to a court proceeding for 40 days before and after a parliamentary session. Another arose from the disclosure of confidential information from a meeting of the Ontario Liberal Caucus. One concerned the denial of access to the Parliamentary Precinct to a Member during the visit of a foreign head of state. Several others concerned instances where bulk mailings sent to their constituents by other Members may have had the effect of unjustly damaging the reputations of the Members raising the questions of privilege.

Parliamentary Privilege

Rights of the House

Contempt of the House: disclosure by a Minister of information regarding a bill prior to its introduction in the House; *prima facie*

March 19, 2001 *Debates*, pp. 1839-40

Context: On March 14, 2001, following the introduction by Anne McLellan (Minister of Justice and Attorney General of Canada) of Bill C-15, *Criminal Law Amendment Act, 2001*, Vic Toews (Provencher) rose on a question of privilege with respect to the disclosure of information about the Bill in a Department of Justice briefing to the media prior to its introduction in the House. Noting that Members and their staff had been denied access to the briefing, Mr. Toews argued that they did not have the information they needed to respond to media inquiries about the Bill. He also reminded the House that in our system, the executive is responsible to Parliament, and not to the media. Thus, he maintained, the Minister and the Department of Justice were both in contempt of Parliament as they had brought the authority and dignity of the House into question.[1] Don Boudria (Minister of State and Leader of the Government in the House of Commons) replied that the briefing given to the media was under embargo and that the media did not receive a copy of the Bill prior to its introduction in the House. After hearing from other Members, the Speaker took the matter under advisement.[2]

Resolution: On March 19, 2001, the Speaker delivered his ruling. He stated that the use of media embargoes and lock-ups had long played a role in the way parliamentary business was conducted and reminded Members that previous Speakers had consistently held that it was not a breach of privilege to exclude Members from lock-ups. He noted, however, that with respect to material to be placed before Parliament, the House should take precedence. He added that once a bill had been placed on notice, its confidentiality was necessary, both so that Members themselves should be well informed, and because of the pre-eminent role which the House plays and must play in the legislative affairs of the nation. He declared that, in his view, it was clear that confidential information concerning Bill C-15, although denied to Members, had been given to members of the media without any effective measures to secure the rights of the House, even though no documents were given out at the briefing. Members having been denied

information that they needed to do their work, the Speaker ruled that this constituted a *prima facie* contempt of the House and invited the Mr. Toews to move the appropriate motion.

Decision of the Chair

The Speaker: I am now ready to rule on the question of privilege raised by the hon. Member for Provencher on March 14, 2001, regarding a briefing the Department of Justice held on a bill on notice that had not yet been introduced in the House.

The bill has now received first reading as Bill C-15, *An Act to amend the Criminal Code and to amend other Acts.*

I wish to thank the hon. Government House Leader, the hon. Member for Berthier–Montcalm, the hon. Member for Winnipeg–Transcona, the hon. Member for Pictou–Antigonish–Guysborough, the hon. Member for Yorkton–Melville, and the hon. Opposition House Leader for their interventions.

Let me first summarize the events that led up to this question of privilege being raised. From the interventions of Members it appears that the Department of Justice sent out a media advisory notifying recipients that there would be a technical briefing given by justice officials at 11:45 a.m. on Wednesday, March 14, with regard to the omnibus bill, now Bill C-15, that was to be introduced in the House by the hon. Minister of Justice that afternoon.

According to the hon. Member for Provencher, Members of Parliament and their staff were denied access to the briefing. The hon. Member for Yorkton–Melville added that while his assistant was denied access to the briefing, the assistant of a Government Member was granted entry. In any event, there is no disputing that the invitation to this so-called technical briefing went out as a media advisory and was designed for members of the media.

The hon. Member for Provencher indicated that following the briefing media representatives began phoning his office and asking for his reaction to the Bill, a situation he found embarrassing, not only for himself and other

Members of the opposition, but also for the House of Commons as a whole since they had not seen the Bill and were not privy to its contents.

The hon. Government House Leader confirmed that opposition critics were given a courtesy copy of Bill C-15 about an hour and a quarter before the Bill's introduction.

The Minister explained that during the briefing, the media had not received actual copies of the Bill or any other documentation. He went on to indicate that the briefing itself was under embargo until the Bill was introduced, a fact confirmed by the copy of the original media advisory that the Chair has obtained.

The Member for Provencher, as well as the other opposition Members who participated in the discussion, argued that by not providing information to Members of Parliament and by refusing to allow Members to participate in a briefing where the media were present, the Government, and in particular the Department of Justice, showed contempt for the House of Commons and its Members.

As I see it, there are two issues here: the matter of the embargoed briefing to the media and the issue of Members' access to information required to fulfil their duties.

As Members know, the use of media embargoes, as well as the use of lock-ups, have long played a role in the way parliamentary business is conducted. For example, it has been our practice to permit briefings in lock-ups prior to the tabling of reports by the Auditor General. Similarly, and perhaps more on point, is the lock-up held on the day of a budget presentation. Two features of these lock-ups are that Members are invited to be present and members of the media are detained until the event in question has occurred; that is the Auditor General's report tabled or the budget speech begun. These are the features one might argue that have made these lock-ups so successful and so useful to the conduct of parliamentary business.

It must, however, be remembered that when the different arrangements have been made for early briefings, previous Speakers have consistently held that it

is not a breach of privilege to exclude Members from lock-ups. I refer the House, for example, to the ruling of Speaker Jerome, in *Debates*, November 27, 1978, pp. 1518-9, and the ruling of Speaker Sauvé, in *Debates*, February 25, 1981, p. 7670.

The House recognizes that when complex or technical documents are to be presented in this Chamber, media briefings are highly useful. They ensure that the public receives information that is both timely and accurate concerning business before the House.

In preparing legislation, the Government may wish to hold extensive consultations and such consultations may be held entirely at the Government's discretion. However, with respect to material to be placed before Parliament, the House must take precedence. Once a bill has been placed on notice, whether it has been presented in a different form to a different session of Parliament has no bearing and the bill is considered a new matter. The convention of the confidentiality of bills on notice is necessary, not only so that Members themselves may be well informed, but also because of the pre-eminent rule which the House plays and must play in the legislative affairs of the nation.

Thus, the issue of denying to Members information that they need to do their work has been the key consideration for the Chair in reviewing this particular question of privilege. To deny to Members information concerning business that is about to come before the House, while at the same time providing such information to media that will likely be questioning Members about that business, is a situation that the Chair cannot condone.

Even if no documents were given out at the briefing, as the hon. Government House Leader has assured the House, it is undisputed that confidential information about the Bill was provided. While it may have been the intention to embargo that information as an essential safeguard of the rights of this House, the evidence would indicate that no effective embargo occurred.

In this case it is clear that information concerning legislation, although denied to Members, was given to members of the media without any effective measures to secure the rights of the House.

I have concluded that this constitutes a *prima facie* contempt of the House and I invite the hon. Member for Provencher to move a motion.

Postscript: Mr. Toews moved that the matter be referred to the Standing Committee on Procedure and House Affairs.[3] After debate, the question was put on the motion and it was agreed to.[4]

On May 9, 2001, Derek Lee (Parliamentary Secretary to the Leader of the Government in the House of Commons) presented the Fourteenth Report of the Standing Committee on Procedure and House Affairs on the above question of privilege. The Report recommended that there be no sanctions with respect to the breach of privilege, but that steps be taken to avoid such breaches of privilege in the future. On June 5, 2001, Peter MacKay (Pictou–Antigonish–Guysborough) moved that the Report be concurred in. Debate arose thereon, whereupon, Mr. Lee moved that the House proceed to Orders of the Day. The question was put on that motion, and it was agreed to on a recorded division, thus superseding the motion to concur in the Report, which was accordingly dropped from the *Order Paper*.[5]

Editor's Note: On October 15, 2001, John Reynolds (West Vancouver–Sunshine Coast) rose on a similar question of privilege with regard to the premature disclosure of a bill prior to its introduction. On the same date, the Speaker found it *prima facie*, and the House immediately agreed to refer the matter to the Standing Committee on Procedure and House of Affairs.[6] The Committee reported back to the House on November 29, 2001.[7] No further action was taken.

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1. *Debates*, March 14, 2001, pp. 1646-7.
2. *Debates*, March 14, 2001, pp. 1652-3.
3. *Debates*, March 19, 2001, p. 1840, *Journals*, p. 187.
4. *Debates*, March 19, 2001, pp. 1839-45, *Journals*, p. 187.
5. *Debates*, June 5, 2001, pp. 4626-32, *Journals*, pp. 490-1.
6. See *Debates*, October 15, 2001, p. 6082, *Journals*, p. 707.
7. Fortieth Report of the Standing Committee on Procedure and House Affairs, presented to the House on November 29, 2001 (*Journals*, p. 883).

Parliamentary Privilege

Rights of the House

Contempt of the House: disclosure of a report before its tabling in the House; availability to Members

March 29, 2001 *Debates*, p. 2498

Context: On March 29, 2001, following the tabling of the Annual Report of the Canadian Human Rights Commission by the Speaker, John Williams (St. Albert) rose on a question of privilege with regard to the disclosure of the Report to the press before its tabling to the House. Mr. Williams argued that both the Canadian Human Rights Commission and Anne McLellan (Minister of Justice) were in contempt of Parliament.[1] He also reminded the House that he rose on a similar question of privilege on February 15, 2001.[2] Don Boudria (Minister of State and Leader of the Government in the House of Commons), while agreeing with the principles of what the Member raised, objected to the allegation that the Minister was personally involved, as the Commission had submitted its Report directly to the Speaker for tabling and not to the Government. Another Member also spoke to the matter.[3]

Resolution: The Speaker delivered his ruling immediately. He stated that the Report had been permanently referred to the Standing Committee on Justice and Human Rights. Since the complaint involved an Officer of the House, he could not see how it necessarily involved a breach of privilege at that time. However, he did say that it seemed that the appropriate course was for the Committee to undertake the study of this question. He also suggested that since the Standing Committee on Procedure and House Affairs was looking at a similar question, perhaps they could also consider the matter. He concluded that if the Committee were to find that something inappropriate had occurred, he would allow the Member or the Committee to raise the matter again.

Decision of the Chair

The Speaker: We have a situation here where a report, which was prepared by an Officer of the House of Commons,[4] a person who reports to the House of Commons directly, has obviously been given to the media, based on the information I am hearing in the House today.

The Report stands permanently referred to the Justice and Human Rights Committee of the House. It seems to me that the appropriate course in the circumstances is for that Committee to undertake its study of the Report, as I am sure it will in due course. It is free to call the head of the Commission and anyone else it sees fit to come and explain what has happened and the circumstances. It seems to me that would be the appropriate course.

Should the Procedure and House Affairs Committee, as part of the work it is doing on the question of release of documents that has come to it as a result of my previous ruling, want to look at the matter, it is of course free to do so.

What I would suggest to the hon. Member for St. Albert, the Government House Leader, the hon. Member for Pictou–Antigonish–Guysborough and all hon. Members is that we let this go to the Justice and Legal Affairs Committee.[5] If the Committee has concerns about what has happened and feels that something inappropriate happened, I will allow the hon. Member for St. Albert, if he wishes, to bring this matter back to the House. We will treat it as a matter of privilege and deal with it at that point.

However, I think that since this is a matter involving an Officer of the House, I do not see that today there has been necessarily a breach of the privileges. The matter can be investigated by a committee. The committee can come back to the House or the Member can come back to the House and raise it as a question of privilege when we have heard the evidence on it. There will be evidence. This matter is before the Committee and making a finding today that sends it to the Committee again is unhelpful.

I am aware that the Procedure and House Affairs Committee is looking at the other matter as a result of my ruling and I am sure that should it choose to do so, it could look into this matter also, but certainly the Justice and Legal Affairs Committee[6] can do so.

I hope that hon. Members can deal with it there and then, if we have to, we will come back to the House and deal with it here.

Postscript: Later that day, Mr. Williams rose on a question of privilege with regard to the availability of the Report, arguing that even though it had been tabled earlier in the day, he had not been able to obtain a copy and he considered this an affront

to the House. The Acting Speaker (Réginald Bélair) replied that he would take the matter under advisement and would consult with the Speaker.[7]

On April 2, 2001, the Acting Speaker delivered his ruling. After reviewing the situation, he stated that he had determined that the copies of the Report had, in fact, been available for distribution, but that they had been packed in boxes, and had been located underneath a second report from the Commission. The Acting Speaker apologized to Members for any inconvenience caused by the confusion and explained that steps had been taken to avoid such a situation in the future.[8]

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1. *Debates*, March 29, 2001, p. 2497.
2. *Debates*, February 15, 2001, p. 741.
3. *Debates*, March 29, 2001, p. 2498.
4. The Chief Commissioner of the Canadian Human Rights Commission is not an Officer of the House of Commons. However, by virtue of section 61.(4) of the *Canadian Human Rights Act*, the Commission's annual report is tabled in Parliament by the Speaker of the Senate and the Speaker of the House of Commons.
5. The name of the Committee should read "Justice and Human Rights".
6. The name of the Committee should read "Justice and Human Rights".
7. *Debates*, March 29, 2001, p. 2503.
8. *Debates*, April 2, 2001, p. 2627.

Parliamentary Privilege

Rights of the House

Contempt of the House: Officers of Parliament; reflection by one Officer on another

May 28, 2001 *Debates*, pp. 4276-7

Context: On May 11, 2001, Peter MacKay (Pictou–Antigonish–Guysborough) rose on a question of privilege with regard to a letter that the Privacy Commissioner (George Radwanski) had written to the Information Commissioner (John Reid). Mr. MacKay argued that the letter was a direct public attack by one Officer of Parliament on the work of another which eroded public confidence in the latter Officer and in Parliament, and constituted a contempt of the House of Commons and its officials. Specifically, Mr. MacKay claimed that the Privacy Commissioner's letter constituted an interference with the work of the Information Commissioner, who was lawfully proceeding based on a request made to him under the *Access to Information Act*. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: On May 28, 2001, the Speaker delivered his ruling. He noted that, in itself, the expression of views by one Commissioner contrary to those of another could not be considered as interference. He added that there was a natural tension between the concepts found in the *Access to Information Act* and those enshrined in the *Privacy Act*, and, thus, the Officers charged with the responsibility of implementing the two Acts might well hold differing views. The Speaker stated that, accordingly, in his view, the letter did not interfere with the Information Commissioner's ability to carry out his mandate. On the matter of whether the conduct of the Privacy Commissioner, in allegedly overstepping his statutory mandate, constituted a contempt of the House, the Speaker stressed that it was neither part of his mandate to comment on points of law nor to interpret the mandate of the Commissioner under the *Privacy Act*. He suggested that if Members felt that there was a need to examine the role of the Privacy Commissioner, they might ask the Standing Committee on Justice and Human Rights to pursue a study on the question of his mandate and to explore the issue of appropriate communication directly with both Officers.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Pictou–Antigonish–Guysborough concerning interference in the work of Information Commissioner John Reid by Privacy Commissioner George Radwanski.

The hon. Member for Pictou–Antigonish–Guysborough stated that in his letter to Mr. Reid the Privacy Commissioner had carried out what amounted to an attack on the Information Commissioner, an Officer of Parliament. He argued that this alleged attack eroded public confidence in the institution of Parliament and constituted a contempt both of the House and its Officers.

I would like to thank the hon. Member for Pictou–Antigonish–Guysborough for having drawn this matter to the attention of the Chair. I would also like to thank the Government House Leader and the Parliamentary Secretary to the Government House Leader for their thoughtful contributions to the discussion of this point.

A small number of individuals have the special distinction of being Officers of Parliament. So great is the importance which Parliament attaches to the responsibilities entrusted to these individuals that they are appointed by resolution of Parliament rather than by the Governor in Council.

Because of the special relationship that exists between these officials and the House of Commons, any actions which affect them or their ability to carry out their work are watched with particular attention by Members.

The hon. Member for Pictou–Antigonish–Guysborough has brought before the House legitimate concerns about a situation involving the attempt of the Privacy Commissioner to influence the Information Commissioner. This attempt has been carried out by way of a letter—an open letter, not only made public but widely disseminated by the signatory—at a time when the case in point is being appealed to the Supreme Court by the Information Commissioner.

There are in my view two questions which need to be addressed in the case before us. Has there been interference in the Information Commissioner's

ability to carry out his duties? Has the Privacy Commissioner conducted himself improperly?

I have examined with great care the letter sent by Mr. Radwanski to Mr. Reid. The letter unquestionably attempts to influence the Information Commissioner and seeks to exert that influence by reference to the interpretation of statutes and court decisions.

It is not my place to weigh the arguments which the Privacy Commissioner has put forward, nor will I speculate on whether or not the letter will prove persuasive to the Information Commissioner, but I must conclude that in itself the presentation of views by one Commissioner contrary to those of another cannot be considered as interference.

Indeed, it must be recognized that there is a natural tension between the concepts found in the *Access to Information Act* and those enshrined in the *Privacy Act*, so that it can come as no surprise that the Officers charged with the responsibility of implementing these two Acts may well hold differing views on issues of great substance. Thus, the letter does not in my view interfere in the Information Commissioner's ability to carry out his mandate.

Now to the matter of the conduct of the Privacy Commissioner, irrespective of the views which the Privacy Commissioner's letter contains or even the egregious language in which he chooses to express those views, I can find nothing in his letter which might be taken as a threat or intimidation. One may regret that this representation has been made by way of an open letter and one may be dismayed that this has been presented in the media as an unseemly squabble between one Officer and another, but these are matters of opinion or judgment and as such are not for the Chair to address.

The second point to be considered is whether the action of the Privacy Commissioner in writing, sending and making public this letter constitutes a contempt of the House.

The hon. Member for Pictou–Antigonish–Guysborough stated that, in his view, the Privacy Commissioner had overstepped his statutory role by his attempt to influence the Information Commissioner in this way.

But, as the hon. Member himself went on to point out, it is not part of the Speaker's mandate to comment on points of law.

The Speaker of the House of Commons has no role in interpreting the mandate of the Commissioner under the *Privacy Act*. However, as the remarks made by the Government House Leader and the Parliamentary Secretary indicate, there are differing views as to the proper role of the Privacy Commissioner.

Members may conclude that there is a need to examine the role of the Privacy Commissioner and, more to the point, the Privacy Commissioner's own understanding of his role. There already exists a forum for such an examination and that is the Standing Committee on Justice and Human Rights. I would commend that Committee to hon. Members as the body to which they should have recourse to pursue questions of mandate, where the issues of appropriate communication might be further explored with both the officers themselves.

Neither the Privacy Commissioner nor the Information Commissioner is an agent of the Government. They are both Officers of Parliament. It is their responsibility as well as ours to see that their relationships to each other and to Parliament are maintained and strengthened.

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1. *Debates*, May 11, 2001, pp. 3936-8.

Parliamentary Privilege

Rights of the House

Contempt of the House: failure of the Ministry to table documents required by statute

November 21, 2001 *Debates*, pp. 7380-1

Context: On October 30, 2001, Gurmant Grewal (Surrey Central) rose on a question of privilege. He alleged that Anne McLellan (Minister of Justice) had breached the privileges of the House by failing to observe a statutory requirement to table statements of the reasons for 16 regulatory changes made by her department under the *Firearms Act*, between September 16, 1998, and December 13, 2000. While Mr. Grewal acknowledged that the statutory requirement did not specify a particular time within which the Minister must table statements of reasons, he insisted that it needed to be done within a reasonable time frame. He further argued that the Minister had breached an Order of the House expressed in the statute and had deprived Members of the ability to verify the validity of her reasons. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: On November 21, 2001, the Speaker delivered his ruling. He drew the attention of Members to the fact that on November 5, 2001,[2] the Minister had tabled the 16 statements of reasons, along with an additional statement pertaining to a subsequent regulatory change. The Speaker ruled that, had there been a tabling deadline included in the legislation, he would not have hesitated to find a *prima facie* case of contempt. However, to have done so in this instance would have amounted to the Speaker inappropriately substituting his own judgement for that of Parliament's. As no deadline was specified, he could only find that a legitimate grievance had been identified. He also took the opportunity to specifically identify defects that were contained in the Minister's tablings, and encouraged the Minister to exhort her officials to demonstrate due diligence in complying with these statutory requirements.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Surrey Central on October 30 concerning the failure of the Minister of Justice to table her reasons for making certain regulations under the *Firearms Act*.

I would like to thank the hon. Member for Surrey Central for having drawn this matter to the attention of the House as well as the Government House Leader and the hon. Member for Yorkton–Melville for their contributions on this point.

The hon. Member for Surrey Central claims that in ignoring her obligations under the *Firearms Act* when making regulations the Minister has breached the privileges of the House.

I should point out to hon. Members the *Firearms Act* provides that where the Minister is of the opinion that the ordinary regulatory process in section 118 should not be followed she may in cases specified by the law proceed directly to the making of new regulations or to the modification of existing regulations. However in such cases the Minister is required by subsection 119(4) of the Act to table in both Houses a statement of her reasons for so doing.

The hon. Member for Surrey Central drew to the attention of the House 16 cases between September 16, 1998, and December 13, 2000, where the Minister made use of this exceptional power but failed to table the required documents in the House. He argued that although no deadline is specified in the *Firearms Act* it is surely unreasonable for the House to be kept waiting for up to three years for the tabling of the Minister's reasons.

I draw to the attention of hon. Members the fact that the Minister tabled the 16 statements of reasons, along with an additional such statement concerning a subsequent regulatory change, on November 5, 2001.

As Speaker this case causes me some difficulty. In declining to include a reporting deadline in the statute, Parliament has provided the Minister with some latitude in fulfilling the requirement to table reasons. It would not be appropriate for the Speaker to impose such a deadline and so substitute his judgment for the decision of Parliament, much as he might enjoy doing so.

Nevertheless the Chair appreciates that the hon. Member has a grievance, one that appears to be entirely legitimate. The alacrity with which the Minister was able to fulfill her statutory obligations following the raising of this question lends some credence to the Member's claim that the delay in presenting these documents has been unreasonable.

Speaker Fraser in delivering a ruling on a related question stated the following on April 19, 1993, p. 18105 of Hansard:

> I am not making any of these comments in any personal sense and Members will understand that but there are people in departments who know these rules and are supposed to ensure that they are carried out.

In the case before us, the legislation drafted by the Justice Department contained from the outset the provisions obliging the Minister to table in Parliament reasons why section 118 should not apply for certain regulations. Furthermore, in the Orders in Council relating to each case, a standard paragraph is included which reads as follows:

> And whereas the Minister of Justice will, in accordance with subsection 119(4) of the *Firearms Act*, have a statement of the reasons why she formed that opinion laid before each House of Parliament;
>
> Therefore, Her Excellency, the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to paragraph X of the *Firearms Act*, hereby makes the annexed regulations—

The Chair must conclude from this evidence that far from being an arcane technicality cloaked in some dusty statute or other, the requirement for tabling of reasons is not only perfectly clear in the legislation but is invoked as an integral part of each such Order in Council. All the more reason, it seems to me, for the department to comply readily with the requirement given a modicum of efficiency in advising the Minister.

In the case before us, when the missing documents were finally tabled several sets of supporting documents tabled by the Minister lacked the Privy Council document which provides an easy link to the regulations cited by the hon. Member for Surrey Central. In the case of the material relating to

P.C. 2000-1783, and I cite *Journals* of November 5, 2001 at page 794, the Privy Council document was provided in only one official language.

Strictly speaking, these defects do not negate the Minister's fulfillment of her statutory obligation, but they do point to a carelessness that appears to be characteristic of the way in which these matters are being handled by the officials in her department.

Were there to be a deadline for tabling included in the legislation, I would not hesitate to find that a *prima facie* case of contempt does exist and I would invite the hon. Member to move the usual motion. However, given that no such deadline is specified, I can only find that a legitimate grievance has been identified.

I would encourage the hon. Minister of Justice to exhort her officials henceforth to demonstrate due diligence in complying with these and any other statutory requirements adopted by Parliament. I look forward in future to the House being provided with documents required by law in a timely manner.

In closing, I would like to commend the hon. Member for Surrey Central for having drawn this serious matter to the attention of the House. I might also remind all hon. Members that the study of departmental estimates in committee offers an excellent opportunity to hold Ministers and their officials accountable, not only for departmental policy and programs but also for their all important relations with Parliament, including their compliance with these sorts of requirements laid down in the laws that we pass in this place.

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1. *Debates*, October 30, 2001, pp. 6735-7.
2. *Journals*, November 5, 2001, pp. 793-5.

Parliamentary Privilege

Rights of the House

Contempt of the House: Minister alleged to have deliberately misled the House; *prima facie*

February 1, 2002 — *Debates*, pp. 8581-2

Context: On January 31, 2002, Brian Pallister (Portage–Lisgar) rose on a question of privilege to charge that Art Eggleton (Minister of National Defence) was in contempt of the House, having made contradictory statements, with the intent of deliberately misleading the House, on two separate occasions about the precise moment at which he had been informed about the involvement of Canadian troops in the taking of prisoners in Afghanistan. He added that, outside the Chamber, the Minister had admitted to the media that he had indeed misled the House, but that he had not apologized to the House. For his part, the Minister stated that it had not been his intention to mislead the House in providing information which, at the time, he believed to be correct. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: On February 1, 2002, the Speaker delivered his ruling. He stated that he was prepared to accept the Minister's assertion that he had had no intention of misleading the House. He added, however, that the contradictory statements made by the Minister in the House, a characterization the Minister did not dispute, left the House with two versions of events, and thus merited further consideration by an appropriate committee to clarify the matter. Accordingly, he invited Mr. Pallister to move his motion.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Portage–Lisgar concerning statements made in the House by the Minister of National Defence. I would like to thank the hon. Member for his presentation and the hon. Member for Pictou–Antigonish–Guysborough for his comments.

I also appreciated the interventions of the hon. Member for Laurier–Sainte-Marie, the hon. Member for Acadie–Bathurst, the Rt. Hon. Member for Calgary Centre and the hon. Member for Lakeland, and I want to thank the hon. Minister of National Defence for his statement.

The hon. Member for Portage–Lisgar alleged that the Minister of National Defence deliberately misled the House as to when he knew that prisoners taken by Canadian JTF2 troops in Afghanistan had been handed over to the Americans. In support of that allegation, he cited the Minister's responses in Question Period on two successive days and alluded to a number of statements made to the media by the Minister. Other hon. Members rose to support those arguments citing various parliamentary authorities including Beauchesne's 6th edition and *Marleau and Montpetit*. In this regard, I commend to the House a citation from *Erskine May*, 22nd edition, quoted by the hon. Member for Pictou–Antigonish–Guysborough as follows:

> The Commons may treat the making of a deliberately misleading statement as a contempt. In 1963 the House resolved that in making a personal statement which contained words which he later admitted not to be true, a former Member had been guilty of a grave contempt.

The authorities are consistent about the need for clarity in our proceedings and about the need to ensure the integrity of the information provided by the Government to the House. Furthermore, in this case, as hon. Members have pointed out, integrity of information is of paramount importance since it directly concerns the rules of engagement for Canadian troops involved in the conflict in Afghanistan, a principle that goes to the very heart of Canada's participation in the war against terrorism.

I have carefully reviewed all the interventions on this issue and the related media reports and tapes referred to in those exchanges. I have also examined the Minister's replies during Question Period and the statement he made in reply to these allegations.

In response to the arguments of opposition Members on this question of privilege, the Minister of National Defence stated categorically, and I quote, "At no time have I intended to mislead this House—" and then went on to

explain the context in which he had made statements that ultimately proved to be contradictory.

As the hon. Member for Acadie–Bathurst has pointed out, in deciding on alleged questions of privilege, it is relatively infrequent for the Chair to find *prima facie* privilege; it is much more likely that the Speaker will characterize the situation as "a dispute as to facts". But in the case before us, there appears to be in my opinion no dispute as to the facts. I believe that both the Minister and other hon. Members recognize that two versions of events have been presented to the House.

I am prepared, as I must be, to accept the Minister's assertion that he had no intention to mislead the House. Nevertheless this remains a very difficult situation. I refer hon. Members to *Marleau and Montpetit* at page 67:

> There are… affronts against the dignity and authority of Parliament which may not fall within one of the specifically defined privileges… the House also claims the right to punish, as a contempt, any action which, though not a breach of a specific privilege, tends to obstruct or impede the House in the performance of its functions; [or that] obstructs or impedes any Member or Officer of the House in the discharge of their duties…

On the basis of the arguments presented by hon. Members and in view of the gravity of the matter, I have concluded that the situation before us where the House is left with two versions of events is one that merits further consideration by an appropriate committee, if only to clear the air. I therefore invite the hon. Member for Portage–Lisgar to move his motion.

Postscript: Mr. Pallister moved that the question of privilege be referred to the Standing Committee on Procedure and House Affairs, and debate on the motion continued until the ordinary hour of daily adjournment.[2] On February 4, 2002, the House resumed debate on the motion, which was shortly followed by the commencement of debate on a proposed amendment until a motion to adjourn the debate was moved and adopted.[3] On February 5, 6 and 7, the House agreed by unanimous consent to adjourn debate on the privilege motion.[4] Later during the sitting of February 7, the House agreed by unanimous consent to proceed immediately to put all questions necessary to dispose of the question of privilege.

The amendment to the motion was defeated on a recorded division, following which the House agreed to the main motion on division.[5] On March 22, 2002, the Committee presented its Fiftieth Report to the House, exonerating the Minister.[6]

1. *Debates*, January 31, 2002, pp. 8517-20.
2. *Debates*, February 1, 2002, pp. 8582-8, 8601-19.
3. *Debates*, February 4, 2002, pp. 8621-8.
4. *Debates*, February 5, 2002, p. 8680, *Journals*, p. 1006; *Debates*, February 6, 2002, p. 8766, *Journals*, p. 1014; *Debates*, February 7, 2002, p. 8792, *Journals*, p. 1018.
5. *Debates*, February 7, 2002, p. 8831, *Journals*, pp. 1019-20.
6. Fiftieth Report of the Standing Committee on Procedure and House Affairs, presented to the House on March 22, 2002 (*Journals*, p. 1250).

Parliamentary Privilege

Rights of the House

Power to discipline: censure, reprimand and the summoning of individuals to the Bar of the House; Member seizing the Mace from the Table; *prima facie*

April 22, 2002 — *Debates*, p. 10654

Context: On April 17, 2002, Keith Martin (Esquimalt–Juan de Fuca) briefly seized the Mace following the adoption of an amendment to the motion for second reading of Bill C-344, *An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act (marihuana)*. The amendment resulted in the withdrawal of the Bill and the referral of its subject matter to the Special Committee on Non-Medical Use of Drugs. Later during the sitting, Ralph Goodale (Leader of the Government in the House of Commons, Minister responsible for the Canadian Wheat Board and Federal Interlocutor for Métis and Non-Status Indians) rose on a question of privilege, maintaining that Mr. Martin had committed an affront to the dignity of the House and an assault on its order and decorum, and gave notice that he would elaborate on the legal aspects at the earliest opportunity. The Acting Speaker replied that the Speaker would look into the matter and report to the House. Marlene Catterall (Ottawa West–Nepean) then rose on a point of order to request that, until the question of privilege was resolved, Mr. Martin not be allowed to speak in the House. The Acting Speaker rejected the request and said that it would be left to the Speaker to judge the gravity of the Member's transgression. Mr. Martin then apologized both to the Chair and to the House for seizing the Mace, stating that he had done so in the heat of the moment to make a point. The Acting Speaker accepted his apology but added that it would be up to the Speaker to pursue the matter further.[1]

On April 22, 2002, the Government House Leader stated that Members had a duty to defend the dignity of the Parliament. John Reynolds (Leader of the Official Opposition) responded that, as Mr. Martin had apologized to the House for his actions, the matter should be considered closed. He also contended that the Government House Leader had not raised the matter in a timely fashion.[2]

Resolution: The Speaker delivered his ruling immediately. He stated that, in his view, the issue had been raised in a timely manner. He stated that the incident in

the Chamber had been contrary to the Standing Orders and that he believed that there had been a *prima facie* breach of privilege of the House. Consequently, he invited the Government House Leader to move his motion.

Decision of the Chair

The Speaker: I am reluctant to get into a lengthy argument in this case at this time anyway.

In my opinion, what took place in the House was contrary to the Standing Orders.

In my opinion it is a situation where I believe the Minister should be allowed to put his motion. I believe there has been a *prima facie* breach of the privileges of the House. The Minister sought to raise the matter on Thursday morning and got my approval to delay it because of the events that had transpired on Wednesday night, so it was not raised at the earliest opportunity, but I indicated there would be no prejudice in respect of time because of the delay on Thursday morning.

Accordingly, in my view the motion is one that could now be brought before the House and I invite the Minister to move his motion.

Postscript: Mr. Goodale moved a motion to find Mr. Martin in contempt of the House and to suspend him from its service until he appeared at the Bar of the House to apologize.[3] During debate on the motion, Mr. Reynolds moved an amendment to remove the requirement for Mr. Martin's suspension from the service of the House, and instead to recognize his disregard for the authority of the Chair, to accept his previous apology and to consider the matter closed.[4] On April 23, 2002, Mr. Reynolds' amendment was defeated and the main motion was adopted.[5] On April 24, 2002, Mr. Martin appeared at the Bar of the House and delivered an apology. The Speaker then invited him to return to his seat.[6]

1. *Debates*, April 17, 2002, pp. 10524-7, *Journals*, pp. 1302-4.
2. *Debates*, April 22, 2002, p. 10654.
3. *Debates*, April 22, 2002, pp. 10654-70, *Journals*, p. 1323.
4. *Debates*, April 22, 2002, p. 10658, *Journals*, p. 1323.
5. *Debates*, April 23, 2002, pp. 10747-8, *Journals*, pp. 1337-8.
6. *Debates*, April 24, 2002, p. 10770, *Journals*, p. 1341.

Parliamentary Privilege

Rights of the House

Contempt of the House: Government advertising allegedly used to influence deliberations of Parliament and public opinion

November 25, 2002 *Debates*, pp. 1822-3

Context: On November 25, 2002, Joe Clark (Calgary Centre) rose on a question of privilege regarding televised advertising about climate change which aired just days after the Government had given notice of a resolution asking the House to ratify the Kyoto Protocol, a matter on which Parliament had not yet come to a decision. Mr. Clark argued that Parliament's policy decisions cannot be advertised until after they have been adopted and that the use of public money to influence a decision of Parliament constituted a contempt of the House. Geoff Regan (Parliamentary Secretary to the Leader of the Government in the House of Commons) noted that the advertising in question did not claim that the Protocol had been approved by Parliament, and that the motion before the House was advisory in nature as the ratification of international treaties did not require resolutions of the House. Another Member also spoke to the matter.[1]

Resolution: The Speaker ruled immediately. He observed that the contested advertisement had not indicated that a decision had already been made, but only that the matter was before Parliament. He added that similar advertising had been allowed in the past, provided it did not suggest that Parliament had made a decision that it had not yet made, or suggest that Parliament would make no changes to a given proposal before it. Accordingly, the Speaker concluded that it was not a *prima facie* question of privilege.

Decision of the Chair

The Speaker: Once again, I am prepared to deal with this matter, having heard the submissions from the Rt. Hon. Member for Calgary Centre, the hon. Parliamentary Secretary to the Government House Leader and the hon. Member for West Vancouver–Sunshine Coast.

When the Rt. Hon. Member for Calgary Centre started his remarks I immediately recalled the ruling of Mr. Speaker Fraser to which he alluded so extensively in his comments. It was one of the early rulings in the House after I was first a Member of this place and I certainly remember the day it happened. I remember the ruling with some considerable clarity and I certainly remember the words at the end of the ruling that the Rt. Hon. Member quoted.

I certainly agreed with them, but in this case I think the matter is quite clear. I might go back to the earlier part of the ruling where he quoted the then Leader of the Opposition.[2] He read part of the notice, the advertisement, that was complained of. It read as follows:

> On January 1, 1991, Canada's Federal Sales Tax System will change. Please save this notice. It explains the changes and the reasons for them.

Then Mr. Speaker Fraser said:

> I point out that this ad was a full-page ad and the letters were very large indeed.

Then he repeated those particular words in French. The suggestion was that these changes were in fact already passed, and the tenor of the advertisement was extremely important in this regard and very important in regard to Mr. Speaker Fraser's ruling, as he said, first of all, that the date was fixed as to when these changes would come in when in fact the Act had not been passed by Parliament, and second, that it said to save the notice because there would be no changes, that this was the way the tax would be, that "you can save this notice now knowing that this is the way it is going to be on January 1, 1991".

It was those two points that were made by Mr. Turner as objections to this particular advertising campaign and with which Mr. Speaker Fraser expressed his grave reservations at the end because of those two particular points.

I can go back to another decision of Madam Speaker Sauvé.

On October 17, 1980 a point of privilege like the one raised today by the Rt. Hon. Member for Calgary Centre was raised.

She dealt with an objection to a Government advertising campaign at that time, where there was the suggestion that advertising on behalf of a partisan policy or opinion before such policy or opinion had been approved by the House was a contempt of the House. She found it was not.

Generally advertising has been permitted, but what has been criticized and was criticized by Mr. Speaker Fraser, and where he had his reservations concerning the advertising campaign, was where the advertisement itself stated that there would be an implementation date and that the material in the ad was the final product. That was the objection. That, in my understanding, was the basis of the objection taken by the then Leader of the Opposition. It was found not to be a sound objection, but Mr. Speaker Fraser did indicate that if it happened again he might rule quite differently.

Nothing in the words that the Rt. Hon. Member quoted to the Chair concerning the advertisements this weekend indicated that this was a *fait accompli* or that the matter was decided in a particular way. As I understand it, they indicated that the matter was before Parliament. Advertising for or against is something that has been allowed in the past, as long as the suggestion in the ad, as in this case of the goods and services tax advertisements, did not indicate that the decision had in fact been made and that no change would be made by Parliament.

That was the point of the alleged contempt which Mr. Speaker Fraser found so objectionable, and I cannot find anything in the evidence I have heard today respecting these advertisements that would indicate that this is in fact the case in these ads. While I am sure there will be differences of opinion in the House as to whether or not public funds should be spent advertising some matter that is before the House, my predecessors in this chair have consistently ruled that it is not for the Chair to interfere in that unless those advertisements themselves somehow suggest that Parliament has no say in the matter or that the whole issue is one that has been decided in advance and Parliament will decide this way on or before a certain date.

I cannot find that in the circumstances before us, and accordingly I do not find that there is valid question of privilege at this time, but obviously the content of ads sometimes changes and I am sure that the Rt. Hon. Member

will continue to be vigilant and if there are advertisements that he feels are objectionable he will raise them with the Chair at a later date and of course receive a hearing.

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1. *Debates*, November 25, 2002, pp. 1820-2.
2. The Leader of the Opposition at the time was John Napier Turner.

Parliamentary Privilege

Rights of the House

Contempt of the House: accountability of Ministers to Parliament

December 12, 2002 *Debates*, pp. 2600-1

Context: On December 9, 2002, John Reynolds (West Vancouver–Sunshine Coast) rose on a question of privilege to accuse Elinor Caplan (Minister of National Revenue) of contempt of Parliament. He alleged that she had failed to comply with a *Financial Administration Act* requirement to report, in the *Public Accounts of Canada*, cases of fraud, theft and loss of taxpayers' money, specifically on matters related to the Goods and Services Tax.[1] After hearing from another Member, the Acting Speaker (Réginald Bélair) took the matter under advisement.[2]

Resolution: On December 12, 2002, the Speaker delivered his ruling. He declared that it was not his role to rule on points of law. The situation at hand constituted a difference of opinion between Mr. Reynolds and the Minister as to the legal interpretation of the Act, and as such was more a matter of debate than of procedure. However, the issue was nevertheless of concern to the House since the changes the Government made to how the *Public Accounts* were to be reported were not preceded by any attempt to seek the advice or agreement of Members, or even inform them of the change. The Speaker pointed out that for the House to be effective in holding the Government to account, Members require complete and accurate information that is provided in a timely fashion. He concluded that, although there was no procedural irregularity in a strict sense, Members might wish to pursue the matter through the Standing Committee on Public Accounts.

Decision of the Chair

The Speaker: I am now prepared to rule on the matter raised by the hon. Member for West Vancouver–Sunshine Coast on December 9 concerning the alleged failure of the Government to report on cases of fraud related to the Goods and Services Tax. The hon. Member charged that the Minister of National Revenue should be found in contempt for failing to table a full accounting of cases of theft, fraud and losses of tax revenue in the *Public Accounts of Canada* as required by the *Financial Administration Act*.

I would like to thank the hon. Member for West Vancouver–Sunshine Coast for raising the question and the hon. Government House Leader for his contribution on this matter.

Referring to Sections 23 and 24 of the *Financial Administration Act* relating to the remission of taxes, the hon. Member for West Vancouver–Sunshine Coast cites Section 24(2) which states:

> Remissions granted under this or any other Act of Parliament during a fiscal year shall be reported in the Public Accounts for that year in such form as the Treasury Board may direct.

While it is a longstanding practice that the Speaker does not interpret matters of law, I suppose one could question whether the funds paid out by the Canada Customs and Revenue Agency in response to fraudulent applications qualify as "remissions" under this section. In this respect, I must note for the sake of precision that a "remission" is not the same as a loss.

The Chair finds more enlightenment by considering the issues raised by the hon. Member for West Vancouver–Sunshine Coast in the context of the provisions of Section 79 of the *Financial Administration Act*. I will return to this in a moment.

The hon. Member also cited a *National Post* article on Saturday, December 7, 2002 alleging that, since 1995, the Government has failed to report on the loss of public money due to fraudulent claims for GST refunds.

Through a written submission to the Chair, the hon. Minister of National Revenue has confirmed that following a 1995 agreement reached between the Department of National Revenue and the Treasury Board, her department ceased reporting fraudulent losses in the *Public Accounts* on a year by year basis. According to the hon. Minister, virtually all such confirmed losses were the result of court decisions rendered some months [or][3] years after the original losses were detected.

Explaining that items included in the *Public Accounts* of a given year must have occurred in that year, the hon. Minister argues that the time delay between the discovery of a loss and its confirmation by the courts made the timely

inclusion of the losses in the *Public Accounts* impossible. The Minister notes that her department, now an agency, addressed this quandary by addressing the Treasury Board. She reports their conclusion that the requirements of the *Financial Administration Act* could be met through the aggregate information on tax write-offs included in the *Public Accounts*, and through media bulletins issued at the time any "loss" was confirmed by a court decision.

In short, the Minister contends that the Canada Customs and Revenue Agency is in full compliance with the Act, by virtue of the Treasury Board having agreed to this manner of reporting.

It is not of course for the Speaker to decide if the Agency is acting in compliance with the law. As I have had occasion to mention in several recent rulings, it is a long-accepted principle that the Speaker does not pronounce on points of law.

There is clearly a difference of opinion between the hon. Opposition House Leader and the hon. Minister concerning interpretation of the legalities flowing from the facts of this case. That is a matter for debate and a variety of different opportunities are available by which the matter can be raised in this Chamber or in committee. There is no procedural issue here and so I need not elaborate on that further.

However, there is another aspect of this case that gives me pause and that will, I think, pose difficulties for Members on both sides of the House. We are all aware that hon. Members cannot carry out the important task of holding the Government to account unless they are provided with complete, accurate information in a timely fashion. For much of this information they must depend upon the Government through such documents as the *Public Accounts*.

The Chair is troubled that although Revenue Canada recognized that it had a reporting difficulty and rightly sought the advice and approval of the Treasury Board as to how best to rectify the situation, no effort was made to consult Parliament.

As the Minister herself points out in her written submission:

> Section 79 of the *Financial Administration Act* (FAA) provides regulation-making authority to prescribe, amongst other things, the manner by which losses of public funds should be reported in the

> *Public Accounts*. The Treasury Board has chosen to prescribe these requirements by way of policy rather than regulation.

There is little doubt that the Treasury Board's decision to proceed by policy rather than by regulation grants it greater flexibility in dealing with the cases that arise, but that decision does not obviate the responsibility for remaining accountable to Parliament. Put another way, had the Treasury Board chosen to avail itself of its authority to make regulations in this regard, at least the Standing Joint Committee on Scrutiny of Regulations might have detected any changes in approach by the Government with regard to the reporting of such losses.

As it stands, not only was the advice or agreement of Members not sought to the reporting solution agreed to by the department and the Treasury Board, no indication that the change had been made was included in the *Public Accounts* or in any public accounts document.

Information that was available in one year simply vanished the next without explanation. It is surely disingenuous to suggest, as does the Minister in her submission, that aggregate information on tax write-offs in the *Public Accounts* and media bulletins on court decisions are adequate or sufficiently evident for parliamentary requirements.

As I said, this is not, strictly speaking a procedural issue but it is an issue that directly affects the rights of hon. Members to timely and accurate information. It is a matter that Members may wish to pursue in a more appropriate forum, possibly in the Standing Committee on Public Accounts, whose Chair, an opposition member, is very competent.

I thank the hon. House Leader of the Official Opposition for having raised this matter. While there is no basis for finding a procedural irregularity here in the strict sense, it does raise an issue of concern to all hon. Members.

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1. *Debates*, December 9, 2002, pp. 2411-2.
2. *Debates*, December 9, 2002, p. 2412.
3. The published *Debates* read "of" instead of "or".

Parliamentary Privilege

Rights of the House

Contempt of the House: Officers of Parliament; alleged false testimony at a committee meeting; *prima facie*

November 6, 2003 *Debates*, p. 9229

Context: On November 4, 2003, Derek Lee (Scarborough–Rouge River) presented to the House the Ninth Report of the Standing Committee on Government Operations and Estimates which documented how the former Privacy Commissioner, George Radwanski, had deliberately misled the Committee, and provided false and misleading information to it.[1] Later in the sitting, Mr. Lee rose on a question of privilege to charge Mr. Radwanski with contempt of Parliament based on the contents of the Report, where the Committee had concluded that an issue of contempt was present and asked the House to find that Mr. Radwanski was in contempt of Parliament. After hearing from several other Members, the Speaker took the matter under advisement.[2] On November 5, 2003, Don Boudria (Minister of State and Leader of the Government in the House of Commons) rose to ask that the Speaker clarify in his ruling the responsibilities of citizens appearing before House of Commons committees, and to outline for Members what courses of action would be available to Members should a *prima facie* case of privilege be found. Intervening on the matter, Paul Szabo (Mississauga South) requested unanimous consent to move a motion to find Mr. Radwanski in contempt of Parliament. Consent for the motion was denied.[3]

Resolution: On November 6, 2003, the Speaker delivered his ruling. The Speaker stated that it was for the House, not for the Speaker, to decide what course of action to take in the case of a *prima facie* breach of privilege, and for committees to make their expectations known to witnesses, adding that while it was not for the Speaker to articulate what committees' expectations of witnesses should be, it is important for committees and the House to be able to rely on the testimony of witnesses. Referring to the matters set out in the Ninth Report of the Standing Committee on Government Operations and Estimates, he found that a *prima facie* breach of the privileges of the House had occurred and invited Mr. Lee to move his motion.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Scarborough–Rouge River on November 4, 2003, concerning the conduct of Mr. George Radwanski before the Standing Committee on Government Operations and Estimates.

I would like to thank the hon. Member for Scarborough–Rouge River for having raised an issue which is of importance to all Members and to the institution of the House of Commons. I would also like to thank the hon. Member for New Westminster–Coquitlam–Burnaby, the Rt. Hon. Member for Calgary Centre and the hon. Member for Winnipeg Centre for their interventions.

On November 5, 2003, the hon. Government House Leader rose in the House to contribute to the discussion. Acknowledging the seriousness of this matter and the importance of the ruling of the Chair in this case, the hon. House Leader called on the Speaker to render a ruling which would also provide two statements. To use his own words, the House Leader looked to the ruling, first:

> … to make it clear to every citizen who may come before a committee of the House the responsibilities that he or she has… and the consequences that may follow from a failure… to uphold those responsibilities…

And secondly:

> … to provide the House with an outline of its options should [the Chair] find a *prima facie* case of contempt…

The hon. Government House Leader went on to discuss various issues surrounding the possible summoning of a private citizen to the Bar of the House. I wish to thank the hon. Government House Leader for his intervention.

Before rendering my decision, I want to address the two requests he has made to the Chair.

First, let me deal with the suggestion that my ruling should lay out the options before the House in this matter. As hon. Members know, the role of the

Speaker in matters of privilege is well defined in *House of Commons Procedure and Practice* at page 122, which states:

> The function of the Speaker is limited to deciding whether the matter is of such a character as to entitle the Member who has raised the question to move a motion which will have priority over Orders of the Day; that is, in the Speaker's opinion, there is a *prima facie* question of privilege. If there is, the House must take the matter into immediate consideration.…
>
> … The Speaker's ruling does not extend to deciding whether a breach of privilege has in fact been committed—a question which can [only][4] be decided by the House itself.

It is clear to me that the Speaker's role in matters of privilege and contempt is well established in our practice. In my view, it is not the role of the Speaker to suggest how the House may wish to deal with a question of privilege or a case of contempt, always assuming that the House has decided that it is faced with such an offence. The ruling will therefore deal only on whether or not the Chair has found a *prima facie* case of contempt.

Secondly, it has been suggested that the ruling lay down guidelines for individuals appearing before committees of this House. However tempting the invitation, the Speaker cannot presume to articulate the expectations that committees have of the witnesses who come before them. Suffice it to say that I believe all hon. Members will agree with me when I say simply that committees of the House and, by extension, the House of Commons itself, must be able to depend on the testimony they receive, whether from public officials or private citizens. This testimony must be truthful and complete. When this proves not to be the case, a grave situation results, a situation that cannot be treated lightly.

In the situation before us, I have carefully read the Ninth Report of the Standing Committee on Government Operations and Estimates tabled in the House. The Committee's Report sets out the testimony of Mr. George Radwanski, the former Privacy Commissioner, that it found misleading and concludes that, in its view, the former Privacy Commissioner

should be found in contempt of the House. The Report reviews the conflicts in the testimony and, it seems to me, draws its conclusions in a manner that seems reasonable in the circumstances.

Accordingly, I conclude that the matters set out in the Ninth Report of the Standing Committee on Government Operations and Estimates are sufficient to support a *prima facie* finding of a breach of the privileges of this House. I therefore invite the hon. Member for Scarborough–Rouge River to move his motion.

Postscript: Immediately after the Speaker ruled, the Chair of the Standing Committee on Government Operations and Estimates, Reg Alcock (Winnipeg South), read a letter from Mr. Radwanski in which he apologized to the Committee and to Parliament for the mistakes that had been made during his tenure as Privacy Commissioner. Mr. Alcock sought and received unanimous consent to table the letter.[5] Mr. Lee then stated that he would not move the privilege motion (which would have called Mr. Radwanski to appear before the Bar of the House), and asked that the House agree to bring the matter to a close.[6] After other Members had spoken to the matter, John Reynolds (West Vancouver–Sunshine Coast) advised that the House Leaders were discussing it, and received unanimous consent for the House to return to it later in the sitting.[7] Later in the sitting, Mr. Lee sought and received unanimous consent for a motion acknowledging receipt of his letter of apology and finding Mr. Radwanski in contempt of the House.[8]

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1. Ninth Report of the Standing Committee on Government Operations and Estimates, presented to the House on November 4, 2003 (*Journals*, p. 1225).
2. *Debates*, November 4, 2003, pp. 9150-1.
3. *Debates*, November 5, 2003, pp. 9192-3.
4. The word "only" is missing from the published *Debates*.
5. *Debates*, November 6, 2003, p. 9230, *Journals*, p. 1245.
6. *Debates*, November 6, 2003, p. 9230, *Journals*, p. 1245.
7. *Debates*, November 6, 2003, p. 9231, *Journals*, p. 1245.
8. *Debates*, November 6, 2003, p. 9237.

Parliamentary Privilege

Rights of the House

Freedom from obstruction, interference, intimidation and molestation: usurpation of the title "Member of Parliament"; *prima facie*

November 23, 2004 *Debates*, pp. 1733-4

Context: On November 22, 2004, Michel Guimond (Montmorency–Charlevoix–Haute-Côte-Nord) rose on a question of privilege with regard to an advertisement by Serge Marcil (former Member for Beauharnois–Salaberry) which referred to him as a Member of Parliament and included the addresses of his old constituency and parliamentary offices even though he had been defeated in a general election four-and-a-half months earlier. Mr. Guimond was granted unanimous consent to table the document in question. The Speaker then took the matter under advisement.[1]

Resolution: The Speaker delivered his ruling on November 23, 2004. He stated that the advertisement, in representing a non-Member as a sitting Member, constituted a *prima facie* breach of privilege and he invited Mr. Guimond to move his motion.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on Monday, November 22, 2004, by the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord, concerning a misleading advertisement by a former Member of Parliament.

In raising his question of privilege, the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord stated that a booklet distributed to his office on November 12, 2004, contains an advertisement in which Mr. Serge Marcil is pictured and described as the Member of Parliament for Beauharnois–Salaberry. The advertisement also includes the addresses for the former offices of Mr. Marcil on Parliament Hill and in the riding. As hon. Members will know, Mr. Marcil was the Member for Beauharnois–Salaberry during the Thirty-Seventh Parliament, but was not returned in the June election.

The hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord compared the current case to the case raised in the House on April 25, 1985, in which Andrew Witer complained of an advertisement by the former Member for Parkdale–High Park in which the former Member, Jesse Flis, was represented as still being the sitting Member for that riding.

That case is set out in detail in *House of Commons Procedure and Practice*, page 87, note 173.

I have examined the advertisement complained of by the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord, and it is clear that his report of the facts of the matter is accurate. How this error occurred is not for your Speaker to judge.

I find that the advertisement, in representing someone as a sitting Member of this House who is not in fact a Member, constitutes a *prima facie* breach of the privileges of the House, and I invite the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord to move his motion.

Postscript: Mr. Guimond moved that the matter be referred to the Standing Committee on Procedure and House Affairs, and the motion was agreed to.[2] On February 23, 2005, the Committee presented its Twenty-Eighth Report. The Report exonerated Mr. Marcil as it had been determined the advertisement was published in error and there had been no intention on his part to misrepresent himself as a Member of Parliament.[3] The Report was concurred in later that day.[4]

1. *Debates*, November 22, 2004, pp. 1657-8.
2. *Debates*, November 23, 2004, p. 1734.
3. Twenty-Eighth Report of the Standing Committee on Procedure and House Affairs, presented to the House on February 23, 2005 (*Journals*, p. 471).
4. *Journals*, February 23, 2005, p. 472.

Parliamentary Privilege

Rights of the House

Contempt of the House: Government alleged to have disregarded Parliament

March 23, 2005 *Debates*, pp. 4498-500

Context: On February 17, 2005, Jay Hill (Prince George–Peace River) rose on a question of privilege and, citing comments made by Jim Peterson (Minister of International Trade), charged the Government with disregarding Parliament and the legislative process by implementing measures contained in Bills C-31, *Department of International Trade Act* and C-32, *An Act to amend the Department of Foreign Affairs and International Trade and to make consequential amendments to other Acts* despite their defeat at second reading on February 15, 2005. After another Member spoke, Tony Valeri (Leader of the Government in the House of Commons) declared that the two departments were operating under the "parliamentary sanction of the *Appropriations Act*" in that the Main Estimates for 2004-05, approved by Parliament, provided funds for the operations of two departments and two Ministers. The Speaker took the matter under advisement.[1]

On March 8, 2005, Dominic LeBlanc (Parliamentary Secretary to the Leader of the Government in the House of Commons), arguing that no contempt of Parliament had occurred, stated that the *Public Service Rearrangement and Transfer of Duties Act* enabled the Government to rearrange pre-existing authorities already created by Parliament and that legislation was generally used to confirm Government organizational changes. Ken Epp (Edmonton–Sherwood Park) and Alexa McDonough (Halifax) both asserted that if legislation was unnecessary, the Government should not have introduced it. Mr. Hill reiterated their point as well. The Speaker again took the matter under advisement.[2]

Resolution: On March 23, 2005, the Speaker delivered his ruling. He explained that statutory authority already existed for the Government to proceed with changes that had been made earlier by Orders in Council pursuant to the *Public Service Rearrangement and Transfer of Duties Act*. He commented that when the Government had introduced Bills C-31 and C-32, it was to confirm the changes that were already in the process of being implemented. He added that if the Minister's intention in making the statements was to express a legal opinion that the reorganization by

Order in Council could continue to have legal effect, then it would be difficult to find that the comments were an offence to the dignity of the House or a breach of privilege. The Speaker concluded his remarks by noting that the defeated Bills had aimed to confirm executive action already taken but that the House had refused to give that confirmation. Despite this paradox, the Speaker concluded that there was no *prima facie* question of privilege.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on February 17 by the hon. Opposition House Leader concerning remarks made by the Hon. Minister of International Trade in relation to the defeat of the motions for second reading of Bill C-31 and Bill C-32, the Bills that proposed to create a Department of International Trade separate from the Department of Foreign Affairs. The hon. Opposition House Leader contends that these remarks represent a contempt of Parliament.

I would like to thank the hon. Opposition House Leader for raising this matter, as well as the hon. Member for Vancouver East, the hon. Member for Calgary Southeast and the hon. Government House Leader for their contributions when the issue was raised. I also want to thank the hon. Parliamentary Secretary to the Government House Leader for his intervention on March 8 and the hon. Member for Edmonton–Sherwood Park, the hon. Member for Halifax and the hon. Opposition House Leader for the responses to his comments.

The hon. Opposition House Leader in his original statement objected to comments made by the Minister for International Trade on the day following the defeat at second reading of Bill C-31 and Bill C-32. He pointed to articles in the *Globe and Mail* and the *Ottawa Citizen* which quoted the Minister as saying that the two departments would continue to work independently even though Parliament had voted against the Bills that proposed to split the two entities, the former Department of Foreign Affairs and International Trade.

The hon. Opposition House Leader alleges that the Minister's words suggest that the passage or defeat of legislation was inconsequential to the separation of the departments and, in so doing, showed disregard for the role

of the House of Commons. He argues that this shows such disrespect as to constitute, in his opinion, a contempt of the House.

There are two issues in the presentation made by the hon. Opposition House Leader. The first issue is the current status of the Department of Foreign Affairs and International Trade given that on February 15 the Bills containing the proposal that it be split into two departments were defeated at second reading in the House. The second issue is whether actions taken or statements made by the Minister in the wake of the defeat of Bill C-31 and Bill C-32 constitute a contempt of the House of Commons.

Let us consider the first issue, the status of the Department of Foreign Affairs and International Trade.

On December 12, 2003, a number of Orders in Council were made under the authority of several statutes, including the *Public Service Rearrangement and Transfer of Duties Act*, the *Public Service Employment Act*, the *Financial Administration Act* and the *Ministries and Ministers of State Act*.

I draw the attention of the House, for example, to Order in Council numbered 2003-52 designating the Department of International Trade as a department. Other Orders in Council in this series address ancillary issues related to that designation, while the existence of the positions of Minister of Foreign Affairs and a Minister of International Trade both existed pursuant to the *Salaries Act* prior to that day.

The *Public Service Rearrangement and Transfer of Duties Act* provides that the Government, by Order in Council, may reorganize existing functions of Government for which Parliament has voted funds. In short, existing statutes grant the Government considerable leeway in proceeding with any reorganization it chooses to pursue. The Canadian custom has been to complete or confirm such rearrangements by way of legislation.

The House will note that these are some of the very points which were emphasized by the hon. Parliamentary Secretary to the

Government House Leader when he spoke to this issue on March 8, saying, in part:

> In reorganizing or organizing a cabinet and making use of the *Public Service Rearrangement and Transfer of Duties Act*, the government does not create new statutory authorities or powers. Rather, the government rearranges pre-existing authorities that have already been created by Parliament and does so in accordance with a legislative mechanism that has also been created by Parliament.

It would appear to the Chair that in general the power of the Government to reorganize, and specifically this latest reorganization, is not very well understood. The House will recall that as far back as March 2004 questions related to the reorganization were surfacing in the House.

For example, I remind hon. Members of the question of privilege raised on March 10, 2004 by the hon. Member for St. John's South–Mount Pearl with regard to the form of the Main Estimates for 2004-05. I refer hon. Members to the *Debates* for that day at pages 1310 and 1311.

I also refer hon. Members to the text, *Organizing to Govern, Volume One*, by the Hon. Gordon F. Osbaldeston, former Clerk of the Privy Council, who explains at page 24:

> For a variety of reasons—ministerial preference, better organization fit, and other reasons… —governments may decide to rearrange their organizations. The chief legislative tool for accomplishing this type of organizational change is the *Public Service Rearrangement and Transfer of Duties Act*. Orders in council pursuant to this Act are used principally for two purposes:
>
> > transfer of organizational subunits… from one organization to another…
> >
> > transfer of responsibility for acts or parts of acts from one minister to another…

On page 25 he goes on to confirm:

> Strictly speaking, these tools are meant only to reorganize existing functions of government for which Parliament has voted funds—any new activities must be authorized by Parliament.

So, too, in the case now before us, whether or not the House is convinced of the case for reorganization, the Government nonetheless has at hand the tools to execute those plans; legislative measures like Bill C-31 and C-32 merely complement them.

I trust that the background I have just presented will assist the House in better appreciating the current situation. Here, existing functions, notably international trade, are being reconfigured and those rearrangements have been carried out by Orders in Council. I should say that this is what distinguishes the current situation from the one cited by the hon. Opposition House Leader on which Speaker Fraser ruled in 1989. In that case, a new tax, the GST, was being proposed by the Government of the day, but enacting legislation had not yet been adopted in the House.

In the opinion of the Chair, the authority to begin the process of separating the departments rests on the series of Orders in Council adopted December 12, 2003, pursuant to existing statutory authorities granted to the Government by Parliament. That authority is set out in the law and it is not for me to judge whether it is sufficient in this case.

Following a search of our precedents, I am unable to find a case where any Speaker has ruled that the Government, in the exercise of regulatory power conferred upon it by statute, has been found to have breached the privileges of the House. Indeed, the hon. Member is not arguing that. He seems to be suggesting that the Minister's comments amounted to a breach of privilege, but if the Minister was stating the legal position, it could hardly constitute a breach.

To recap then, since I promised the hon. Member for Halifax that all would be made clear in this ruling, statutory authority, namely the *Public Service Rearrangement and Transfer of Duties Act*, already exists to proceed

with the changes that were originally made in December by Orders in Council pursuant to that Act. When the Government introduced legislation, specifically Bill C-31 and Bill C-32, since, as explained the hon. Parliamentary Secretary to the Government House Leader, it was as a complement in keeping with "… Canadian practice… to confirm major changes in Government organization through legislation". We can think of these Bills as similar to the miscellaneous statutes amendments bills that come before Parliament from time to time.

From a reading of the Bills, it appears to me that they enshrine in statute the new names of the departments and Ministers and spell out the mandate of international trade, not in the cryptic language of the Order in Council but in the more Cartesian vocabulary of legislative drafting. Furthermore, Bill C-31 appears to create a new post of Associate Deputy Minister of International Trade.

Thus, as the House well knows, on December 7, 2004, Bill C-31, *An Act to establish the Department of International Trade and to make related amendments to certain Acts*, and Bill C-32, *An Act to amend the Department of Foreign Affairs and International Trade Act and to make consequential amendments to other Acts*, were introduced and read a first time. These Bills were debated at second reading in early February, each coming to a vote on second reading, that is to say a vote on approval in principle of each Bill, on February 15. Both Bills were defeated at second reading.

Where does that leave matters?

The procedural consequence is clear. Bill C-31 and Bill C-32 will not proceed further in this session.

The legal consequence is not for me to address. The Chair is unable to determine what future legislative measures the Government may bring forward to complete or confirm the division of the two departments. That is for the Government to determine.

As my predecessors and I have pointed out in many previous rulings, where legal interpretation is at issue, it is not within the Speaker's authority to

rule or decide points of law. This principle is explained on pages 219 and 220 of *House of Commons Procedure and Practice*:

> —while Speakers must take the Constitution and statutes into account when preparing a ruling, numerous Speakers have explained that it is not up to the Speaker to rule on the "constitutionality" or "legality" of measures before the House.

If the Chair cannot pronounce on the legality of Government action, it is up to the Speaker to examine the situation and to weigh the arguments of the hon. Opposition House Leader to determine from a purely procedural perspective whether the privileges of the House have been breached.

I can only assume that the Minister, in stating his intention to continue with the establishment of the Department of International Trade, is planning to proceed for the moment under existing authorities.

In a similar vein, the Chair has noted and draws the attention of the House to the form of the Main Estimates for 2005-06. Those documents present separate budgets for foreign affairs and for international trade, though the formal name Foreign Affairs and International Trade is still invoked.

Is there cause for concern, however, that the privileges of the House are breached where the Government continues with its departmental reorganization by Orders in Council after confirmation of these initiatives was not approved by the House? Am I to find here a *prima facie* breach of privileges of the House?

It seems to me that in making the statement outside the House, which gave rise to the point of privilege of the hon. Opposition House Leader, the Minister might only have meant to indicate that the reorganization by Orders in Council continues to have legal effect. If that was the intent of the Minister's remark and the actions taken are legally valid, which I must assume is the case, it is difficult to find this comment offensive to the dignity of the House and therefore a *prima facie* breach of privileges.

That is not to say that the comments, if reported accurately, do not concern me. I can fully appreciate the frustration of the House and the confusion of hon. Members, let alone those who follow parliamentary affairs from outside this Chamber. The scrutiny of legislation is arguably the central role of Parliament.

The decision of the House at each stage of a Government bill determines whether or not the proposal can go forward. How can the decisions of the House on these Bills be without practical consequence?

We appear to have come upon a paradox in Canadian practice. Bill C-31 and Bill C-32 aimed to confirm executive action, action already taken pursuant to statutes by non-legislative means, and the House of Commons has refused to give that confirmation. It leaves the Government and the House in a most unfortunate conflict on the matter but, on the information I have, I cannot find that this constitutes a *prima facie* breach of the privileges of the House.

At the end of all this, it seems to me that what we have here is an unfortunate incident that has impacted upon the working relationship between the House and the Government. The hon. Government House Leader has said that the Government is reviewing its parliamentary options. The Chair would encourage the Government, during the course of that review, to have further consultations with all parties in the House to clarify events and restore the central working relationship to its usual good form.

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1. *Debates*, February 17, 2005, pp. 3652-4.
2. *Debates*, March 8, 2005, pp. 4120-2.

Parliamentary Privilege

Rights of the House

Contempt of the House: Prime Minister alleged to have disregarded a decision of the House concerning an Order in Council appointment

May 3, 2005 — *Debates*, pp. 5547-8

Context: On April 12, 2005, Bob Mills (Red Deer) rose on a question of privilege[1] to accuse Paul Martin (Prime Minister) of contempt of Parliament for disregarding a decision of the House, following its concurrence, on April 6, 2005, in the Fourth Report of the Standing Committee on the Environment and Sustainable Development, which recommended that Glen Murray's nomination as Chairman of the National Round Table on the Environment and the Economy be withdrawn.[2] On April 14, 2005, Dominic LeBlanc (Parliamentary Secretary to the Leader of the Government in the House of Commons) spoke to the question of privilege, claiming that the Committee knew it did not have the authority to revoke the appointment, and that the appointment had been made prior to the Committee reporting back to the House on the matter. The Speaker then took the matter under advisement.[3]

Resolution: The Speaker delivered his ruling on May 3, 2005. He reminded Members that committees did not have the power to revoke an appointment or nomination, and that a resolution of the House did not have the effect of requiring that any action be taken—nor was it binding. The Speaker indicated that, as Order in Council appointments were the prerogative of the Crown, he could not compel the Government to abide by the Committee's recommendation. He concluded that the matter did not, therefore, constitute a *prima facie* breach of privilege.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on Tuesday, April 12, by the hon. Member for Red Deer concerning the Government's disregard of a motion adopted by the House with respect to an Order in Council appointment.

I would like to thank the hon. Member for Red Deer for bringing this matter to the attention of the House as well as the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons for his intervention.

In presenting his case, the hon. Member for Red Deer charged that the Prime Minister was in contempt of Parliament for disregarding the motion adopted by the House on April 6 recommending that Mr. Glen Murray's nomination as chairperson of the National Round Table on the Environment and the Economy be withdrawn. The hon. Member for Red Deer argued that his privileges had been taken away because the Prime Minister had ignored the wishes of the House of Commons by appointing Mr. Murray to the position.

In order for the House to appreciate fully the context of the hon. Member's question of privilege, I feel it would be useful if I summarized the proceedings leading up to it.

On February 17, 2005, the Parliamentary Secretary to the Leader of the Government in the House of Commons tabled the certificate of nomination of Mr. Glen Murray as chairperson of the National Round Table on the Environment and the Economy pursuant to Standing Order 110(2), after which the certificate of nomination was referred to the Standing Committee on the Environment and Sustainable Development. Mr. Murray was subsequently invited to appear before the Committee to answer questions about his qualifications for the position.

On March 8, 2005, the Committee adopted the following motion:

> That, due to the fact Mr. Glen Murray has insufficient experience in environment related fields or study, this Committee calls on the Prime Minister to withdraw Mr. Murray's appointment to the National Round Table on the Environment and the Economy.

The Chair of the Committee, the hon. Member for York South–Weston, informed the members of the Committee that although the Committee did not have the power to revoke an appointment, a letter would be sent to the Prime Minister advising him of the Committee's decision.

On March 22, 2005, the Committee adopted another motion to report its decision to the House and on March 24, 2005, the Chair of the Committee presented the Committee's Fourth Report to the House. The House subsequently adopted a motion to concur in the Committee's Report on April 6, 2005. In the meantime, Mr. Murray's appointment had been confirmed by the Prime Minister's Office.

On April 14, 2005, the hon. Parliamentary Secretary to the Leader of the Government in the House rose to present the Government's position with respect to the question of privilege. The hon. Parliamentary Secretary provided the House and the Chair with additional facts that he believed were relevant to the issue. He stated that the appointment was proceeded with on March 18, 2005, because the Government understood from the Chair's letter that the Committee had completed its consideration of the matter and "in full knowledge that it did not have the power to revoke the appointment". He noted that it was only after the appointment had been finalized that the Committee decided to report the matter to the House.

During my deliberations on this question of privilege, I reviewed Standing Orders 110 and 111 relating to the examination of Order in Council certificates of nomination and appointments by standing committees to refresh my memory as to their operation.

For the benefit of Members, Standing Orders 110 and 111 were first adopted on a provisional basis by the House in February 1986 and made permanent in June 1987. Standing Order 110(1) provides for the tabling in the House of a certified copy of an Order in Council appointing an individual to a non-judicial post and its referral to a standing committee for its consideration.

Standing Order 110(2) provides for the tabling of a certificate stating that a specific individual has been nominated for an appointment to a specified non-judicial role and the referral of this certificate to a standing committee for its consideration for a period not exceeding 30 sitting days. This is the mechanism by which Mr. Murray's nomination was referred to the Standing Committee on the Environment and Sustainable Development.

Standing Order 111 sets forth the terms of the examination of the appointee or nominee in the designated committee. In particular, the Standing Order restricts the examination to the appointee's qualifications and competence and provides for a specific time limit of 10 sitting days for the examination of the appointee or nominee in the committee from the first consideration and within the overall 30 day limit.

I would also like to refer Members to page 875 of *Marleau and Montpetit*:

> Appointments are effective on the day they are announced by the government, not on the date the certificates are published or tabled in the House.

Further, on page 877, it states:

> A committee has no power to revoke an appointment or nomination and may only report that they have examined the appointee or nominee and give their judgement as to whether the candidate has the qualifications and competence to perform the duties of the post to which he or she has been appointed or nominated.

House of Commons Procedure and Practice at page 448, further states that the adoption of:

> A resolution of the House makes a declaration of opinion or purpose; it does not have the effect of requiring that any action be taken—nor is it binding.

To conclude, it is clear from the above that Order in Council appointments are the prerogative of the Crown.

While the Government can be guided by recommendations of a standing committee on the appointment or nomination of an individual, the Speaker cannot compel the Government to abide by the committee's recommendation nor by the House's decision on these matters. I therefore find there is no *prima facie* question of privilege.

I thank the hon. Member for Red Deer for bringing this matter to the attention of the House.

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1. *Debates*, April 12, 2005, pp. 4950-1.
2. *Journals*, March 24, 2005, p. 564; April 5, 2005, p. 579; April 6, 2005, pp. 583-4.
3. *Debates*, April 14, 2005, pp. 5067-8.

Parliamentary Privilege

Rights of the House

Contempt of the House: Officers of Parliament; Ethics Commissioner's actions and remarks regarding an investigation of a Member; *prima facie*

October 6, 2005 *Debates*, pp. 8473-4

Context: On September 26, 2005, Deepak Obhrai (Calgary East) rose on a question of privilege, alleging that the Ethics Commissioner, Bernard Shapiro, was in contempt of the House for having breached the *Parliament of Canada Act* and sections 27(4) and (7) of the *Conflict of Interest Code for Members of the House of Commons*. Mr. Obhrai argued that the Commissioner had not, as required by the Code, provided him with reasonable written notice that he was under investigation for possible violations of the Code, nor for which specific section of it the Member may have violated. Moreover, he claimed that Mr. Shapiro had commented on the investigation to representatives of the media, thus damaging his reputation and prejudicing the inquiry. The Speaker took the matter under advisement.[1]

Resolution: On, October 6, 2005, the Speaker delivered his ruling. He noted that neither the *Parliament of Canada Act* nor the *Conflict of Interest Code* provided a mechanism to permit Members to make complaints against the Ethics Commissioner with respect to the discharge of his mandate, nor for the Ethics Commissioner to defend himself against complaints about how he performs his duties. He stated that, without a review of the matter by the relevant committee, he was hesitant to rule an Officer of Parliament to be in contempt of the House. He further stated that it was unclear what role the Speaker could play in interpreting and enforcing the Code. He pointed out that subsection 72.05(3) of the Act stipulates that the Ethics Commissioner is to carry out his duties under the "general direction of a committee of the House", namely the Standing Committee on Procedure and House Affairs. However, since the Code was relatively new at the time and there was no clear process to address these sorts of disputes, the Speaker declared himself willing to rule that there was a *prima facie* breach of privilege so as to afford the House the opportunity to decide how it wished to proceed. The Speaker then invited Mr. Obhrai to move the appropriate motion.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on Monday, September 26 by the hon. Member for Calgary East concerning the work of the Ethics Commissioner. I would like to thank the hon. Member for raising this matter, as well as for the additional information he provided.

In presenting his case, the hon. Member for Calgary East argued that the Ethics Commissioner had not followed the proper process for conducting an inquiry as defined in the *Conflict of Interest Code* appended to our Standing Orders. Specifically, the hon. Member claimed that the Ethics Commissioner failed to provide him with reasonable written notice that he was the subject of an inquiry. In addition, the hon. Member stated that, by commenting on the inquiry to a journalist, the Ethics Commissioner failed to conduct the inquiry in private.

Finally, the hon. Member alleged that the Ethics Commissioner's comments to this journalist had damaged the hon. Member's reputation and unfairly prejudiced the investigation.

For those reasons, he charged that the Ethics Commissioner was in contempt of the House and asked that I find a *prima facie* breach of privilege.

As both the position of Ethics Commissioner and the *Conflict of Interest Code* are relatively new, I believe it would be helpful to review how they came into existence.

On March 31, 2004, Royal Assent was given to Bill C-4, *An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence*. This Act created the position of Ethics Commissioner, whose role in relation to Members of Parliament is specified in subsection 72.05(1) of the Act, namely to:

> "perform the duties and functions assigned by the House of Commons for governing the conduct of its Members when carrying out the duties and functions of their office as Members of that House".

On April 29, 2004, the House adopted the Twenty-Fifth Report of the Standing Committee on Procedure and House Affairs, which recommended that a *Conflict of Interest Code for Members* be appended to our Standing Orders. This Code, which came into force at the beginning of the Thirty-Eighth Parliament, assigns several responsibilities to the Ethics Commissioner.

I mention these events to underscore that the *Conflict of Interest Code* contains rules that the House has adopted for itself and that the House has mandated the Ethics Commissioner to interpret and apply the Code. However neither the Act nor the Code provide a mechanism for Members to make a complaint against the Ethics Commissioner regarding the discharge of that mandate. By the same token, there is no mechanism for the Ethics Commissioner to defend himself against a complaint about how he performs his duties.

Having no other recourse, the hon. Member for Calgary East has asked me to rule on whether or not the Ethics Commissioner has breached two specific portions of the Code. The first alleged violation relates to subsection 27(4) of the Code which reads:

> The Ethics Commissioner may, on his or her own initiative, and on giving the Member concerned reasonable written notice, conduct an inquiry to determine whether the Member has complied with his or her obligations under this Code.

The hon. Member stated that the inquiry into his conduct began last May, but claimed not to have been notified officially until August 23, 2005, of the nature of the allegations against him.

Second, the hon. Member claimed that by revealing details of the investigation to the media, the Ethics Commissioner has failed to conduct his inquiry in private. This requirement is found in subsection 27(7) of the Code which states:

> The Ethics Commissioner is to conduct an inquiry in private and with due dispatch, provided that at all appropriate stages throughout the inquiry the Ethics Commissioner shall give the Member reasonable

> opportunity to be present and to make representations to the Ethics Commissioner in writing or in person by counsel or by any other representative.

Those two allegations are troubling in themselves and the correspondence provided by the hon. Member lends further weight to his case, so I have concerns about how this matter has progressed.

That being said, it is unclear what role, if any, that I as your Speaker have to play in ensuring that the Code is properly interpreted and enforced. For example, is it up to the Chair to determine what constitutes "reasonable written notice" or to say to what extent inquiries are to be conducted in private? Can the Chair be expected to rule on what constitutes "due dispatch" or on whether a Member who is the subject of an inquiry has been given a "reasonable opportunity to be present and to make representations?" A close reading of the Act and the Standing Orders suggests to me that that responsibility lies elsewhere.

Subsection 72.05(3) of the Act specifies that the Ethics Commissioner shall carry out his duties and functions under the general direction of a committee of the House. The House has designated the Standing Committee on Procedure and House Affairs to be this committee. Pursuant to Standing Order 108(3)(*a*)(viii), the Standing Committee has the mandate to "review and report on all matters relating to the *Conflict of Interest Code for Members of the House of Commons*".

Since, as I stated earlier, the Code is still relatively new, I believe it would be beneficial both for the Office of the Ethics Commissioner and for the House if the Committee considered this matter. This would afford the Ethics Commissioner an opportunity to explain the process by which inquiries are conducted and give hon. Members a chance to raise any concerns. The Chair hopes that such a dialogue between the Committee and the Ethics Commissioner will clarify matters for all involved.

To summarize then, while the Chair is hesitant to rule that the conduct of an Officer of Parliament constitutes a contempt of the House in the absence of a thorough review and assessment by the responsible committee, the Chair is nevertheless sympathetic with the hon. Member for Calgary East who is

seeking guidance on what avenues are open to him to ensure that this very serious matter is resolved. In particular, the Chair is concerned that the absence of a clear process to address these kinds of disputes leaves both hon. Members and the Ethics Commissioner lacking the clarity to which they are entitled in the performance of their respective roles.

For these reasons, and to afford the House an opportunity to pronounce itself on how it wishes to proceed in this very delicate case, I am prepared to find a *prima facie* question of privilege, and I therefore invite the hon. Member for Calgary East to move his motion.

Postscript: Mr. Obhrai moved that the question be referred to the Standing Committee on Procedure and House Affairs and the motion was agreed to.[2] On November 18, 2005, the Committee presented its Fifty-First Report to the House, finding the Commissioner to be in contempt of the House but recommending no sanctions or penalty in the matter.[3] (**Editor's Note:** the Report was not concurred in).

1. *Debates*, September 26, 2005, pp. 8025-7.
2. *Debates*, October 6, 2005, p. 8474, *Journals*, p. 1119.
3. Fifty-First Report of the Standing Committee on Procedure and House Affairs, presented to the House on November 18, 2005 (*Journals*, pp. 1289-90).

Parliamentary Privilege

Rights of the House

Contempt of the House: termination of funding to Law Commission of Canada

October 19, 2006 *Debates*, pp. 4014-5

Context: On October 3, 2006, Joe Comartin (Windsor–Tecumseh) rose on a question of privilege to object to the Government's decision to terminate all funding for the Law Commission of Canada. Mr. Comartin argued that such an action constituted a breach of the House's collective privileges since it would, in effect, dissolve the Law Commission, whereas he maintained the dissolution would only be done by Parliament through the repeal of the *Law Commission of Canada Act*. Rob Nicholson (Leader of the Government in the House of Commons) argued that the Government had acted properly and was under no obligation to expend funds in areas in which it had decided not to. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: The Speaker delivered his ruling on October 19, 2006. As to whether the Government's actions conformed to existing legislation respecting the Law Commission, the Speaker declared that it was not within the Speaker's authority to rule or to decide on points of law. In considering whether or not the elimination of funding for the Law Commission had breached the privileges of the House, the Speaker concluded that none of the collective privileges of the House had been breached. The Speaker also pointed out that it was the prerogative of the Government to manage public funds and ruled that the Government's action had not challenged the perceived authority and dignity of Parliament since the House retained the ability to oversee public expenditures though its standing committees.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on October 3, 2006, by the hon. Member for Windsor–Tecumseh concerning funding cuts to the Law Commission of Canada.

I wish to thank the hon. Member for raising this issue. I also wish to thank the hon. Member for London West, the hon. Government House Leader and the hon. Member for Vancouver East for their interventions.

In his question of privilege, the hon. Member for Windsor–Tecumseh expressed concern about the Government's announcement on September 25 that it would be eliminating funding to the Law Commission of Canada, thus effectively dissolving the organization. He questioned the authority of the Government to do so without parliamentary approval, contending that the House of Commons first had to pass legislation to repeal the *Law Commission of Canada Act*. In support of this argument, he referred to a 1993 precedent when Bill C-63, *An Act to Dissolve or Terminate Certain Corporations*, was passed. In conclusion, he asserted that the actions of the Government breached the collective privileges of the House.

The hon. Member for London West contributed arguments in support of the question of privilege. She gave a brief summary of the history and mandate of the Law Commission of Canada, citing several sections from the *Law Commission of Canada Act*. The hon. Member for Vancouver East also spoke in support of the question of privilege.

For his part, the hon. Government House Leader contended that this was not a question of privilege. He stated:

> … the President of the Treasury Board and the Government of Canada are not obligated to continue to spend money in areas which the Government has decided it does not want to spend….

The matter raised by the hon. Member for Windsor–Tecumseh is complex. The question on which I have been asked to rule is twofold. First, [are][2] the Government's actions in conformity with existing legislative provisions respecting the Law Commission of Canada? Second, do the Government's actions in eliminating the funding for the Law Commission breach the privileges of the House?

With respect to the first point, as my predecessors and I have pointed out in many rulings, where legal interpretation is an issue, it is not within the

Speaker's authority to rule or decide points of law. Mr. Speaker Lamoureux's ruling, found at page 7740 of the *Debates* for September 13, 1971, deals with this question as follows:

> Whether the government has an obligation under the terms of the existing law to make certain payments is not a question for the Chair to decide… This is a matter of judicial interpretation and is far beyond the jurisdiction and certainly far beyond the competence of the Chair.

Accordingly, if there is a legal problem, then the solution is to be found in the courts.

Now let me address the procedural issues that do lie within the Speaker's purview. The hon. Member for Windsor–Tecumseh argues that the collective privileges of the House have been breached.

Generally speaking, the collective privileges of the House are categorized as the power to discipline; the regulation of its own internal affairs; the authority to maintain the attendance and service of its Members; the right to institute inquiries, call witnesses and demand papers; the right to administer oaths to witnesses; and the right to publish papers containing defamatory material. In this particular instance, it is evident that none of these collective rights have been breached.

That being said, *House of Commons Procedure and Practice* states, at page 52:

> Any conduct which offends the authority or dignity of the House, even though no breach of a specific privilege may have been committed, is referred to as a contempt of the House. 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.

In short, the Chair is being asked to judge whether this action by the Government has challenged the perceived authority and dignity of Parliament. Let me review briefly the parameters of that authority as they relate to this case.

Through the estimates and ways and means processes, Parliament authorizes the amounts and destinations of all public expenditures. Once Parliament has allocated the moneys, it is the prerogative of the Government to manage these funds. On page 697 of the *House of Commons Procedure and Practice* it states:

> As the Executive power, the Crown is responsible for managing all the revenue of the state, including all payments for the public service.

Although responsibility for financial management belongs to the Government, the House retains an important oversight role. Members, through the standing committee system, have an opportunity to examine how the Government has managed these funds through their review of the estimates, the annual departmental performance reports, the *Public Accounts of Canada* and the reports of the Auditor General.

At this time Ministers may be invited to appear before standing committees to defend these expenditures and the committees may report back to the House. In addition, as part of its responsibility for oversight of Government activities, a committee may invite a Minister to appear at any time to discuss administrative decisions.

Following such inquiries, committees are empowered to report to the House concerning any comments or recommendations they may wish to make. The House then has the authority to take up the matter and deal with it as it sees fit.

Thus, the duty of oversight goes to the very reason for the existence of Parliament and this range of activities represents the normal operations of this place. In this way, Members who disagree with the course taken by the Government on any particular issue can pursue such questions in a variety of ways. Since the avenues remain open to the hon. Member, the Chair cannot conclude that the Government's action on the Law Commission is flouting the authority of the House.

While Members may have deep concerns about the decision to no longer fund the Law Commission of Canada, this decision does not constitute a

breach of privilege. While the hon. Member for Windsor–Tecumseh may feel he has a grievance, I cannot find a *prima facie* case of privilege in this case.

I thank the hon. Member, however, for bringing this important matter to the attention of the Chair.

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1. *Debates*, October 3, 2006, pp. 3526-9.
2. The published *Debates* read "is" instead of "are".

Parliamentary Privilege

Rights of the House

Contempt of the House: premature disclosure of Speech from the Throne to members of the media

October 23, 2007 *Debates*, pp. 282-3

Context: On October 16, 2007, prior to the summoning of the House to the Senate for the reading of the Speech from the Throne, Ralph Goodale (Wascana) rose on a question of privilege. He argued that a contempt of Parliament had occurred because copies of the Speech from the Throne had been made available to the media prior to its reading by the Governor General. After hearing from another Member, the Speaker took the matter under advisement and indicated that he would come back to the House, if necessary.[1]

Resolution: On October 23, 2007, the Speaker delivered his ruling. He noted that although the premature release of important documents runs contrary to the practices of the House, the source of the leak was not certain. He pointed out that the secrecy usually associated with the release of important documents like the Speech from the Throne and budgets was a convention of Parliament and not a matter of privilege. Accordingly, he concluded that there had been no breach of privilege.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. House Leader for the Official Opposition on October 16, 2007, concerning disclosure to the media of details of the Speech from the Throne prior to its reading by Her Excellency the Governor General to both Houses of Parliament.

I would like to thank the House Leader for the Official Opposition for bringing this matter to the attention of the House, as well as the hon. Government House Leader for his contribution on this question.

The House Leader for the Official Opposition, in raising the matter, pointed out that copies of the Speech from the Throne were made available to the media before Her Excellency read the Speech in the Senate Chamber. The Government House Leader also expressed his concern about this situation, which he described as troubling.

I, too, view such matters seriously, as I know all hon. Members do. The premature release of important documents, such as the Speech from the Throne or the budget, runs contrary to our practices.

In this particular situation, however, there seems to be some disagreement about the responsibility for this leak. I must add, too, that even if undisputed facts were provided in this specific case, the Chair can find no procedural authority for the claim that the premature disclosure of the Speech from the Throne constitutes a breach of the privileges of the Members of this House.

In reference to the secrecy of the budget, *House of Commons Procedure and Practice* states at page 753: "Speakers of the Canadian House have maintained that secrecy is a matter of parliamentary convention, rather than one of privilege."

I would suggest to the House that the same is true with regard to Throne Speeches. I therefore must rule that no breach of privilege has occurred in the present case.

Once again, I would like to thank the hon. Opposition House Leader for going to the trouble of raising this matter.

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1. *Debates*, October 16, 2007, pp. 1-2.

Parliamentary Privilege

Rights of the House

Contempt of the House: Government advertising alleged to have anticipated a decision of the House

May 29, 2008 *Debates*, pp. 6276-8

Context: On May 15, 2008, Jim Karygiannis (Scarborough–Agincourt) and Olivia Chow (Trinity–Spadina) each rose on questions of privilege with respect to advertisements placed in various newspapers by the Department of Citizenship and Immigration.[1] Mr. Karygiannis and Ms. Chow argued that these advertisements, on the subject of changes to the *Immigration and Refugee Protection Act* included in Bill C-50, *Budget Implementation Act, 2008*, presented misleading information that obstructed and prejudiced the proceedings of the House and its committees, anticipated a decision of the House, constituted an unauthorized expenditure of public funds for partisan purposes, and were, therefore, a contempt of Parliament. Peter Van Loan (Leader of the Government in the House of Commons) challenged the timeliness of the question of privilege, noted that the funds for the advertisements had already been approved by Parliament when it had adopted interim supply, argued that the wording of the advertisements respected parliamentary jurisdiction by clearly stating that the measures were currently before Parliament, and concluded that the question was in fact a matter for debate. After a further intervention from Mr. Karygiannis, the Speaker took the matter under advisement.[2]

Resolution: The Speaker delivered his ruling on May 29, 2008. He indicated that he was satisfied that Mr. Karygiannis had raised the question of privilege in a timely manner. He noted that the expenditure of money for the advertisements in question was not a procedural matter. He added that the wording in the advertisements made it clear that the matters discussed were currently before Parliament and were merely proposals. The advertisements did not misrepresent the proceedings of the House, nor did they presume the outcome of deliberations on the Bill. Consequently the Speaker concluded that there was no *prima facie* case of privilege or contempt of Parliament.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Scarborough–Agincourt and the hon. Member for Trinity–Spadina on May 15, 2008, concerning the Department of Citizenship and Immigration's newspaper advertisements entitled "Reducing Canada's Immigration Backlog".

I would like to thank the hon. Members for having raised this matter, as well as the hon. Leader of the Government in the House of Commons for his intervention.

In his remarks, the hon. Member for Scarborough–Agincourt brought to the attention of the House that advertisements had been placed in newspapers by the Department of Citizenship and Immigration regarding proposed changes to the *Immigration and Refugee Protection Act*. He contended that the advertisements promoted certain changes to the Act as contained in section 6 of Bill C-50, *An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008 and to enact provisions to preserve the fiscal plan set out in that budget*.

As hon. Members know, Bill C-50 has not yet been adopted by this House or by Parliament. The hon. Member for Scarborough–Agincourt argued that these advertisements and the use of public funds to pay for them demonstrated contempt for this House on the part of the Minister of Citizenship and Immigration.

In her submission, the hon. Member for Trinity–Spadina also contended that these advertisements constituted a contempt of Parliament by presenting misleading information that has obstructed and prejudiced the proceedings of this House. The hon. Member likened this situation to a case in 1989 when the Government of the day placed an advertisement in newspapers to announce changes to the federal sales tax, which had not been adopted yet by Parliament.

In support of the contention that the use of public funds for these ads constituted a contempt of Parliament, the hon. Member cited an

October 17, 1980 ruling by Madam Speaker Sauvé regarding an advertising campaign on the Government's constitutional position.

The hon. Leader of the Government in the House of Commons argued, for his part, that the question of privilege was not raised at the earliest available opportunity since the advertisements in question had first appeared in newspapers on April 15. To support this point, he quoted passages from *House of Commons Procedure and Practice* on pages 122 and 124 which state that the Speaker must be satisfied that a question of privilege was raised at the earliest opportunity.

In addressing the issue of the use of public money, the Government House Leader stated that the funds used were not dependent on the passage of Bill C-50 but, in fact, had been approved in March of this year as part of interim supply.

In addition, he maintained that the advertisements were written in such a way as to take into account what he described as the core principle of Mr. Speaker Fraser's 1989 ruling, that is:

> … that advertising undertaken by the Government should not presume or suggest that a decision had been made already when it had not been taken by the House of Commons or by Parliament.

He stressed that words and the tone used in the advertisements fully respected the jurisdiction and privileges of Parliament since they did not presume that Parliament had already taken a decision on the matter. To that end, he quoted from the advertisements in question.

In assessing the merits of any question of privilege raised in the House, the Chair is always mindful of the important point raised by the Government House Leader regarding timing. It is true that Members wishing to raise a question of privilege must do so at the earliest opportunity.

However, there is an important nuance the Government House Leader may have overlooked. In this case, as in others, it is not so much that the event

or issue complained of took place at a given time, but rather that the Members bringing the matter to the attention of the House did so as soon as practicable after they became aware of the situation.

The Chair has always exercised discretion on this point given the need to balance the need for timeliness with the important responsibility Members have of marshalling facts and arguments before raising matters of such import in the House.

In the case at hand, the Minister of Citizenship and Immigration was asked about the advertisements when she appeared before the Standing Committee on Citizenship and Immigration on the afternoon of Tuesday, May 13, less than two days before the matter was raised in the House. Given these circumstances, I am satisfied that the Members for Scarborough–Agincourt and Trinity–Spadina have respected the timing requirements of our established procedure for raising questions of privilege.

The Chair must now determine whether or not the placement of the advertisements related to certain provisions of Bill C-50 has interfered with the ability of Members to carry out their responsibilities as Members of Parliament. In doing so, the cases cited by the Member for Trinity–Spadina have been most instructive.

As Mr. Speaker Fraser stated in his ruling in the *Debates* of October 10, 1989, on pages 4457 to 4461:

> In order for an obstruction to take place, there would have had to be some action which prevented the House or Members from attending to their duties, or which cast such serious reflections on a Member that he or she was not able to fulfill his or her responsibilities. I would submit that this is not the case in the present situation.

Despite not finding a *prima facie* case of privilege in that case, Mr. Speaker Fraser did raise serious concerns about the situation, stating that the ad was "objectionable and should never be repeated".

With respect to the content and the cost of the advertisements, in the ruling given by Madam Speaker Sauvé on October 17, 1980, she stated on page 3781 of the *House of Commons Debates*:

> The fact that certain Members feel they are disadvantaged by not having the same funds to advertise as does the government, which could possibly be a point of debate, as a matter of impropriety or under any other heading, does not constitute a *prima facie* case of privilege unless such advertisements themselves constitute a contempt of the House, and to do so there would have to be some evidence that they represent a publication of false, perverted, partial or injurious reports of the proceedings of the House of Commons or misrepresentations of Members.

As I indicated when this matter was raised, the issue of the money spent for these advertisements is clearly not a procedural matter.

In addition to these examples, another can be found in 1997, when a question of privilege was raised concerning advertisements made by Health Canada in daily newspapers regarding anti-tobacco legislation that had not yet been adopted by the House. In that case, Mr. Speaker Parent ruled, on March 13, 1997, in the *Debates*, on pages 8987 to 8988, that the advertisement did not give the impression that the House had already passed then Bill C-71 and, therefore, he could not find a *prima facie* question of privilege.

It is with these precedents in mind that I reviewed the advertisements in question. They contain phrases such as "the Government of Canada is proposing measures", "These important measures, once in effect," and "These measures are currently before Parliament". In my view, the advertisements clearly acknowledge that these measures are not yet in place. I am therefore unable to find evidence of a misrepresentation of the proceedings of the House or of any presumption of the outcome of its deliberations.

While the hon. Members for Scarborough–Agincourt and Trinity–Spadina may disagree with the title and content of these advertisements, this is more a matter of debate than of procedure or privilege. The Chair must

therefore conclude, for the same reasons as my predecessors did, that the case before us today does not constitute a *prima facie* case of privilege or contempt of Parliament.

Once again, I thank the hon. Members for Scarborough–Agincourt and Trinity–Spadina for having brought this matter to the attention of the House.

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1. *Debates*, May 15, 2008, pp. 5883, 5920-2.
2. *Debates*, May 15, 2008, pp. 5922-4.

Parliamentary Privilege

Rights of the House

Contempt of the House: disturbance in the gallery; Member's alleged complicity

November 5, 2009 *Debates*, pp. 6690-1

Context: On October 26, 2009, during Oral Questions, protesters sitting in the public galleries disrupted the proceedings of the House.[1] On October 27, 2009, Jay Hill (Leader of the Government in the House of Commons) rose on a question of privilege to charge Jack Layton (Toronto–Danforth) with contempt of the House for his alleged complicity in the disturbance. The Government House Leader stated that the protesters had been guests of the New Democratic Party Leader who had arranged for the use of a room in which they had practised the chant that they had then used to obstruct the proceedings of the House and to intimidate its Members. After hearing from other Members, the Speaker stated that, while he had been unable to see what had been happening in the gallery behind him, he would look into the incident and return to the House with a ruling. He also suggested that, in the event of a finding on his part of a breach of privileges, the Government House Leader could move a motion to refer the matter to a committee.[2]

On November 5, 2009, Mr. Layton rose on a point of order, disavowed any responsibility for, or prior knowledge of, the actions of the protesters and invited the Government House Leader to apologize for his accusations.[3]

Resolution: On November 5, 2009, the Speaker ruled that, in keeping with the long-standing tradition of the House of taking Members at their word, and in view of Mr Layton's disavowal of any knowledge as to the protesters' intent, he considered the matter closed. He then reminded all Members to be vigilant about the nature and intentions of groups using parliamentary facilities under their aegis.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on October 27, 2009, by the Leader of the Government in the House of Commons regarding the disturbance in the public gallery that occurred during Oral Questions on October 26, 2009.

I wish to thank the Government House Leader, the hon. Member for Mississauga South, the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord, the hon. Member for Vancouver East, and the hon. Member for Langley for their interventions.

As Members will recall, during Question Period on October 26, a disturbance occurred while the Leader of the New Democratic Party was asking a question. Several persons were shouting in the public gallery and the House had to interrupt its proceedings for several minutes while the gallery was being cleared by our security officers.

In raising his question of privilege, the Government House Leader charged the Member for Toronto–Danforth with contempt, alleging his involvement in this incident. The substance of the Government House Leader's allegation, a version of events supported by the Parliamentary Secretary to the Minister of the Environment, is summarized in the following paragraph of his intervention, found on page 6240 of the *Debates* of October 27, 2009:

> The leader of the protesters is the political events organizer of the NDP. His group gained access to the Parliamentary Precinct because of the leader of the NDP. The leader of the NDP provided a practice room for this group. The group was allowed to go from its practice to the galleries where it obstructed the proceedings of the House and intimidated some Members.

The Government House Leader explained that it had been reported to him that Members had felt uncomfortable and had feared for their safety.

In reply to this very serious allegation, the House Leader of the New Democratic Party emphatically denied that the Member for Toronto–Danforth was involved in the protest that occurred in the public gallery. She indicated

that he was simply doing his job by meeting with the group as did other Members of Parliament, but that he had no knowledge of the planned protest.

This morning the hon. Member for Toronto–Danforth assured the House that he was not aware that a disturbance had been planned by the visitors with whom he met on October 26. He denied being involved in any way and expressed dismay that such allegations were made.

At the outset, the Chair wishes to state that it views the disruption of the proceedings of the House as a very serious matter, and as has been noted by the Government House Leader, *House of Commons Procedure and Practice* on page 84 states:

> Speakers have consistently upheld the right of the House to the services of its Members free from intimidation, obstruction and interference.

Some Members may recall that the House experienced two gallery disturbances in 1990; both instances are most instructive in dealing with the case at hand. The first occurred on April 10, 1990, when two visitors disrupted the proceedings of the House by throwing papers from the galleries onto Members in the Chamber. The next day, a Member raised a question of privilege charging another Member with contempt of the House, alleging that he had provided passes for the protesters and had prior knowledge of the protest. On April 27, as reported on page 10760 of the *Debates of the House of Commons*, the Member thus charged denied such prior knowledge, thereby settling the matter.

The second case happened on October 17, 1990, when again, objects—in this case macaroni and protest cards—were thrown onto the floor of the House by protesters in the galleries. A question of privilege was raised the next day, as reported on pages 14359 to 14368 of the *Debates of the House of Commons*, in which a Member charged another Member with knowing in advance about the demonstration and doing nothing to prevent it. He contended that the Member was thereby an accessory to a contempt of the House. The Member who was the subject of the charge denied his involvement in the matter. In his ruling delivered on November 6, 1990, Mr. Speaker Fraser stated that as the Member had denied his involvement, that matter was at an end.

In the case presently before the House, the allegations made about the involvement of the Member for Toronto–Danforth in the gallery disturbance of October 26 have been categorically denied. In keeping with the precedents outlined above and with the long-standing tradition in this place that we accept an hon. Member's word, the Chair accepts the statement of the hon. Member for Toronto–Danforth that he was in no way involved. Accordingly, I will therefore consider the matter closed.

Having set aside the question of privilege raised by the Government House Leader, the Chair wishes to stress that it continues to have serious concerns about the gallery disturbance itself. The actions of the sizable group of individuals in using subterfuge to gain admittance to the galleries and then to disrupt our proceedings are totally unacceptable, and do them and their cause little credit.

They were less than frank about their intentions, and the aggressive behaviour of a few individuals as they were escorted out was particularly provocative. If anything, this incident graphically illustrates the extent to which Members can be vulnerable and must be vigilant to avoid being dragged into situations when their guests abuse their trust.

Before I conclude, I would like to take the opportunity to thank the House's security personnel for their work during the incident on October 26. Their swift action in clearing the public gallery under difficult circumstances allowed the House to resume its work with a minimum of delay.

I would like to thank all of my colleagues for their attention.

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1. *Debates*, October 26, 2009, pp. 6163-4.
2. *Debates*, October 27, 2009, pp. 6239-41.
3. *Debates*, November 5, 2009, p. 6653.

Parliamentary Privilege

Rights of the House

The right to institute inquiries, to require the attendance of witnesses and to order the production of documents: access to unredacted documents; *prima facie*; alleged intimidation of committee witnesses

April 27, 2010 — *Debates*, pp. 2039-45

Context: On November 27, 2009, the Special Committee on the Canadian Mission in Afghanistan presented its Third Report to the House. The Report addressed what the Committee considered to be a breach of its privileges in relation to its inquiries and requests for documents relating to the detention of combatants by Canadian Forces in Afghanistan.[1] On December 10, 2009, the House adopted an opposition motion to order the production of the documents that the Committee had been trying to obtain from the Government.[2] Prior to the debate commencing on the opposition motion, Rob Nicholson (Minister of Justice and Attorney General of Canada), argued that the motion was not in order because the Government, in refusing to produce the documents in question, was shielding confidential information related to Canada's national security, pursuant to the *Canada Evidence Act*. The Speaker ruled immediately, allowing the motion to be considered.[3] On December 30, 2009, the Second Session of the Fortieth Parliament was prorogued. The House Order of December 10, 2009, remained in effect when the new session began on March 3, 2010 and the Special Committee was re-constituted on the first sitting day of the session by unanimous consent.[4] On March 5, 2010, Mr. Nicholson, on a point of order, announced that the Government had appointed a former Supreme Court Justice, Frank Iacobucci, to undertake a review of the documents related to Afghan detainees, and stated that Justice Iacobucci would prepare a report that the Minister would table in the House.[5] On March 16, 2010, the specific terms of reference for Mr. Justice Iacobucci were tabled in the House.[6]

On March 18, 2010, three questions of privilege were raised in the House in relation to the Order for the production of documents related to Afghan detainees. Derek Lee (Scarborough–Rouge River), Jack Harris (St. John's East) and Claude Bachand (Saint-Jean) all argued that the absolute right of the House and its committees to send for documents obliged the Government to comply with the Order to produce the documents in question. Mr. Harris also argued that the Government's refusal to

provide unredacted documents undermined Parliament and its committees, and added that the Order of December 10, 2009, provided for enough flexibility in the way in which the documents were made available. In his submission, Mr. Lee also alleged that comments made by Peter MacKay (Minister of National Defence) during Oral Questions on December 1, 2009,[7] as well as those made by an official from the Department of Justice in a letter to the Law Clerk of the House of Commons, had intimidated officials appearing before the Special Committee, essentially implying that they ought not to answer questions. Therefore, he argued that this constituted a contempt of the House. Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons) raised the procedural issue of the timeliness of the questions of privilege, noting that the matter dated from December. He also raised a more substantive point, arguing that the House Order of December 10, 2009, did not include any provisions to safeguard the sensitive nature of the documents. After hearing from other Members, the Speaker stated that he would wait to hear from the Ministers mentioned in the questions of privilege before returning to the House with a ruling. He did, however, address the question of timeliness, stating that although Mr. Lee had filed his request before the Third Session had begun,—the Speaker himself had asked him to defer raising the matter to see how events would unfold. Timeliness was not, he concluded, an issue in this case.[8]

On March 25, 2010, the Government tabled a large number of documents relating to the Order of December 10, 2009.[9] Jack Layton (Toronto–Danforth) rose on a point of order, objecting to the tabling of heavily censored documents and the lack of additional copies. He argued that it contravened the Order of the House, which required the documents to be produced in their original and uncensored form. After hearing from other Members, the Acting Speaker (Barry Devolin) stated that the issues raised would be addressed by the Speaker in a comprehensive ruling.[10]

On March 31, 2010, Mr. Lukiwski rose to speak to the matter and questioned the legitimacy of the Order adopted by the House on December 10, 2009, arguing that many of the documents listed in the Order could be requested only by means of an Address to the Crown. The Minister of Justice then argued that the comments of the Minister of National Defence and the Justice Department official were matters of debate, that parliamentary privilege was neither indefinite nor unlimited, and that the House had no authority to demand unfettered access to documents. He rejected the contention that the Government had breached parliamentary privileges by failing to comply with the Order of December 10, 2009,

and argued, citing Crown privilege, that the Government had the duty to protect information that could jeopardize national security. This, he claimed, empowered the Government to withhold confidential information requested by the House. In insisting on the production of the requested documents, the House was attempting to unlawfully extend the scope of its own privileges, which the Minister argued are not indefinite. The Minister added that it was the duty of Government to balance competing obligations, in providing information to the House when requested and also respecting its obligation to protect the public interest. After hearing from other Members on that day,[11] on April 1 and on April 12, 2010, the Speaker again took the matter under advisement.[12]

On April 1 and 26, 2010, the Government tabled additional documents. The documents were redacted and, by unanimous consent, were tabled either in English or in French only.[13]

Resolution: On April 27, 2010, the Speaker ruled on these questions of privilege. Given the complexity of the issues, he grouped them thematically for the purposes of the ruling. First, he declared that it was procedurally acceptable for the House to use an Order rather than an Address to require the production of the documents in question. Second, with regard to the allegations made by Mr. Lee about the intimidation of witnesses, he ruled that neither the Minister's words nor the letter from the Department of Justice official constituted witness intimidation, though he conceded that the letter could have had a chilling effect. The Speaker could not find that there had been a direct attempt to prevent or to influence the testimony of any witness and that there was therefore no *prima facie* case of contempt on this point. Third, the Speaker stated that it was within the powers of the House of Commons to ask for the documents specified in the Order, that its power to do so was absolute, and that it did not transgress the separation of powers between the executive and legislative branches of Government. The Speaker declared that it was the Government's responsibility to provide cogent reasons for not producing documents ordered by the House. He also reminded the House that all sides agreed that the protection of confidential information needed to be taken seriously. The challenge for the House was to put into place a mechanism whereby the documents could be made available to the House, without compromising the security and confidentiality of the information they contained. The Speaker also addressed the issue of trust among Members and the Government, noting that the Government should be more trusting of the House with confidential Government information,

and conversely, Members should be more willing to accept the Government's assertions.

The Speaker concluded by stating that, having analyzed the evidence and the precedents, the Government's failure to comply with the Order of December 10, 2009, constituted a *prima facie* breach of privilege. He added that he would allow the House Leaders, Ministers and party critics two weeks to negotiate some way of resolving the impasse, but, if the matter could not be resolved in that time, he would return to make a statement on the motion that would be allowed to be proposed to the House.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on March 18, 2010, by the hon. Member for Scarborough–Rouge River, the hon. Member for St. John's East and the hon. Member for Saint-Jean concerning the Order of the House of December 10, 2009, respecting the production of documents regarding Afghan detainees.

I would like to thank those three Members raising these issues. I would also like to thank the hon. Minister of Justice and Attorney General of Canada, the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons, the hon. House Leader of the Official Opposition, and the hon. Members for Toronto Centre, Joliette, Windsor–Tecumseh, Yukon, Toronto–Danforth, Outremont and Kootenay–Columbia for their interventions on this important matter on March 18, 25 and 31, and on April 1 and 12, 2010.

The facts that have led the House, and the Chair, to be seized of this case are the following:

On February 10, 2009, the House recreated the Special Committee on the Canadian Mission in Afghanistan. This Committee conducted its business in the usual way and began, in the fall of that year, to seek information from the Government on the treatment of Afghan detainees.

On November 27, 2009, the Committee reported to the House what it considered to be a breach of its privileges in relation to its inquiries and requests for documents.

On December 10, 2009, the House adopted an Order for the production of documents regarding Afghan detainees.

On December 30, 2009, the session in which this Order was adopted was prorogued.

On March 3, 2010, when the present session began, the Special Committee was re-constituted and resumed its work. Since Orders of the House for the production of documents survive prorogation, the House Order of December 10, 2009, remained in effect.

On March 5, 2010, the Minister of Justice rose in the House to announce that the Government had appointed former Supreme Court Justice Frank Iacobucci to undertake "an independent, comprehensive and proper review of the documents at issue".

The Minister described Mr. Iacobucci's mandate in relation to the Order of December 10, 2009, specifying that the former Justice would report to him.

On March 16, 2010, the Leader of the Government in the House of Commons tabled the specific terms of reference for Mr. Iacobucci.

On March 18, 2010, three Members raised questions of privilege related to the Order of December 10, 2009. A number of other Members also contributed to the discussion.

On March 25, 2010 and again on April 1 and 26, 2010 the Government tabled a large volume of documents regarding Afghan detainees "without prejudice" to the procedural arguments relating to the Order of December 10, 2009.

On March 25 and April 1 the Chair also heard interventions from Members.

On March 31, 2010 the Government responded to the arguments made in relation to the questions of privilege raised on March 18, 2010.

Last, on April 1, and again on April 12, 2010, the Chair heard arguments on the questions of privilege from several Members, took the matter under advisement and undertook to return to the House with a ruling.

Before addressing the arguments brought forward, I want to take this opportunity to remind Members of the role of the Chair when questions of privilege are raised.

House of Commons Procedure and Practice, Second Edition, O'Brien and Bosc, at page 141 states:

> Great importance is attached to matters involving privilege. A Member wishing to raise a question of privilege in the House must first convince the Speaker that his or her concern is *prima facie* (on the first impression or at first glance) a question of privilege. The function of the Speaker is limited to deciding whether the matter is of such a character as to entitle the Member who has raised the question to move a motion which will have priority over Orders of the Day; that is, in the Speaker's opinion, there is a *prima facie* question of privilege. If there is, the House must take the matter into immediate consideration. Ultimately, it is the House which decides whether a breach of privilege or a contempt has been committed.

As Speaker, one of my principal duties is to safeguard the rights and privileges of Members and of the House. In doing so, the Chair is always mindful of the established precedents, usages, traditions and practices of the House and of the role of the Chair in their ongoing evolution. It is no exaggeration to say that it is a rare event for the Speaker to be seized of a matter as complex and as heavy with consequence as the matter before us now.

Because of the complexity of the issues that have been raised, and the large number of lengthy interventions made by hon. Members, I have taken the liberty of regrouping the issues thematically in order to address the arguments presented more effectively.

The main and most important issue that the Chair must address today concerns the right of the House to order [the][14] production of documents, including the nature of the right, questions related to the extent of the right and the manner in which the right can or ought to be exercised. All Members who have intervened on these matters of privilege have touched on these fundamental questions in one way or another. In addition, the Chair has been asked to determine whether or not the Order has been complied with, and if not, whether this constitutes, *prima facie*, a contempt of the House.

A second matter before the Chair is the contention—made primarily by the Member for Scarborough–Rouge River—that witnesses were intimidated by answers given in Question Period by the Minister of National Defence and that a letter written by an official from the Department of Justice was contemptuous of the House in setting out for potential witnesses a false basis for refusing to answer questions in a committee of this House.

Arguments were also made in relation to a third theme, namely the form, clarity and procedural validity of the December 10 Order of the House. These issues arose when the Parliamentary Secretary to the Leader of the Government in the House of Commons contended on March 31, 2010, that the Order of December 10 was fatally flawed in that it seeks documents that he claims can only be obtained by way of an Address to the Governor General. Related issues were brought to the Chair's attention on the same day by the Minister of Justice, who stated, at page 1225 of the *Debates*:

> Mr. Speaker, as you will recall, the December Order called for uncensored documents. It listed eight different categories of documents to be produced. The Order did not specify exactly when such documents should be produced, who should produce them or to whom they should be produced. The Order made no reference to the confidential information being protected…

The fourth theme that the Chair wishes to address concerns the issue of accommodation and trust which a number of Members on both sides of the House have raised. Several Members have made reference to the need to safeguard confidential information that, in the words of the Minister of Justice, as found at page 7881 of the *Debates* of December 10, 2009, "if disclosed, could compromise Canada's security, national defence and international relations".

More significantly, a number of Members have indicated that they wish to find a way to accommodate the desire of the House for information while also accommodating the desire of the Government to protect sensitive information.

The first arguments the Chair wishes to address are those related to the form, clarity and procedural validity of the December 10 Order.

The Minister of Justice has called into question the clarity of the Order. On reading the Order, it is abundantly clear to the Chair that it is the Government that is expected to produce the documents demanded, and that in the absence of instructions to the contrary, the documents are to be tabled in the House in the usual manner. In this sense the Minister and the Parliamentary Secretary are correct in asserting that no provision is made in the Order for confidential treatment of the material demanded. The Chair will return to this aspect of the question later in this ruling.

As to when the material is to be tabled, the Order says very clearly "forthwith". *House of Commons Procedure and Practice*, Second Edition, at page 475 states:

> … if the House has adopted an Order for the production of a document, the Order should be complied with within a reasonable time. However, the Speaker has no power to determine when documents should be tabled.

As to the procedural validity of the Order, as well as its form, the Chair wishes to draw the attention of the House to Bourinot's *Parliamentary Procedure and Practice in the Dominion of Canada*, 4th edition, which states at pages 245 and 246:

> Previous to the session of 1876, it was customary to move for all papers by address to the Governor General, but since that time the regular practice of the English Houses has been followed. It is now the usage to move for addresses only with respect to matters affecting imperial interests, the royal prerogative or the Governor in Council. On the other hand, it is the constitutional right of either House to ask for such information as it can directly obtain by its own order from any department or officer of the government… papers may be directly

> ordered when they relate to canals and railways, post office, customs, militia, fisheries, dismissal of public officers, harbours and public works and other matters under the immediate control and direction of the different departments of the government.

As this passage makes clear, an order is issued when seeking papers that fall under the "immediate control and direction of the different departments of the Government". As an example, in the case of the documents related to the Chief of the Defence Staff referred to by the Parliamentary Secretary, it is simply not credible to claim that these documents are not under the control of the Government.

The Parliamentary Secretary has referred to certain rulings of my predecessors in making his arguments and has also provided additional material in support of his contention. The Chair has examined these precedents—a ruling from 1959 by Mr. Speaker Michener and a ruling from 1982 by Madam Speaker Sauvé—but is not convinced that they directly support the particular circumstances faced by the House in this case.

A further point to be made on this issue has to do with the documents tabled "without prejudice" so far by the Government in response to the Order of December 10. The Chair wishes to point out that of the documents tabled, several appear to fall into the categories which the Parliamentary Secretary claims require an address before they can be produced. In addition, the fact that these documents have been tabled has been cited by the Government as a gesture of good faith on its part and an indication that it is complying, to the extent that it feels it can, with the Order of December 10.

Finally, as the Member for St. John's East noted, in response to objections raised at the time debate was commencing on the original motion, a decision was rendered that the motion was in order. Consequently, the House went on to debate and decide the matter: the House has expressed its will, and that is where the matter now stands.

I have considered the arguments put forward, and for the reasons stated above, the Chair concludes that it was procedurally acceptable for the House to use an Order and not an Address to require the production of these documents.

The Chair will now turn to the allegations related to witness intimidation. The Member for Scarborough–Rouge River has contended that the comments made by the Minister of National Defence in reply to a question during Oral Questions on December 1, 2009, amounted to intimidation. He argued that the Minister's contention that the documents in question could be released to the Special Committee on the Canadian Mission in Afghanistan only under the provisions of the *Canada Evidence Act* was wrong and misleading, obstructed the House and intimidated witnesses, especially armed forces personnel and public servants, thereby lessening the likelihood of their compliance with House requests and orders.

The hon. Member for Scarborough–Rouge River also took exception to a December 9, 2009, letter to the Law Clerk and Parliamentary Counsel of the House from an Assistant Deputy Minister from the Department of Justice on the obligations of witnesses before committees, and on the obligation to provide documents ordered by committees. He argued that the letter constituted a contempt of the House by setting out for witnesses a false basis for refusing to provide disclosure to the House or its committees after being ordered to do so. In particular, the Member for Scarborough–Rouge River stressed that if the contents of the letter were crafted with ministerial approval, it could constitute a conspiracy to undermine Parliament and the ability of the House to carry on its constitutional functions.

The Government responded that the remarks made by the Minister of National Defence were simply matters of debate and differences of opinion between Members. Of the second complaint, the Government took the view that the letter from the justice official constituted nothing more than an exchange of views between legal professionals and it could not be construed as "an attempt to intimidate the Government witnesses".

The hon. Member for Scarborough–Rouge River had argued that the Minister's reply constituted a slander of Parliament's core powers to hold the Government to account and thus was a contempt. However, particularly since this exchange between the Minister and the Member for Vancouver South occurred during Question Period, I find that I must agree with the Parliamentary Secretary's characterization of this exchange as a matter of debate.

I have no need to remind the House that freedom of speech is one of our most cherished rights. Although Members may disagree with the comments made by the Minister, I cannot find that the Minister's words in and of themselves constitute witness intimidation, hence nor do they constitute a *prima facie* contempt of the House.

As for the Member for Scarborough–Rouge River's other concern regarding the letter from the Assistant Deputy Minister, the procedural authorities are clear that interference with witnesses may constitute a contempt. *House of Commons Procedure and Practice*, Second Edition, at page 1070, states: "Tampering with a witness or in any way attempting to deter a witness from giving evidence may constitute a breach of parliamentary privilege."

It is reasonable to assume that a letter signed by an Assistant Deputy Minister, acting under the authority of the Minister of Justice, is an expression of the Government's view on an issue, and given that its contents have been widely reported and circulated, the letter could leave the impression that public servants and Government officials cannot be protected by Parliament for their responses to questions at a parliamentary committee, when this is not the case.

Specifically, I would like to draw to the attention of hon. Members the section of the letter in question, which the Member for Scarborough–Rouge River tabled in the House on March 18, 2010, where the Assistant Deputy Minister lays out a view of the duties of public servants in relation to committees of the House. The letter states:

> Of course, there may be instances where an Act of Parliament will not be interpreted to apply to the Houses of Parliament (or their committees). However, that does not mean automatically that government officials—who are agents of the executive, not the legislative branch—are absolved from respecting duties imposed by a statute enacted by Parliament, or by requirements of the common law, such as solicitor-client privilege or Crown privilege.
>
> This is so even if a parliamentary committee, through the exercise of parliamentary privilege, may extend immunity to witnesses appearing before it. A parliamentary committee cannot waive a legal duty imposed on government officials. To argue to the contrary would be inimical

> to the principles of the rule of law and parliamentary sovereignty. A parliamentary committee is subordinate, not superior, to the legislative will of Parliament as expressed in its enactments.

It does concern me that the letter of the Assistant Deputy Minister could be interpreted as having a "chilling effect" on public servants who are called to appear before parliamentary committees, as contended the Members for Scarborough–Rouge River and Toronto Centre. This could be especially so if the view put forth in the letter formed the basis of a direction given by department heads to their employees who have been called to testify before parliamentary committees.

At the same time, it is critically important to remember in this regard that our practice already recognizes that public servants appearing as witnesses are placed in the peculiar position of having two duties. As *House of Commons Procedure and Practice*, Second Edition, states at pages 1068 and 1069:

> Particular attention is paid to the questioning of public servants. The obligation of a witness to answer all questions put by the committee must be balanced against the role that public servants play in providing confidential advice to their Ministers.… In addition, committees ordinarily accept the reasons that a public servant gives for declining to answer a specific question or series of questions which… may be perceived as a conflict with the witness' responsibility to the Minister….

The solution for committees facing such situations is to seek answers from those who are ultimately accountable, namely, the Ministers themselves.

It has been argued that there may be a chilling effect, which could come dangerously close to impeding members of committees in carrying out their duties; however, I remind the House that this letter was sent to our Law Clerk, so on balance, I would need to see the use made of this letter, in particular whether it was ever presented to a person who was scheduled to testify before the Special Committee with the intent of limiting the person's testimony.

As things stand, there does not appear to the Chair to be sufficient evidence for me to conclude that this letter constitutes a direct attempt to

prevent or influence the testimony of any witness before a committee, and for these reasons, I cannot find that there is a *prima facie* question of contempt on this point.

I now turn to the questions of the House's right to order the production of documents and the claim that the Government has failed to comply with the Order of the House.

The hon. Member for Kootenay–Columbia argued that even if the documents were provided to the Committee, the Committee could not, given their sensitive nature, make use of them publicly. However, I cannot agree with his conclusion that this obviates the Government's requirement to provide the documents ordered by the House. To accept such a notion would completely undermine the importance of the role of parliamentarians in holding the Government to account.

Before us are issues that question the very foundations upon which our parliamentary system is built. In a system of responsible Government, the fundamental right of the House of Commons to hold the Government to account for its actions is an indisputable privilege and in fact an obligation.

Embedded in our Constitution, parliamentary law and even in our Standing Orders, it is the source of our parliamentary system [from][15] which other processes and principles necessarily flow, and it is why that right is manifested in numerous procedures of the House, from the daily Question Period to the detailed examination by committees of estimates, to reviews of the *Accounts of Canada*, to debate, amendments, and votes on legislation.

As I noted on December 10, 2009, *House of Commons Procedure and Practice*, Second Edition, states at page 136:

> By virtue of the Preamble and section 18 of the *Constitution Act, 1867*, Parliament has the ability to institute its own inquiries, to require the attendance of witnesses and to order the production of documents, rights which are fundamental to its proper functioning. These rights are as old as Parliament itself.

And on pages 978 to 979:

> The Standing Orders do not delimit the power to order the production of papers and records. The result is a broad, absolute power that on the surface appears to be without restriction. There is no limit on the type of papers likely to be requested, the only prerequisite is that the papers exist—in hard copy or electronic format—and that they are located in Canada….
>
> No statute or practice diminishes the fullness of the power rooted in the House privileges unless there is an explicit legal provision to that effect, or unless the House adopts a specific resolution limiting the power. The House has never set a limit on its power to order the production of papers and records.

Further, at page 70, Bourinot's 4th edition states:

> The Senate and House of Commons have the right, inherent in them as legislative bodies, to summon and compel the attendance of all persons, within the limits of their jurisdiction, as witnesses, and to order them to bring with them such papers and records as may be required for the purpose of an inquiry.

In the arguments presented, the Chair has heard this power described as unabridged, unconditional, unqualified, absolute and, furthermore, one which is limited only by the discretion of the House itself. However, this view is not shared by all and so it is a privilege whose limits have now been called into question.

The Government's view is that such an unqualified right does not exist for either House of Parliament or their committees. The executive, the holder of the sensitive information sought by the House, has competing obligations. On the one hand, it recognizes that there is an expectation of transparency so that Government actions can be properly monitored to ensure that they respect the law and international agreements. On the other hand, the Government contends that the protection of national security, national defence and

international relations demand that some information remain secret and confidential, out of the reach of those obliged to scrutinize its actions and hold it to account.

In his March 31 intervention, the Minister of Justice quoted from the 1887 parliamentary treatise of Alpheus Todd to support the view that "a due regard to the interests of the State, occasionally demand… that information sought for by members of the legislature should be withheld, at the discretion and upon the general responsibility of ministers".

The Minister also cited *Bourinot* in 1884, observing that the Government may "feel constrained to refuse certain papers on the ground that their production would be… injurious to the public interest". Had he read a little further, he might have found the following statement by Bourinot at page 281:

> But it must be remembered that under all circumstances it is for the House to consider whether the reasons given for refusing the information are sufficient. The right of Parliament to obtain every possible information on public questions is undoubted, and the circumstances must be exceptional, and the reasons very cogent, when it cannot be at once laid before the Houses.

As the Members for Saint-Jean and Joliette commented on March 25, 2010, Bourinot's 2nd edition notes that even in instances where a Minister refuses to provide documents that are requested, it is clear that it is still ultimately up to the House to determine whether grounds exist to withhold documents.

Bourinot, in referring to procedures for notices of motions for production of papers, wrote at pages 337 and 338:

> Consequently, there are frequent cases in which the Ministers refuse information, especially at some delicate stage of an investigation or negotiation; and in such instances the House will always acquiesce when sufficient reasons are given for the refusal… But it must be remembered that under all circumstances it is for the House to consider whether the reasons given for refusing the information are sufficient.

Joseph Maingot's *Parliamentary Privilege in Canada*, 2nd edition, also supports the need for Parliament to have a voice in these very matters when it states at page 190:

> The only limitations, which could only be self-imposed, would be that any inquiry should relate to a subject within the legislative competence of Parliament, particularly where witnesses and documents are required and the penal jurisdiction of Parliament is contemplated. This dovetails with the right of each House of Parliament to summon and compel the attendance of all persons within the limits of their jurisdictions.

Similarly, in *Erskine May*, 23rd edition, in a discussion of the exclusive cognizance of proceedings at page 102, we find the following:

> … underlying the Bill of Rights [1689] is the privilege of both Houses to the exclusive cognizance of their own proceedings. Both Houses retain the right to be sole judge of the lawfulness of their own proceedings, and to settle—or depart from—their own codes of procedure. This is equally the case where the House in question is dealing with a matter which is finally decided by its sole authority, such as an order or resolution, or whether (like a bill) it is the joint concern of both Houses.

In David McGee's *Parliamentary Practice in New Zealand*, [3rd][16] edition, at page 621 he asserts, "The Australian legislation", referring to the *Parliamentary Privileges Act, 1987*, "in respect of article 9 of the Bill of Rights… may be taken to indicate the types of transactions falling within the term 'proceedings of Parliament'".

He then goes on to state that such proceedings to which privilege attaches include "… the presentation of a document to a House or a committee… ".

Odgers' Australian Senate Practice, 12th edition, at page 51 states clearly:

> Parliamentary privilege is not affected by provisions in statutes which prohibit in general terms the disclosure of categories of information….
>
> Statutory provisions of this type do not prevent the disclosure of information covered by the provisions to a House of the Parliament or to

> a parliamentary committee in the course of a parliamentary inquiry…. They… do not prevent committees seeking the information covered by such provisions or persons who have that information providing it to committees.

In light of these various authorities, the Chair must conclude that the House does indeed have the right to ask for the documents listed in the Order of December 10, 2009.

With regard to the extent of the right, the Chair would like to address the contention of the Minister of Justice, made on March 31, that the Order of the House of December 10 is a breach of the constitutional separation of powers between the executive and the legislature.

Having noted that the three branches of Government must respect the legitimate sphere of activity of the others, the Minister argued that the Order of the House was tantamount to an unlawful extension of the House's privileges. This can only be true if one agrees with the notion that the House's power to order the production of documents is not absolute. The question would then be whether this interpretation subjugates the legislature to the executive.

It is the view of the Chair that accepting an unconditional authority of the executive to censor the information provided to Parliament would in fact jeopardize the very separation of powers that is purported to lie at the heart of our parliamentary system and the independence of its constituent parts. Furthermore, it risks diminishing the inherent privileges of the House and its Members, which have been earned and must be safeguarded.

As has been noted earlier, procedural authorities are categorical in repeatedly asserting the powers of the House in ordering the production of documents. No exceptions are made for any category of Government documents, even those related to national security.

Therefore, the Chair must conclude that it is perfectly within the existing privileges of the House to order production of the documents in question. Bearing in mind that the fundamental role of Parliament is to hold the Government to account, as the servant of the House and the protector of its privileges, I cannot agree with the Government's interpretation that ordering

these documents transgresses the separation of powers and interferes with the spheres of activity of the executive branch.

But what of the House's responsibility regarding the manner in which this right can or ought to be exercised? The authorities cited earlier all make reference to the long-standing practice whereby the House has accepted that not all documents demanded ought to be made available in cases where the Government asserts that this is impossible or inappropriate for reasons of national security, national defence or international relations.

O'Brien and Bosc, at page 979, states: "—it may not be appropriate to insist on the production of papers and records in all cases."

The basis for this statement is a 1991 report by the Standing Committee on Privileges and Elections, which, as recorded on page 95 of the *Journals* of May 29, 1991, pointed out:

> The House of Commons recognizes that it should not require the production of documents in all cases; considerations of public policy, including national security, foreign relations, and so forth, enter into the decision as to when it is appropriate to order the production of such documents.

In his comments on this aspect of the matter before us, the Parliamentary Secretary to the Leader of the Government in the House of Commons referred to my ruling of June 8, 2006, where I stated that national security, when asserted by a Minister, was sufficient to set aside a requirement to table documents cited in debate. The examples cited by the Parliamentary Secretary related strictly to documents that have been cited by a Minister in the absence of any other explicit expression of interest by the House in the said documents.

Having reviewed the June 8 ruling, it is clear to the Chair that there is a difference between the practice of the House which allows a Minister, on the sole basis of his or her judgment, to refrain from tabling a cited document for reasons of confidentiality and national security, and an Order, duly adopted by the House following notice and debate, requiring the tabling of documents.

Another important distinction between the Order adopted by the House on December 10, 2009, and the practice respecting notices of motions for the production of papers, referred to by the Member for St. John's East on April 12 is that, with respect to such notices, there is an opportunity for a Minister or Parliamentary Secretary to indicate to the House that the notice is acceptable to the Government subject to certain reservations, such as confidentiality, or national security.

Thus the House, prior to the adoption of the motion, is fully aware that some documents will not be produced if the motion is adopted. If the House does not agree, the motion must either be transferred for debate or be put immediately to the House without debate or amendment.

Something similar happened on December 10, 2009. Before the House voted on the motion that became an Order to produce documents, the Ministers of Justice, National Defence and Foreign Affairs all rose in the House to explain the reasons why the documents in question should not be made available. This is in keeping with what Bourinot refers to as the Government's responsibility to provide "reasons very cogent" for not producing documents.

Under normal circumstances, reflecting on past history in the House, these assertions by the Government might well have been found to be acceptable by the House. In the current circumstances, however, the reasons given by the Government were not found to be sufficient. The House debated the matter and voted to adopt an Order for the production of documents despite the request of the Government.

The reason for this, it seems, has to do with the issue of accommodation and trust. On December 10, 2009, as found on page 7877 of the *Debates*, I stated:

> It is unfortunate, if I may make this comment, that arrangements were not made in committee to settle this matter there, where these requests were made and where there might have been some agreement on which documents and which format would be tabled or made available to Members. How they were to be produced or however it was to be done, I do not know, but obviously that has not happened.

Several Members have made the point that there are numerous ways that the documents in question could have been made available without divulging state secrets and acknowledged that all sides in the House needed to find a way to respect the privileges and rights of Members of Parliament to hold the Government to account, while at the same time protecting national security.

The Government, for its part, has sought to find a solution to the impasse. It has appointed former Supreme Court Justice Frank Iacobucci and given him a mandate to examine the documents and to recommend to the Minister of Justice and Attorney General what could be safely disclosed to the House.

The Government has argued that in mandating this review by Mr. Iacobucci, it was taking steps to comply with the Order consistent with its requirements to protect the security of Canada's armed forces and Canada's international obligations.

However, several Members have pointed out that Mr. Iacobucci's appointment establishes a separate, parallel process outside of parliamentary oversight, and without parliamentary involvement. Furthermore, and in my view perhaps most significantly, Mr. Iacobucci reports to the Minister of Justice; his client is the Government.

The authorities I have cited are unanimous in the view of the House's privilege to ask for the production of papers and many go on to explain that accommodations are made between those seeking information and those in possession of it to ensure that arrangements are made in the best interests of the public they both serve.

Certainly from the submissions I have heard, it is evident to the Chair that all Members take seriously the sensitive nature of these documents and the need to protect the confidential information they contain.

The Chair must conclude that it is within the powers of the House of Commons to ask for the documents sought in the December 10 Order it adopted. Now it seems to me that the issue before us is this: Is it possible to put in place a mechanism by which these documents could be made available to the House without compromising the security and confidentiality of the information they contain? In other words, is it possible for the two sides,

working together in the best interests of the Canadians they serve, to devise a means where both their concerns are met? Surely that is not too much to hope for.

The Member for Toronto Centre has made a suggestion, as recorded on page 615 of the *Debates* of March 18, 2010:

> What we believe can be done is not beyond the ability of the House. It is done in many other parliaments. Indeed, there are circumstances under which it has even been done in this House. It is perfectly possible for unredacted documents to be seen by Members of Parliament who have been sworn in for the purpose of looking at these documents.

O'Brien and Bosc, at page 980, points to ways of seeking a compromise for Members to gain access to otherwise inaccessible material:

> Normally, this entails putting measures in place to ensure that the record is kept confidential while it is being consulted: *in camera* review, limited and numbered copies, arrangements for disposing of or destroying the copies after the committee meeting, *et cetera*.

In some jurisdictions, such as the Legislative Council in the Australian state of New South Wales, and I would refer Members to *New South Wales Legislative Council Practice* by Lovelock and Evans at page 481, mechanisms have been put in place, which satisfy the confidentiality concerns of the Government as well as those of the legislature. Procedures provide for independent arbiters, recognized by both the executive and the legislature, to make determinations on what can be disclosed when a dispute arises over an order for the production of documents.

Finding common ground will be difficult. There have been assertions that colleagues in the House are not sufficiently trustworthy to be given confidential information, even with appropriate security safeguards in place. I find such comments troubling. The insinuation that Members of Parliament cannot be trusted with the very information that they may well require to act on behalf of Canadians runs contrary to the inherent trust that Canadians have placed in their elected officials and which Members require to act in their various parliamentary capacities.

The issue of trust goes in the other direction as well. Some suggestions have been made that the Government has self-serving and ulterior motives for the redactions in the documents tabled. Here too, such remarks are singularly unhelpful to the aim of finding a workable accommodation and ultimately identifying mechanisms that will satisfy all actors in this matter.

But the fact remains that the House and the Government have, essentially, an unbroken record of some 140 years of collaboration and accommodation in cases of this kind. It seems to me that it would be a signal failure for us to see that record shattered in the Third Session of the Fortieth Parliament because we lacked the will or the wit to find a solution to this impasse.

The House has long understood the role of the Government as "defender of the realm" and its heavy responsibilities in matters of security, national defence and international relations. Similarly, the Government understands the House's undoubted role as the "grand inquest of the nation" and its need for complete and accurate information in order to fulfill its duty of holding the Government to account.

Examples have been cited of mechanisms that might satisfy the competing interests of both sides in this matter. In view of the grave circumstances of the current impasse, the Chair believes that the House ought to make one further effort to arrive at an interest-based solution to this thorny question.

Accordingly, on analyzing the evidence before it and the precedents, the Chair cannot but conclude that the Government's failure to comply with the Order of December 10, 2009, constitutes *prima facie* a question of privilege.

I will allow House Leaders, Ministers and party critics time to suggest some way of resolving the impasse, for it seems to me we would fail the institution if no resolution can be found. However, if in two weeks' time, the matter is still not resolved, the Chair will return to make a statement on the motion that will be allowed in the circumstances.

In the meantime, of course the Chair is disposed to assist the House in any way it can, and I am open to suggestions on any particular role that I as your Speaker can play.

I thank the House for its attention.

Postscript: On May 11, 2010, Jay Hill (Leader of the Government in the House of Commons) rose in the House and reported that the discussions among the parties were ongoing. He submitted to the Speaker a request from all of the parties to extend, to the end of the time provided for Government Orders on May 14, 2010, the time permitted for negotiations and a motion to that effect was agreed to.[17] At noon on May 14, 2010, Rob Nicholson (Minister of Justice and Attorney General of Canada) rose in the House to announce that the parties had reached an agreement in principle that would allow the documents to be released to Members for review and, at the same time, would protect the security and confidentiality of their contents. He subsequently tabled a document outlining the terms of the agreement.[18] He noted that the details of the proposal would be outlined further in a memorandum of understanding to be signed by all party leaders by May 31, 2010. The House Leaders of the three opposition parties, Ralph Goodale (Wascana), Pierre Paquette (Joliette) and Libby Davies (Vancouver East) signalled their support for the agreement.[19] On May 31, 2010, the Minister of Justice rose in the House and explained that progress was being made but more time was needed for the negotiations.[20]

On June 15, 2010, the Government House Leader announced, during "Statements by Ministers", that three of the four parties had come to an agreement with regard to the method of dealing with the documents. Mr. Goodale and Mr. Paquette spoke in support of the agreement. Ms. Davies responded that her party was not in agreement with the others and that Jack Harris (St. John's East) would be raising a question of privilege on the matter later that morning.[21] In his question of privilege, Mr. Harris stated that the agreement reached did not respect the Speaker's ruling of April 27, 2010, and that he would be prepared to move a motion that would be consistent with the Speaker's ruling. After hearing from other Members, the Speaker took the matter under advisement.[22] On June 16, 2010, the Government House Leader tabled a memorandum of understanding in the House.[23]

On June 17, 2010, the Speaker delivered his ruling on the question of privilege raised by Mr. Harris. He stated that the memorandum of understanding tabled by the Government House Leader made it apparent that a consensus had been reached among three of the parties and that it was not for the Chair to examine the details of the agreement or to compare it to the agreement in principle tabled on May 14, 2010. The Speaker concluded that the requirements of the ruling of April 27, 2010, had been met and that, accordingly, there was no new *prima facie*

question of privilege. He concluded by stating that he would allow time for the processes and mechanisms described in the agreement to be implemented.[24]

On July 10, 2010, as per the agreement and the memorandum of understanding, an *ad hoc* committee composed of one Member and one alternate from each of the three parties signatory to the agreement, having been sworn to secrecy, began to examine the approximately 40,000 pages of text related to Afghan detainees. In addition, as agreed, an arbitration panel composed of three retired Justices of Supreme Courts was named. The committee and the panel continued their work throughout 2010 and into 2011. On March 26, 2011, the Fortieth Parliament was dissolved.

On June 22, 2011, a few weeks after the opening of Forty-First Parliament, John Baird (Minister of Foreign Affairs) tabled copies of approximately 362 documents totalling over 4,000 pages, and a report of the panel of arbiters, relating to the detention of combatants by Canadian Forces in Afghanistan. By unanimous consent, some of the documents were tabled in English or French only, without translation.[25]

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1. Third Report of the Special Committee on the Canadian Mission in Afghanistan, presented to the House on November 27, 2009 (*Journals*, p. 1101).
2. *Journals*, December 10, 2009, pp. 1193-7.
3. *Debates*, December 10, 2009, pp. 7872-7.
4. *Journals*, March 3, 2010, p. 9.
5. *Debates*, March 5, 2010, pp. 79-80.
6. *Debates*, March 16, 2010, p. 491, *Journals*, p. 85.
7. *Debates*, December 1, 2009, p. 7449.
8. *Debates*, March 18, 2010, pp. 607-17.
9. *Debates*, March 25, 2010, p. 909, *Journals*, p. 137.
10. *Debates*, March 25, 2010, pp. 919-24.
11. *Debates*, March 31, 2010, pp. 1219-29.
12. *Debates*, April 12, 2010, pp. 1351-62.
13. *Debates*, April 1, 2010, p. 1239, *Journals*, p. 175; *Debates*, April 26, 2010, p. 972, *Journals*, p. 284.
14. The word "the" is missing from the published *Debates*.
15. The published *Debates* read "for" instead of "from".
16. The published *Debates* read "2nd" instead of "3rd".

17. *Debates*, May 11, 2010, p. 2637.
18. *Debates*, May 14, 2010, pp. 2847-8, *Journals*, p. 381.
19. *Debates*, May 14, 2010, pp. 2848-9.
20. *Debates*, May 31, 2010, p. 3157.
21. *Debates*, June 15, 2010, pp. 3837-8.
22. *Debates*, June 15, 2010, pp. 3842-6.
23. *Debates*, June 16, 2010, p. 3926, *Journals*, p. 536.
24. *Debates*, June 17, 2010, p. 4021.
25. *Debates*, June 22, 2011, pp. 615-6, *Journals*, p. 133.

Parliamentary Privilege

Rights of the House

The right to institute inquiries, to require the attendance of witnesses and to order the production of documents: standing committees; access to documents; *prima facie*

March 9, 2011 — *Debates*, pp. 8840-2

Context: On February 7, 2011, James Rajotte (Edmonton–Leduc) presented the Tenth Report of the Standing Committee on Finance (question of privilege relating to the Government's failure to produce documents with respect to corporate profits and taxes and the costs of various justice bills).[1] Later in the sitting, Scott Brison (Kings–Hants) rose on a question of privilege in relation to the Report. He explained that on November 17, 2010, the Committee had passed a motion ordering the Government to provide it with five-year projections of total corporate profits before taxes and effective corporate tax rates, and also projected costs of certain justice bills. He added that, in both cases, the Government had invoked Cabinet confidence to justify not providing the information without providing a reasonable explanation as to why it was invoking such a justification. Arguing that some of this information had been published by the previous Government, and that confidentiality on cost estimates should not apply to legislation once it had been introduced, he contended that withholding the information had impeded Parliament's ability to fulfill its duty to scrutinize the estimates and to hold the Government to account. The Speaker heard from other Members on February 9 and 11, 2011.[2]

On February 17, 2011, the House debated an opposition motion, the text of which affirmed the right of Parliament to request documents, stated that the Government's refusal to table the requested information constituted a violation of the rights of Parliament, and ordered the Government to produce the desired documents by March 17, 2011. During the course of the sitting, John Baird (Leader of the Government in the House of Commons) tabled information in response to the Committee's Order. At the conclusion of debate, a recorded division on the motion was demanded and deferred.[3]

On February 28, 2011, both Mr. Lukiwski and Mr. Brison rose again, Mr. Lukiwski arguing that, since there was no order from the House for the production of

documents, there was no question of privilege, and that the Government, while not being able to provide the House with specific documents on grounds of Cabinet confidence, had provided it with information that met the requirements of the Committee's Order. Mr. Brison countered that the information tabled by the Government House Leader was inadequate and that the Government's continued failure to provide an explanation as to why the documents were covered by Cabinet confidence constituted a contempt of Parliament. The Speaker indicated that he would take their submissions into consideration.[4] Later during the sitting, the House proceeded to the taking of the deferred recorded division on the opposition motion of February 17, 2011 and the motion was agreed to.[5]

Resolution: The Speaker delivered his ruling on March 9, 2011. He declared that the absolute power of committees to order the production of papers was indistinguishable from that of the House. He stated that, without judging the quality of the information tabled by the Government, he had concluded that the Government had not provided all the information requested by the Committee. He added that he considered this a serious matter that went to the heart of the House's role in holding the Government to account. For these reasons, the Speaker judged that there were sufficient grounds for finding a *prima facie* question of privilege in the matter. Before recognizing Mr. Brison to move his motion, the Speaker took the opportunity to provide guidance to the House as to the type of motion that he would find in order in this instance. Quoting *House of Commons Procedure and Practice,* 2009, he emphasized that it was Canadian practice to refer such matters to committee for study and indicated that he expected the motion to be consistent with this practice. The Speaker then delivered a ruling on another matter before recognizing Mr. Brison to move his motion.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on February 7, 2011, by the hon. Member for Kings–Hants concerning the production of documents ordered by the Standing Committee on Finance.

I would like to thank the hon. Member for Kings–Hants for having raised this matter, as well as the hon. Parliamentary Secretary to the Government

House Leader, and the Members for Mississauga South, Windsor–Tecumseh and Notre-Dame-de-Grâce–Lachine for their interventions.

The Member for Kings–Hants explained that on November 17, 2010, the Standing Committee on Finance adopted a motion ordering the production of documents relating to corporate profits and taxes and the costs of various justice bills. The Government, citing Cabinet confidence as a reason, declined on three separate occasions to produce the information sought. The Committee then presented its Tenth Report to the House on February 7, 2011, to draw the attention of the House to this matter.

More specifically, the Member for Kings–Hants contended that the refusal to provide the information constituted a breach of this House's privileges and, moreover, the refusal to provide a reasonable explanation as to why the information was deemed to constitute a Cabinet confidence was tantamount to contempt.

There was a considerable lapse of time before the Government formally responded to this question of privilege. Before it did so on February 17, 2011, in the *Debates*, at page 8324, the Government House Leader rose in the House to table "information on our Government's low-cost and tough-on-crime agenda as requested by certain Members of Parliament".

Only after this, on February 28, 2011, did the Parliamentary Secretary to the Government House Leader [return][6] to the House to present his case on the question of privilege. He argued that even though, in his view, the Standing Committee on Finance, in its Tenth Report, did not ask the House to order the production of the documents in question, the Government, despite the absence of such a House Order, had willingly tabled information which preserved "the confidentiality required around documents which are classified as Cabinet confidences yet meets the request for specific data contained within the documents which by its nature is not a Cabinet confidence".

Later the same day, the Member for Kings–Hants made further arguments in the House to indicate his dissatisfaction with the Government's response. He stated that he believed the Government had "failed both to provide all the documents or provide any reasonable explanation as to why these documents cannot be provided".

In interventions since that time, the Government has maintained that the Government has provided the information requested, implying that all of it has been provided.

It should be noted that at the same time as interventions were being made on this question of privilege, the House was proceeding on a separate track on what was essentially the same matter.

Thus, on February 17, 2011, the House was debating an opposition motion ordering the production of the same documents demanded by the Standing Committee on Finance. In a subsequent vote on the motion, held on February 28, 2011, the House adopted the motion, thus setting a deadline of March 7, 2011 for the production of the documents in question.

Dealing first with the question of whether or not the House or its committees have the authority to order the production of documents, let me restate in part my April 27, 2010, ruling with respect to the production of documents related to Afghan detainees.

At the time I stated, at page 2043 of the *Debates*:

> —procedural authorities are categorical in repeatedly asserting the powers of the House in ordering the production of documents. No exceptions are made for any category of Government documents… Therefore, the Chair must conclude that it is perfectly within the existing privileges of the House to order production of the documents in question.

I also quoted *House of Commons Procedure and Practice*, Second Edition, at pages 978 and 979, which states:

> The Standing Orders do not delimit the power to order the production of papers and records. The result is a broad, absolute power that on the surface appears to be without restriction. There is no limit on the type of papers likely to be requested, the only prerequisite is that the papers exist—in hard copy or electronic format—and that they are located in Canada….

> No statute or practice diminishes the fullness of the power rooted in the House privileges unless there is an explicit legal provision to that effect, or unless the House adopts a specific resolution limiting the power. The House has never set a limit on its power to order the production of papers and records.

With respect to the power of committees to order the production of documents, Standing Order 108(1)(*a*) is clear that they can "… send for persons, papers and records… ". *O'Brien and Bosc*, at page 978, expands on this point:

> The Standing Orders state that standing committees have the power to order the production of papers and records, another privilege rooted in the Constitution that is delegated by the House….

Thus, the power of committees of the House to order papers is indistinguishable from that of the House.

With these well-established privileges and principles in mind, and in order to assess properly whether or not the order flowing from the Standing Committee on Finance has been complied with, I undertook a review of what was tabled. The Chair was helped in this by the Committee's Order, which was quite explicit in the information it sought, even going so far as to list the bills for which information was required. While the Chair does not judge the quality of documents tabled in the House, it is clear from a cursory examination of the material tabled that, on its face, it does not provide all the information ordered by the Committee.

While the Chair finds this in and of itself unsettling, what is of greater concern is the absence of an explanation for the omissions. At the very least, based on the indisputable right of the Committee to order these documents, this is required. Only then can the House determine whether the reasons given are sufficient or satisfactory. The need to provide reasons to the House is clear. On page 281 of Bourinot's *Parliamentary Procedure and Practice in the Dominion of Canada*, 4th edition, it states:

> But is must be remembered that under all circumstances it is for the House to consider whether the reasons given for refusing the information are sufficient. The right of Parliament to obtain every

> possible information on public questions is undoubted, and the circumstances must be exceptional, and the reasons very cogent, when it cannot be at once laid before the houses.

The Chair has reviewed the *Debates* on this question, and while initially Cabinet confidence was cited as a reason not to produce any of the documents, despite this, the Government saw fit to partially comply with the Committee Order and a tabling of some material did eventually take place. Since then, no further reasons have been given as to why the balance of the documents should not or will not be tabled.

It may be that valid reasons exist. That is not for the Chair to judge. A committee empowered to investigate the matter might, but the Chair is ill-equipped to do so. However, there is no doubt that an Order to produce documents is not being fully complied with, and this is a serious matter that goes to the heart of the House's undoubted role in holding the Government to account.

For these reasons, the Chair finds that there are sufficient grounds for finding a *prima facie* question of privilege in this matter.

Before I invite the Member for Kings–Hants to move his motion, however, the Chair wishes to explain the procedural parameters that govern such motions.

House of Commons Procedure and Practice, Second Edition, at pages 146 and 147 states:

> In cases where the motion is not known in advance, the Speaker may provide assistance to the Member if the terms of the proposed motion are substantially different from the matter originally raised. The Speaker would be reluctant to allow a matter as important as a privilege motion to fail on the ground of improper form. The terms of the motion have generally provided that the matter be referred to committee for study or have been amended to that effect.

I hasten to add that the powers of the Speaker in these matters are robust and well known. In 1966, Mr. Speaker Lamoureux, having come to a finding of

prima facie privilege on a matter, ruled a number of motions out of order. As *House of Commons Procedure and Practice*, Second Edition, tells us at page 147, footnote 371, in doing so, Mr. Speaker Lamoureux "more than once pointed out that it was Canadian practice to refer such matters to committee for study and suggested that this should be the avenue pursued".

The Chair is of course aware of exceptions to this practice, but in most if not all of these cases, circumstances were such that a deviation from the normal practice was deemed acceptable, or there was a unanimous desire on the part of the House to proceed in that fashion.

With this guidance in mind, I will soon recognize the hon. Member for Kings–Hants so that he can propose his motion, but before he proceeds, I have a ruling on another matter, which I will deliver.

Postscript: Later in the sitting, Mr. Brison moved that the question be referred to the Standing Committee on Procedure and House Affairs and that the Committee report its findings and recommendations to the House no later than March 21, 2011. After debate, the motion was agreed to.[7] On March 21, 2011, the Standing Committee presented its Twenty-Seventh Report, in which it concluded that the Government`s failure to produce documents had impeded the House in the performance of its functions and constituted a contempt of Parliament.[8] During Routine Proceedings on March 23, 2011, Mr. Brison moved concurrence in the Report and debate ensued. At the end of the time available that day for debate on the concurrence motion, the Speaker informed the House that debate on the motion would be rescheduled for another sitting.[9] On March 25, 2011, the House debated and agreed to an opposition motion to the effect that it agreed with the findings of the Twenty-Seventh Report of the Standing Committee on Procedure and House Affairs and consequently had lost confidence in the Government.[10] On March 26, 2011, the Fortieth Parliament was dissolved.

1. Tenth Report of the Standing Committee on Finance, presented to the House on February 7, 2011 (*Journals*, p. 1188).
2. *Debates*, February 9, 2011, pp. 7946-8; February 11, 2011, pp. 8051-7.
3. *Debates*, February 17, 2011, pp. 8294-325, 8342-56, *Journals*, p. 1262.
4. *Debates*, February 28, 2011, pp. 8413-4, 8442-3.
5. *Journals*, February 28, 2011, pp. 1271-3.
6. The published *Debates* read "returned" instead of "return".
7. *Debates*, March 9, 2011, pp. 8843-7, *Journals*, pp. 1330-1.
8. Twenty-Seventh Report of the Standing Committee on Procedure and House Affairs, presented to the House on March 21, 2011 (*Journals*, p. 1358).
9. *Debates*, March 23, 2011, pp. 9141-52.
10. *Debates*, March 25, 2011, pp. 9246-53, 9279-85, *Journals*, pp. 1421-3.

Parliamentary Privilege

Rights of the House

Contempt of the House: misleading statements by Minister; *prima facie*

March 9, 2011 *Debates*, pp. 8842-3

Context: On December 13, 2010, John McKay (Scarborough–Guildwood) rose on a question of privilege with respect to what he alleged were deliberately misleading statements made by Bev Oda (Minister of International Cooperation) and Jim Abbott (Kootenay–Columbia), the former Parliamentary Secretary to the Minister, on the subject of a funding application to the Canadian International Development Agency (CIDA) by international development organization KAIROS. In response, Mr. Abbott apologized for any misleading statements that he may have made. After hearing from other Members that day and on December 14 and 15, 2010, the Speaker took the matter under advisement.[1] On February 10, 2011, the Speaker delivered his decision. He accepted that Mr. Abbott had not intended to mislead the House and ruled that part of the matter closed. He then noted that as some of the statements attributed to the Minister had been made before the Standing Committee on Foreign Affairs and International Development, he could not take them into consideration for, without a committee report on the matter, anything said before the Committee was not properly before the House. The Speaker did recognize the full body of material, originating from both House and Committee proceedings, gave rise to very troubling questions, which to any reasonable person would be of concern, if not shocking. However, based on the documents and information that were properly before the House, the Speaker concluded that there was no evidence that the Minister's statements to the House had been deliberately misleading, and he accordingly ruled that there was no *prima facie* question of privilege.[2]

On February 14, 2011, the Minister rose on a point of order to clarify that the decision not to fund KAIROS had been hers, and she reaffirmed that she had not intended to imply either before the House or before the Standing Committee that her decision or opinion was shared by her department. After hearing from other Members, the Speaker urged Members who continued to have questions for the Minister to raise them in committee or during Oral Questions.[3]

On February 17, 2011, the Standing Committee on Foreign Affairs and International Development presented its Sixth Report (Committee Business—Question of Privilege), the purpose of which was to place the proceedings of the December 9, 2010 Committee meeting on the subject of KAIROS officially before the House.[4] Later in the sitting, Mr. McKay and Paul Dewar (Ottawa Centre) rose on questions of privilege based on the Report, arguing that the evidence presented to the Committee demonstrated that the Minister had intentionally misled the Committee and the House. They stated that they were, accordingly, prepared to move a motion finding the Minister in contempt. The Speaker took the matter under advisement.[5] On February 18, 2011, several Members spoke to the matter. Tom Lukiwski (Parliamentary Secretary to the Government House Leader) noted that the Committee Report did not contain any accusations, specific allegations that the rights or dignity of the House had been breached, or any suggestion or evidence that the Committee had been misled.[6] After further interventions that day and on March 3, 2011, the Speaker again took the matter under advisement.[7]

Resolution: On March 9, 2011, the Speaker delivered his ruling. Noting that the Sixth Report of the Standing Committee had made available material not previously before the House, he explained that he had taken its findings into consideration, and measured them against other material, including statements in the House and answers to oral and written questions. He also pointed out that statements made by the Minister had at the very least caused confusion. He then declared that, in keeping with recent precedent and mindful of a ruling by Mr. Speaker Jerome to the effect that in the case of doubt on a question the Speaker should leave it to the House to decide, sufficient doubt existed to warrant a finding of a *prima facie* question of privilege. Having ruled another matter raised by Scott Brison (Kings–Hants) as a *prima facie* question of privilege earlier in the sitting, he stated that he would return to Mr. McKay to move his motion in due course. Following the debate on and adoption of Mr. Brison's motion, the Speaker recognized Mr. McKay to move his motion.[8]

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on February 17, 2011, by the hon. Member for Scarborough–Guildwood, stemming from the presentation of the Sixth Report of the Standing Committee on Foreign Affairs and International Development, and the allegedly misleading statements made by the Minister of International Cooperation.

I would like to thank the Member for Scarborough–Guildwood, as well as the hon. Parliamentary Secretary to the Government House Leader, and the Members for Ottawa Centre, Joliette, Scarborough–Rouge River, Vancouver East, Guelph, Eglinton–Lawrence, Beaches–East York, Yukon and Winnipeg North for their contributions on this important matter.

As Members will know, this matter was first raised by the Member for Scarborough–Guildwood on December 13, 2010. In my ruling of February 10, 2011, I explained that I was unable to "find evidence in documents properly before the House to suggest that the Minister's statements to the House were deliberately misleading". Accordingly, I declined to find that a *prima facie* question of privilege existed.

On February 14, 2011, the Minister of International Cooperation made a statement in the House to clarify matters related to the funding application for KAIROS. While acknowledging that the way in which this case has been handled was unfortunate, she asserted that she had neither intentionally nor knowingly misled the House or the Committee. She also stated that:

> If some were led to conclude that my language implied that the department and I were of one mind on this application, then I apologize.

On February 17, 2011, the Sixth Report of the Standing Committee on Foreign Affairs and International Development was presented to the House. It is a short report which focuses primarily on testimony by the Minister and her officials on December 9, 2010, in relation to the process that led to the rejection of a funding application by KAIROS.

In particular, much attention is given to determining how the word "not" made its way into the assessment of the KAIROS funding application submitted to the Minister for approval. The last part of the Report links this testimony with "other information before the House" and draws "attention to what appears to be a possible breach of privilege".

The Member for Scarborough–Guildwood and other Members have argued that the Minister has made statements in committee that are different from those made in the House or provided to the House in written form. Indeed, these Members have argued that the material available shows that

contradictory information has been provided. As a result, they argue, this demonstrates that the Minister has deliberately misled the House and that as such, a *prima facie* case of privilege exists.

For his part, the Parliamentary Secretary to the Leader of the Government in the House of Commons argued that the Sixth Report of the Standing Committee contained no accusations or other suggestions that the rights or dignity of the House had been compromised or that the Committee had been misled, either unintentionally or deliberately. Claiming that in fact no direct accusation had been made, he asked, "What charge is there to be answered?" He suggested that it was improper for a committee to report that "an undescribed and undefined breach of privilege may have occurred", and emphasized that the Minister had given clear, accurate and honest answers. He also stated that it was not contradictory for the Minister to state that while she did not know who inserted the word "not", it had indeed been done on her instructions.

Now that the Standing Committee, in its Sixth Report, has made available to the House material not previously before us, I must take its findings into consideration, measuring them against other material, including statements in the House and answers to oral and written questions.

But I caution that the Speaker has a very particular and limited role in the conclusions to be drawn. In a ruling given on March 21, 1978, at page 3975 of *Debates*, which is also referred to in Maingot's *Parliamentary Privilege in Canada*, 2nd edition, at page 227, Mr. Speaker Jerome quoted a British procedure committee report of 1967, which states in part:

> —the Speaker should ask himself, when he has to decide whether to grant precedence over other public business to a motion which a Member who has complained of some act or conduct as constituting a breach of privilege desires to move, should be not—do I consider that, assuming that the facts are as stated, the act or conduct constitutes a breach of privilege, but could it reasonably be held to be a breach of privilege, or to put it shortly, has the Member an arguable point? If the Speaker feels any doubt on the question, he should, in my view, leave it to the House.

It is with this principle in mind that I have taken great care to study the evidence in view of the very serious allegations regarding the conduct of a Minister, who as a result has been subjected to harsh and public criticism which has been potentially damaging to her reputation.

The crux of the matter, it seems to me, is this: as the Committee has reported, when asked who inserted the word "not" in the assessment of the KAIROS funding application, in testimony the Minister twice replied that she did not know. In a February 14 statement to the House, while she did not indicate that she knew who inserted the word "not", the Minister addressed this matter by stating that the "not" was inserted at her direction. At the very least, it can be said that this has caused confusion. The Minister has acknowledged this, and has characterized her own handling of the matter as "unfortunate". Yet as is evident from hearing the various interventions that have been made since then, the confusion persists. As the Member for Scarborough–Rouge River told the House, this "has confused me. It has confused Parliament. It has confused us in our exercise of holding the Government to account, whether it is the Privy Council, whether it is the Minister, whether it is public officials; we cannot do our job when there is that type of confusion".

The Chair has faced a somewhat analogous situation before. In January 2002 the Minister of National Defence had made statements in the House regarding Afghan detainees that ultimately also caused confusion and led to a question of privilege being raised. In that case, two versions of events had been presented to the House. In that case, as in this one, the Minister assured the House that there was no intention to mislead. At that time, in finding a *prima facie* case, I stated at page 8581 of the *Debates* of February 1, 2002, that I was "prepared as I must be to accept the Minister's assertion that he had no intention to mislead the House. Nevertheless this remains a very difficult situation". I then went on to conclude that "the situation before us where the House is left with two versions of events is one that merits further consideration by an appropriate committee, if only to clear the air".

In keeping with this fairly recent precedent, and mindful of the ruling by Mr. Speaker Jerome cited earlier, the Chair is of the view that sufficient doubt exists to warrant a finding of *prima facie* privilege in this case. Accordingly, I will invite the Member for Scarborough–Guildwood to move his motion in

due course, but at the moment I will return to the hon. Member for Kings–Hants to move his motion on the earlier case.

Postscript: Having been recognized by the Speaker to move his motion, Mr. McKay expressed the view that the House already had before it all the evidence that might be obtained by referring the matter to a committee, and inquired as to whether the House might immediately be seized of a motion that the Minister of International Cooperation be suspended from its service until such time as she should appear at the Bar of the House to apologize in a manner satisfactory to the Speaker. The Speaker replied that the proper course of action would be to refer the matter to a committee for consideration. Accordingly, Mr. McKay moved that the matter be referred to the Standing Committee on Procedure and House Affairs and that the Committee report back to the House no later than March 25, 2011. Following a brief debate, the motion was agreed to.[9]

The Standing Committee did not report back to the House by the deadline. On March 25, 2011, the Government was defeated on a motion of non-confidence.[10] On March 26, 2011, the Fortieth Parliament was dissolved.

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1. *Debates*, December 13, 2010, pp. 7142-7; December 14, 2010, pp. 7252-4; December 15, 2010, pp. 7337-9.
2. *Debates*, February 10, 2011, pp. 8029-30.
3. *Debates*, February 14, 2011, pp. 8115-6.
4. Sixth Report of the Standing Committee on Foreign Affairs and International Development, presented to the House on February 17, 2011 (*Journals*, p. 1261).
5. *Debates*, February 17, 2011, pp. 8338-42.
6. *Debates*, February 18, 2011, pp. 8390-3.
7. *Debates*, March 3, 2011, pp. 8628-9.
8. *Debates*, March 9, 2011, pp. 8843-7.
9. *Debates*, March 9, 2011, pp. 8847-55, *Journals*, p. 1331.
10. *Journals*, March 25, 2011, pp. 1421-3.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: Member denied access to computer files

October 15, 2001 — *Debates*, pp. 6081-2

Context: On September 27, 2001, Deborah Grey (Edmonton North) rose on a question of privilege, claiming that she had been denied access to her computer files as these had been frozen and shut down by the Canadian Alliance. (**Editor's Note**: This occurred after Ms. Grey had left the Canadian Alliance caucus and was sitting as a member of the Progressive Conservative Party/Democratic Representative Caucus Coalition.) She further maintained that, without consulting with her office, the House of Commons Information Services Directorate had given permission to a staff member of the Whip of the Canadian Alliance to gain access to her computer files. Expressing concerns about privacy and confidentiality, Ms. Grey contended that she had been impeded in carrying out her parliamentary duties. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: On October 15, 2001, the Speaker delivered his ruling. He noted that there were competing claims in this situation. First, the Member contended that the documents and data she and her assistants had stored on the Canadian Alliance server and which were password protected, were hers and should be returned to her. Second, Canadian Alliance officials claimed that the server where the files were located belonged to them, that the files were found in a directory called "CA Leader", a position the Member no longer held, and that the Alliance had a legitimate right to ensure that no caucus documents were included in the files to be returned to the Member. Faced with these competing claims, House of Commons Information Services had concluded that it could not adjudicate the dispute and had suggested that both sides negotiate a mutually acceptable solution to the impasse. The Chair was concerned that an officer of the Alliance, on the request of the Canadian Alliance Whip, had been granted access to the disputed files to review and determine their appropriate disposition. He added that this error might well have been an honest mistake, but the fact remained that the action taken could be viewed as potentially damaging to Ms. Grey's ability to represent her constituents. He directed that the remaining disputed files still held on the Alliance server be

returned forthwith to the Member. Further, he directed Information Services to establish new protocols immediately to ensure that files and data belonging to Members of Parliament, including caucus officers, be kept as originally intended on Members' servers and not on caucus servers.

Decision of the Chair

The Speaker: I am now ready to rule on the question of privilege raised by the hon. Member for Edmonton North on September 27 concerning the alleged unauthorized access to the hon. Member's computer files.

I would like to thank the hon. Member for bringing this matter to the attention of the House. I would also like to thank the hon. Whip of the Official Opposition for the information he provided on this question.

Let me say at the outset that I was greatly troubled by the hon. Member's allegations. I asked for and have now received a complete report on the circumstances surrounding this case.

If the House will bear with me, I would like to explain the chronology of events in this case so that we can understand what has happened here; identify where things went wrong and take steps to ensure that such errors are not repeated.

I believe the hon. Opposition Whip put his finger on a central problem in noting what he called "the relative newness of the information age". In organizing their work Members rely on their own staff, the staff of the party to which they are affiliated, and on the staff of the administration of the House of Commons.

Often the details of how work is organized particularly with regard to technology, for example how local area networks operate or how a server is configured, are left in the hands of the staff.

The Member's primary concerns are to use the time in Ottawa most efficiently and effectively and to serve the constituency in the best way possible, and the staff is trusted to make the arrangements to make that happen.

Ironically it appears to the Chair that it is precisely in trying to meet those concerns that this problem arose.

This saga begins in March 2000 when the hon. Member for Edmonton North became Acting Leader of the Canadian Alliance. At that time the Information Services Directorate received a request to move the data from the MP server in the hon. Member's office to the Canadian Alliance caucus server.

This was done, that is the hon. Member and her assistants were given a special section on the Canadian Alliance CA server under the group title "CA Leader". The files thus transferred were password protected and so could be said to belong to the hon. Member for Edmonton North, being accessible only to her and to her staff.

In September 2000, the hon. Member stepped down as Acting Leader. In the normal course of events, one might have expected that the hon. Member's files—still being resident on the Canadian Alliance server—would have been transferred back to the server in her MP's office. However, this did not happen.

It is important to note that while the Information Services Directorate operates as a centralized integrated service, Members and caucuses enjoy the usual autonomy of clients in how they organize their affairs. Information Services is in this regard reactive rather than proactive. Beyond establishing certain standards through recommendations to the Board of Internal Economy, the Directorate does not dictate how or where a Member or a caucus will organize or store its data. Nor does the Directorate point out anomalies or inconsistencies.

Thus it was only in May 2001 that the Canadian Alliance network administrator raised with Information Services the anomalous presence on the Alliance server of the files of the hon. Member for Edmonton North. Information Services was informed that consultations with the Whip would be undertaken by the Alliance administrator before any specific instructions on the matter would be issued to the Directorate. However no such instructions were given to the Directorate and all remained as it had been since March 2000.

The situation remained that way until September 20, 2001, when one of the hon. Member's assistants requested that Information Services grant her access

to a number of the standard functions, for example electronic forms, available to a Member's office usually resident on the MP server. When Information Services granted the requested functionality the assistant's connectivity to the Alliance server was severed.

On discovering that she could no longer access her files in the usual way, the assistant called the Information Services help desk. This call gave rise to a number of further telephone exchanges between and among concerned parties, with the final result that the matter was raised here in the Chamber by the hon. Member for Edmonton North on the afternoon of September 28.

As I understand it, the competing claims in this situation may be summed up this way. On the one hand, the hon. Member for Edmonton North contends that the documents and data she and her assistants stored on the Alliance server in a group named "CA Leader" that was password protected are hers and should be returned to her.

On the other hand, Canadian Alliance officials claimed that the server where the files were resident was the Alliance server; that the files were found in a directory called "CA Leader", which position the Member no longer held; and that the Alliance had a legitimate right to ensure that no caucus documents would be included in the files to be returned to the hon. Member for Edmonton North.

Information Services, as a matter of policy, takes no action related to files on a server without the express authority of the Member or caucus whose server it is.

Thus, Information Services, faced with these competing claims, determined that it could not adjudicate the dispute and suggested that both sides negotiate a mutually acceptable solution to the impasse.

It is regrettable that a consensual solution between the two sides could not be found. Then, as the Opposition Whip explains, an Alliance official, having been advised that there was no impediment to his doing so, requested that Information Services grant him access to the disputed files. On the request of his Whip, the officer proposed to review and make a determination on the appropriate disposition of the files.

Information Services had also been advised that if a request were made by the Alliance for access to files held on the Alliance server, such a request could not be refused. As a result of this advice Information Services, acceding to his request, granted read only access to the Alliance official.

It is here that the Chair finds cause for disquiet for I must conclude that the parties have not been well served by the advice they received.

I refer the House to a decision by Mr. Speaker Fraser on February 9, 1988. I quote from pages 12761 to 12762 of *Debates* where he said in a case similar to this one:

> I am satisfied that what has occurred in this case was done innocently. However, the point made by the hon. Member for Thunder Bay–Atikokan that electronic information should be treated no differently from "hard copy" material is well taken.

This error may well have been an honest mistake but the fact remains that the action taken in good faith as a consequence of that error can be viewed as potentially damaging to the hon. Member's ability to represent her constituents.

It is true that the data on the Canadian Alliance server might in the ordinary scheme of things be considered to be under the unquestioned control of the Canadian Alliance, but this is not an ordinary situation. I would liken it to a person with a locked suitcase stored in the locked trunk of someone else's car.

Can the owner of the car, asked to surrender the suitcase, unlock the trunk, retrieve the suitcase and ask a locksmith to unlock the suitcase so its contents could be examined before the suitcase is returned?

This analogy may seem somewhat oversimplified, but I believe it can be helpful in finding a way through the technological labyrinth that is unfamiliar territory to many of us. The files of the hon. Member for Edmonton North were in her own private compartment on the server in a form accessible only to her. I am therefore directing that the remaining disputed files that are still being held on the Alliance server be returned forthwith to the hon. Member for Edmonton North.

Further, I have directed Information Services to establish new protocols to ensure that files and data belonging to an MP are, even in the case of caucus officers, kept as originally planned on MPs servers and not on caucus servers.

There is little doubt that the case before us features many unique ancillary factors that have complicated what might have been a more straightforward situation. The Chair believes that all Members involved in trying to resolve this situation have acted honourably.

I also believe that staff both in the Members' offices and in Information Services, acting on the direction of hon. Members, have carried out their duties responsibly. I trust that the remedial steps I am directing to be taken immediately will resolve this particular case and will ensure that this kind of situation is not encountered again by any hon. Member or caucus. I trust this settles the matter and I thank hon. Members for their attention.

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1. *Debates*, September 27, 2001, pp. 5672-4.

Parliamentary Privilege

Rights of Members

Freedom of speech: remarks made outside the House by a Minister about another Member

January 29, 2002 — *Debates*, pp. 8444-5

Context: On December 10, 2001, Paul Forseth (New Westminster–Coquitlam–Burnaby) rose on a question of privilege with regard to remarks that had allegedly been made about him by Elinor Caplan (Minister of Citizenship and Immigration) on Wednesday, December 5, 2001, outside the House of Commons, suggesting that he had misled the House. The remarks were printed the following day in the newspaper. He alleged that the Minister had accused him of spreading lies and attributed treasonous words and actions to him, thereby deliberately attempting to tarnish his reputation, and that she had thus breached his rights and privileges, as well as those of Parliament. After hearing from another Member, the Speaker took the matter under advisement.[1]

Resolution: On January 29, 2002, the Speaker delivered his ruling. He observed that the remarks had not been directed at the Member personally and that they had been made outside the Chamber. For these reasons, he ruled that there was no *prima facie* question of privilege.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on Monday, December 10, 2001, by the hon. Member for New Westminster–Coquitlam–Burnaby. I thank the hon. Member for raising this matter and the then Government House Leader for his intervention.

In his presentation, the Member referred to statements of the then Minister of Citizenship and Immigration quoted in a recent newspaper article, and argued that these statements constituted a personal attack on him and an offense against the dignity of Parliament.

The Chair noted that during the oral question period just before the holidays the House heard some unusually strong language and forceful expression of opinion. On Monday, December 3, there was such an exchange between the hon. Member and the then Minister. I refer all hon. Members to the *Debates* of December 3, 2001, at pages 7765 to 7766.

It is understandable that such exchanges should sometimes occur when there are strongly held views on either side on contentious issues. Therefore I thought it appropriate on Wednesday, December 5, to remind hon. Members to use care in their choice of words both in answers and in questions. Again, I refer all hon. Members to the *Debates* of December 5, 2001, at page 7896.

The situation before us at the moment is rather different for it concerns a statement made outside the House itself. I had the opportunity to review the newspaper article referred to by the hon. Member for New Westminster–Coquitlam–Burnaby and to examine the relevant precedents. The cause for offense, as the hon. Member described it, is the reporting of remarks made outside the House by the then Minister and reflecting on the exchange during Question Period on December 3.

I refer hon. Members to the following passage from page 522 of *House of Commons Procedure and Practice*:

> Remarks directed specifically at another Member which question that Member's integrity, honesty or character are not in order.

In the case before us the comments were phrased generally and not directed at the Member. Furthermore, *Marleau and Montpetit* in the same paragraph goes on to state:

> The Speaker has no authority to rule on statements made outside the House by one Member against another.

After careful examination I have concluded that the case raised by the hon. Member fails on two counts: the remarks in question were not clearly directed at the hon. Member personally and the remarks were made outside the Chamber.

The Chair therefore rules that this is not a question of privilege though the hon. Member may feel aggrieved by the remarks of the then Minister.

That being said, I would like to reiterate my remarks of December 5 and encourage all hon. Members to be careful in their choice of words in the Chamber during Question Period in both questions and answers and outside the House when responding to matters that arose in the House. I do not think I am being unrealistic here.

My predecessor, Mr. Speaker Fraser often said of the House of Commons that it was not and never had been a tea party.

On October 10, 1991, *Debates*, pp. 3562-4, he said:

> I do not think we need… to remind ourselves that there is often provocation in this place and it comes on both sides. There has to be, of course, some common sense in our approach because… strong minded men and women who believe passionately in things are going to express that passion and conviction from time to time [but]… when decorum degenerates, it leads to further and further excess.

It seems to the Chair that the sort of escalation in language complained of sheds more heat than light on important issues being debated. I would again ask for the cooperation of all hon. Members in using more temperate language.

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1. *Debates*, December 10, 2001, pp. 8067-8.

Parliamentary Privilege

Rights of Members

Freedom of speech: misuse; relationship between Minister and Crown corporations

February 18, 2002 *Debates*, p. 8926

Context: On January 28, 2002, Peter Goldring (Edmonton Centre-East) rose on a question of privilege, alleging that both he and the House had been deliberately misled by Alfonso Gagliano (the former Member for Saint-Léonard–Saint-Michel) during the latter's tenure as Minister of Public Works and Government Services with regard to the relationship the Minister had had with a Crown corporation. Mr. Goldring charged that the Minister had contradicted reported statements made by Jon Grant, the former Chairman of Canada Lands Company Limited, concerning hiring practices at the federal agency. He added that, although Mr. Gagliano had resigned from the House of Commons since the statements in question had been made, this did not preclude some kind of censure. After hearing from another Member, the Speaker took the matter under advisement.[1]

Resolution: On February 18, 2002, the Speaker delivered his ruling. He cautioned that, although statements in the House are protected in an absolute sense by privilege, Members must be extremely judicious in their comments especially when these concern a former colleague who is no longer able to rise in the House to defend himself. He added that there were different opinions concerning the relationship that existed between the Minister and the Canada Lands Company Limited, but that it was not possible to arrive at the conclusion that the statements in question were instances of deliberate dishonesty. He also reminded Members that statements made or documents published outside the House should not be used to question statements made in the House. He concluded that there was no evidence that a *prima facie* breach of privilege had occurred.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Edmonton Centre-East concerning statements made in the House by the former Minister of Public Works.

I would like to thank the hon. Member for bringing this matter to the attention of the House and also the Government House Leader for his comments.

In raising this question, the hon. Member for Edmonton Centre-East charged that the former Minister of Public Works had on a number of occasions deliberately misled the House concerning the relationship between the Minister and the operations of Crown corporations. In support of his charge, the hon. Member referred to statements attributed to a former Chairman of the Canada Lands Corporation in various newspaper reports.

Let us first recognize that this case makes allegations about the conduct of a former Minister who is now no longer even a Member of the House. I want to remind hon. Members of the need for caution in framing remarks concerning individuals outside the House. With respect to Members' freedom of speech Mr. Speaker Fraser stated on May 5, 1987, at page 5766 of *Debates*:

> Such a privilege confers grave responsibilities on those who are protected by it. By that I mean specifically the hon. Members of this place. The consequences of its abuse can be terrible. Innocent people could be slandered with no redress available to them. Reputations could be destroyed on the basis of false rumour.

Since statements in this place are protected in an absolute sense by privilege Members must be extremely judicious in their comments. I think all hon. Members will agree that this caution takes on an even greater significance when applied to a former colleague who is no longer able to rise in the House to defend himself.

Obviously, the Chair must view seriously any charges of deliberate falsehoods or dishonesty, either of which may affect the ability of individual Members to carry out their duties as parliamentarians and the dignity of Parliament itself.

I have carefully reviewed the statement made by the hon. Member for Edmonton Centre-East and I agree with the hon. Member that there are distinct views on the matters he has raised and a fundamental disagreement about the relationship that existed between the Minister and the Canada Lands Corporation. While such differences can be readily acknowledged it is more

difficult to reach the conclusion that they represent instances of deliberate dishonesty.

Our rules concerning disagreements as to fact are longstanding and previous speakers have been consistent in their application of them. As an example I cite Mr. Speaker Fraser from *Debates* of December 4, 1986, at page 1792 where he stated:

> Differences of opinion with respect to fact and details are not infrequent in the House and do not necessarily constitute a breach of privilege.
>
> The hon. Member in his question was addressing an important matter which was acknowledged to be important by the Minister. However, whatever the differences might be, a dispute as to fact does not constitute a breach of privilege and the Chair cannot adjudicate on that dispute.

This ruling I note was given in response to an issue raised by the then hon. Member for Saint-Léonard–Anjou, Mr. Alfonso Gagliano, in response to comments made by the then Minister of National Revenue, Mr. Elmer MacKay.

There is an additional ruling that I thought hon. Members might note and that was by Mr. Speaker Lamoureux on November 16, 1971, at page 923 of the *Journals* of the House. He said:

> —the pertinent precedents tend to establish in the main that statements made outside the House, or documents published elsewhere, ought not to be used for the purpose of questioning statements made in this Chamber by hon. Members from either side of the House.

He went on to cite examples in support of that proposition. Therefore, on the basis of the arguments presented by the hon. Member for Edmonton Centre-East, I have concluded that while there is clearly disagreement as to the interpretation of events surrounding a serious issue the Chair can find no evidence that a *prima facie* breach of privilege has occurred.

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1. *Debates*, January 28, 2002, pp. 8332-3.

Parliamentary Privilege

Rights of Members

Freedom of speech: limitations; content on a political party's Web site and comments made by Members outside the House reflecting on the dignity of the House

April 16, 2002 *Debates*, pp. 10462-3

Context: On February 28, 2002, Joe Jordan (Parliamentary Secretary to the Prime Minister) rose on a question of privilege with respect to documents found on the Canadian Alliance Web site that, he alleged, reflected negatively on the dignity of the House. Mr. Jordan stated that the documents, as well as related statements by Canadian Alliance Members, concerned ongoing proceedings of the Standing Committee on Procedure and House Affairs, specifically its study of allegedly conflicting statements made by Art Eggleton (Minister of National Defence). The statements that concerned Mr. Jordan were to the effect that the Minister and Jean Chrétien (Prime Minister) had deliberately misled the House and concealed important information through false statements made in the House. (**Editor's Note**: This matter had been raised as a question of privilege by Brian Pallister (Portage–Lisgar) on January 31, 2002,[1] and, following a February 1, 2002 ruling by the Speaker,[2] had been referred to the Standing Committee on Procedure and House Affairs.[3]) Mr. Jordan added that he believed that statements made outside the House which impugned the integrity of Members should be considered contempts of the House. After hearing from other Members, who questioned the timing of the raising of this question given that the Standing Committee was sitting at the time, the Speaker stated that he would hold the matter in abeyance until such time as the Members charged had had the opportunity to respond.[4]

On March 19, 2002, Mr. Pallister, Leon Benoit (Lakeland), and Cheryl Gallant (Renfrew–Nipissing–Pembroke), the Canadian Alliance Members referred to by the Parliamentary Secretary, rose to speak to the question of privilege. They claimed that the matter raised by Mr. Jordan was an attempt to prevent the opposition from criticizing the Minister and the Government. After interventions by other Members, the Deputy Speaker (Bob Kilger) took the matter under advisement.[5]

Resolution: On April 16, 2002, the Speaker delivered his ruling. He reminded Members of the rights and responsibilities that flowed from their privilege of freedom of speech but, given the relevant practice and precedents of the House, he concluded that no *prima facie* case of privilege existed. Keeping in mind the long-standing tradition in the House of accepting a Member at his word, the Speaker reminded Members that the Minister of National Defence had denied that he deliberately misled the House. He added that he had been troubled by the fact that the language which had been complained of had appeared again in the text of a dissenting opinion from the Canadian Alliance that had been appended to the Fiftieth Report of the Standing Committee on Procedure and House Affairs on the question of privilege relating to the Minister of National Defence.[6] While not judging the content of dissenting opinions to committee reports, he reminded the House that it had become common for committees to agree to print, sight unseen, dissenting opinions as appendices. In view of this, he appealed to the Members and Chairs of committees to ensure that the parliamentary practice with regard to language and form was fully respected.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Parliamentary Secretary to the Prime Minister on February 28, [2002][7], concerning communications issued on the Canadian Alliance Web site and by various Members of that party in relation to the deliberations of the Standing Committee on Procedure and House Affairs with regard to its study of conflicting statements made to the House by the Minister of National Defence.

I would like to thank the hon. Parliamentary Secretary for bringing this matter to the attention of the Chair, as well as the hon. Members for Okanagan–Shuswap, Témiscamingue, and Richmond–Arthabaska, who all spoke when this matter was first raised.

I would also like to thank the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons, the Leader of the Opposition in the House, as well as the Members for Portage–Lisgar, Lakeland, Renfrew–Nipissing–Pembroke, Toronto–Danforth and Beauport–Montmorency–Côte-de-Beaupré, who have all contributed.

The hon. Parliamentary Secretary to the Prime Minister argued that the Canadian Alliance had breached parliamentary privilege by the language used in certain statements on its Web site and through certain of its Members' comments to the media to the effect that the Minister of National Defence and the Prime Minister had deliberately misled the House and concealed important information through false statements made in the House.

Members need not be reminded that the Minister denied that he deliberately misled the House or that the matter was referred to the Standing Committee on Procedure and House Affairs for study. Members had the opportunity to criticize and to challenge the words of the Minister, both in the House and during the proceedings of the Standing Committee, as is normal during debate. The Standing Committee on Procedure and House Affairs has now reported on the matter of the statements of the hon. Minister of National Defence. It is up to the House to deal with the Report and its findings.

However, this question of privilege remains outstanding. I ask hon. Members to bear with me as I place the question in context.

House of Commons Procedure and Practice states the following on page 74:

> Freedom of speech permits Members to speak freely in the Chamber during a sitting or in committees during meetings while enjoying complete immunity from prosecution for any comment they might make. This freedom is essential for the effective working of the House.… Though this is often criticized, the freedom to make allegations which the Member genuinely believes at the time to be true, or at least worthy of investigation, is fundamental.

It continues at page 76:

> Members are therefore cautioned that utterances which are absolutely privileged when made within a parliamentary proceeding may not be when repeated in another context, such as in a press release,… on an Internet site, (in) a television or radio interview—

That being said, the privilege of freedom of speech is not limitless. Indeed, Members will recall that during the Committee's study, the Chair

here in the House had, on several occasions, to caution Members that it was unparliamentary to state that the Minister of National Defence had deliberately misled the House, had given false information, or had lied to the House.

I have carefully considered the arguments submitted to me concerning certain communication documents of the Official Opposition and certain comments made by the hon. Members for Portage–Lisgar, Lakeland and Renfrew–Nipissing–Pembroke.

Based on our practice and precedents, I have had to conclude that no *prima facie* case of privilege exists. Nevertheless, though there is no breach of privilege, there is a cause for concern.

These various statements and communications were, in my opinion, intemperate and ill-advised. If we do not preserve the tradition of accepting the word of a fellow Member, which is a fundamental principle of our parliamentary system, then freedom of speech, both inside and outside the House, is imperilled.

I must also say that I am greatly troubled by the fact that the language complained of in this case actually appears again in the text of the dissenting opinion from the Canadian Alliance. Pursuant to motion of the Committee, that opinion has been printed as an appendix to the Fiftieth Report of the Standing Committee on Procedure and House Affairs.

Of course, Standing Order 108(1)(*a*) permits a committee to print dissenting views as appendices. Indeed, so common have these appendices become and such are the pressures of time when a committee completes its work, that committees often agree to print these dissenting appendices, sight unseen. This is a potentially dangerous development since it gives the authors of the dissent a virtual *carte blanche* in terms of their use of language. I would appeal to the Chairs of committees and to all hon. Members to pay close attention to the impact of committee decisions in this regard.

Let me be clear about this: As your Speaker, I am not commenting on the substance of dissenting opinions or on the content of committee reports themselves. Committees have been and must remain masters of their own procedure. But in deciding on the language and the form of these texts,

I believe that it behooves all hon. Members to ensure that our parliamentary practice with regard to language and form is fully respected.

I hope that all Members will consider carefully what I have said in this ruling and that they will be guided accordingly, so that even in the heat of debate on contentious subjects, they will be mindful of our practice and respectful of the traditions that serve this House well.

Once again, I thank all hon. Members who intervened in this matter and I hope that these comments will be helpful.

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1. *Debates*, January 31, 2002, pp. 8517-20.
2. *Debates*, February 1, 2002, pp. 8581-2.
3. *Debates* February 7, 2002, pp. 8792, 8831-2, *Journals*, pp. 1018-20.
4. *Debates*, February 28, 2002, pp. 9388-90.
5. *Debates*, March 19, 2002, pp. 9838-48.
6. *Debates*, March 22, 2002, p. 10038, *Journals*, p. 1250.
7. "2002" is missing from the published *Debates*.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: senior departmental officials allegedly directing employees not to reply to a Member's electronic survey

February 12, 2003 *Debates*, pp. 3470-1

Context: On January 29, 2003, Jim Pankiw (Saskatoon–Humboldt) rose on a question of privilege regarding his attempts to use his parliamentary e-mail account to conduct a survey of the views of public servants about the impact of the Government's bilingualism policy. He alleged that senior departmental officials had directed employees not to reply to the survey, thereby impeding and interfering with his work as a Member, and constituting a contempt of the House. After hearing from another Member, the Speaker took the matter under advisement, but noted that the Member's use of the e-mail system had caused unprecedented difficulties in that the volume and size of messages sent had interfered with the operation of both House and Government systems. He added that, until specific guidelines had been adopted to regulate mass e-mailings, he was directing officials to contact any Member whose activities impeded the functioning systems, to inform them to cease such activity. If a Member failed to comply, officials were instructed to suspend that Member's e-mail account.[1]

Resolution: On February 12, 2003, the Speaker delivered his ruling, stating that Members do possess certain rights, privileges and immunities, but that they are finite and apply only within the confines of the Parliamentary Precinct and parliamentary proceedings. He stated that since the Member's survey had not been carried out in the context of a proceeding of the House or one of its committees, parliamentary privilege did not apply, and therefore no contempt was involved. He urged Members to adhere to new guidelines governing mass electronic communication and to carry out their duties such that they could avail themselves of the House's full authority when conducting inquiries.

Decision of the Chair

The Speaker: Order, please. I am now prepared to rule on the question of privilege raised on January 29, 2003, by the hon. Member for Saskatoon–Humboldt concerning undue interference by senior public servants in his ability to carry out his duties as a parliamentarian.

I would like to thank the hon. Member for Saskatoon–Humboldt for having raised the matter, as well as the hon. Government House Leader for his contribution on the subject.

The hon. Member for Saskatoon–Humboldt stated that on December 27, 2002, and from January 3 to 6, 2003, he attempted to conduct a survey of the views of public servants with respect to the impact of the Government's bilingualism policy. He named a number of senior public servants from various Government departments who he alleged had either forbidden their staff to reply to his survey, or indicated that the confidentiality of replies could not be guaranteed. These actions, he maintained, constituted undue interference in the conduct of his duties as a Member of Parliament.

In response to the points raised by the hon. Member for Saskatoon–Humboldt, the hon. Government House Leader pointed out that there had been no attempt to interfere with the Member's right to freedom of speech in parliamentary proceedings. Furthermore, he argued that an individual Member's right to make inquiries on his or her own initiative should not be confused with the powers of inquiry vested in committees of the House. In concluding his remarks, the Government House Leader asserted that the manner in which the survey material had been presented had had a disruptive effect on many of the recipient Government departments and their staff and that the managers in those departments were justified in taking the action complained of.

I have reviewed the facts relevant to the matter and wish to make several points.

First, it is quite true that the House has certain rights and privileges that are necessary to allow it to conduct its business in the Chamber and in committee.

In his argument, the hon. Member for Saskatoon–Humboldt cited page 50 of *Marleau and Montpetit*, which states:

> "Parliamentary privilege" refers more appropriately to the rights and immunities that are deemed necessary for the House of Commons, as an institution, and its Members, as representatives of the electorate, to fulfil their functions.

Marleau and Montpetit goes on to state at page 51 that:

> The House has the authority to invoke privilege where its ability has been obstructed in the execution of its functions or where Members have been obstructed in the performance of their duties.

It is clear that the managers in certain federal Government departments dealt with the disruption caused in their departments by the hon. Member's e-mails by making various attempts either to prevent their staff from responding, to warn people of the risks that might be involved in responding, or to otherwise limit the negative impact on their networks and e-mail systems. The question before us is whether any of these actions constitute an obstruction of the hon. Member's ability to perform his parliamentary duties.

In this regard, I would again like to cite *Marleau and Montpetit* at page 52, where the limitations of the application of parliamentary privilege to the individual Member is described:

> Privilege essentially belongs to the House as a whole; individual Members can only claim privilege insofar as any denial of their rights, or threat made to them, would impede the functioning of the House. In addition, individual Members cannot claim privilege or immunity on matters that are unrelated to their functions in the House.

Members do possess certain rights, privileges and immunities—freedom of speech, freedom from arrest in civil actions, exemption from jury duty and so on—but these are finite and apply only in context, which usually means within the confines of the Parliamentary Precinct and a "proceeding in parliament".

In a 1971 ruling related to a question of privilege, Mr. Speaker Lamoureaux made the following point:

> In my view, parliamentary privilege does not go much beyond the right of free speech in the House of Commons and the right of a Member to discharge his duties in the House as a Member of the House of Commons.

In presenting his case, the hon. Member argued that the directives to staff from managers with regard to his survey infringed upon his right to obtain information from Government sources. Members have an undeniable right to question and obtain information from the Government in order to discharge their responsibility of oversight. This function is chiefly carried out in two ways: by asking questions of the Government either during Question Period or by way of written questions, and through inquiries carried out by committees of the House. Both of these proceedings are protected by the full weight of parliamentary privilege. It is not the case, however, that the privilege to seek such information extends to every aspect of a Member's activities.

In a related case raised in November 2001, I was asked to rule on whether or not a breach of privilege occurred when the Government ordered its officials not to appear before an *ad hoc* committee established by the hon. Member and others.

I did not find that the situation constituted a *prima facie* question of privilege and made the following point:

> I do not believe that any one of us has the right to call before us a government official and insist on answers to questions… (the hon. Member) stated that the committee that he was chairing was an *ad hoc* caucus of Members. It clearly was not a committee of this House.

In the case before us again, I cannot find that there has been any contempt or breach of the Member's privileges. Had his survey been conducted in the context of a proceeding of this House or one of its committees, it would have been fully protected by privilege. Given the manner in which the survey was circulated and the fact that it was not carried out in relation to a parliamentary proceeding, parliamentary privilege does not apply.

I would urge the hon. Member for Saskatoon–Humboldt and other Members to look to the other parliamentary options that are available to them in carrying out their duties. They will then be able to avail themselves of the full authority of the House in conducting their inquiries.

The House need not be reminded about the unprecedented difficulties that these mass e-mailings cause. The Members will be soon, if they have not already been, informed of new guidelines to regulate this type of communication. In the meantime I know that I can count on the full cooperation of all hon. Members to respect the guidelines in their future work.

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1. *Debates*, January 29, 2003, pp. 2846-8.

Parliamentary Privilege

Rights of Members; Rights of the House

Exemption from being subpoenaed to attend court as a witness: parliamentary privilege invoked as a reason for non-attendance at a court hearing; *prima facie*

May 26, 2003 — *Debates*, pp. 6413-5

Context: On May 12, 2003, Don Boudria (Minister of State and Leader of the Government in the House of Commons) rose on a question of privilege arising from the claim of parliamentary privilege by Paul Martin (LaSalle–Émard) as a reason for failing to attend certain court proceedings for which he had been subpoenaed. The Government House Leader noted that while the British Columbia Court of Appeal had confirmed that parliamentary privilege released Members of Parliament from the obligation to participate in legal proceedings when Parliament was in session, it had ruled that there was no legal basis for extending this privilege 40 days before or after a parliamentary session. The Government House Leader argued that it is the role of Parliament, not the courts, to define what parliamentary privilege is. Further, he claimed that the House has a fundamental right to the attendance and service of its Members. After hearing from other Members, the Speaker took the matter under advisement.[1]

On May 16, 2003, the Government House Leader raised a further question of privilege arising from a ruling of the Ontario Superior Court on May 14, 2003, with respect to the failure of John Manley (Minister of Finance) to appear before that Court. He explained that, although that Court had also confirmed the privilege of Members not to attend court proceedings when Parliament is in session, it had asserted that this privilege should be limited to the period when Parliament was actually sitting and for 14 days after it adjourned. The Government House Leader stated that the Court's attempt to define parliamentary privilege was an attack on the privileges of Members, and that any alteration of its privileges would be for the House alone to decide.[2]

Resolution: On May 26, 2003, the Speaker delivered his ruling. He reaffirmed that parliamentary privilege is not a matter for the courts but for Parliament to decide on, and that "judges must look to Parliament for precedents on privilege, not to rulings of their fellow judges, since it is in Parliament where privilege is defined

and claimed". He explained that while a Member's immunity from testifying in court during a parliamentary session is a personal privilege, it does not exist for a Member's personal benefit, but rather for the benefit of the House. He noted that the British Columbia Court of Appeal allowed the 40-day period at the beginning and end of a session with respect to the freedom from civil arrest while not allowing it with respect to the freedom from testifying in court. Similarly, the Ontario Superior Court had erred by not making a distinction between a session and a sitting when it ruled that Members were available during adjournment periods for matters such as court appearances. The Speaker then took the opportunity to remind the House that parliamentary privilege exists to ensure that the other branches of Government respect the independence of the legislative branch of Government. In view of this, he ruled there were, *prima facie,* two breaches of the privileges of the House. He then invited the Government House Leader to move his motion.

Decision of the Chair

The Speaker: I am now prepared to rule on the questions of privilege raised by the hon. Government House Leader on May 12, 2003, and on May 16, 2003, arising from a decision of the British Columbia Court of Appeal in respect of the hon. Member for LaSalle–Émard, and a decision of the Ontario Superior Court in respect of the hon. Member for Ottawa South, where the court in each case has set aside the parliamentary privileges of the hon. Members and has required them to testify pursuant to a subpoena issued by the court.

I would like to thank the hon. Government House Leader for having raised this important issue, as well as the hon. Members for West Vancouver–Sunshine Coast, Roberval, Vancouver East and St. John's West for their comments on May 12th when this point was first raised.

The hon. Government House Leader when first raising this point indicated that, while he had informed the hon. Member for LaSalle–Émard of his intention to raise this question, he was not doing so on the latter's behalf but out of a concern for the privileges of [the][3] House.

The hon. Member drew to the attention of the House that, in a ruling delivered by the British Columbia Court of Appeal in the Ainsworth case on April 23, 2003, a finding of contempt had been made against the hon. Member

for LaSalle–Émard as a result of his failure to appear before the Court when summoned.

The hon. Government House Leader went on to point out that as Joseph Maingot indicates on page 161 of *Parliamentary Privilege in Canada*, Members of Parliament are exempt from being subpoenaed while the House is in session and for 40 days both before and after a session. The British Columbia Court of Appeal, on the other hand, claimed it could find no support for the 40-day rule and held that the privilege was restricted to days when the House was in session.

The hon. Government House Leader emphasized the importance of the independence of the House and its right to insist on the attendance of its Members, and that it is this House, and not some outside body, which must determine the interpretation of the rights and privileges of this place.

The hon. Member for West Vancouver–Sunshine Coast, in his intervention, while recognizing the need for parliamentary privilege, pointed out as well the need for an even-handed application of privilege with respect to the rights of other Canadians. He suggested that it might be appropriate for the House to revisit its current interpretation of the immunity that its privileges provide.

Recognizing the special requirements of the House which make privilege necessary, both the hon. Member for Vancouver East and the hon. Member for St. John's West spoke of the need to ensure that other citizens are not adversely affected by those privileges. In particular, they expressed concern that the blind application of the right of Members such as the right not to be compelled to appear before a court as a witness might interfere unduly with the rights of others.

At the same time, they shared the view expressed by the hon. Member for Roberval that privilege is a matter of fundamental importance to the House and that it is here, and not elsewhere, that these issues should be decided.

In his point of privilege on May 16, the Government House Leader characterized the decision of the Ontario Court as an attack on the privileges of hon. Members more serious than the earlier court decision in British Columbia. The Ontario Court's decision, according to the Government House Leader,

was "an intrusion by the courts in improperly attempting to define what is parliamentary privilege" and that he did not think it "appropriate for a court to define what is parliamentary privilege in our country".

The privileges of Parliament are fundamental to the standing of this House as the democratically elected Chamber representing the interests of Canadians from sea to sea to sea. There are several privileges and the privilege at the heart of the issue raised by the Government House Leader is the privilege that holds Members of Parliament free from civil arrest or summons during the sessions of Parliament including a period of 40 days before and 40 days after a session. These privileges have their origins in British parliamentary law.

The well known British parliamentary text, Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, the most eminent authority on parliamentary procedures and practices, including parliamentary privilege, first published in 1844 and now in its 22nd edition, explains parliamentary privilege and provides numerous authorities that have affirmed the privileges of Members of Parliament as a matter of English parliamentary law. According to this learned text:

> Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, 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. Thus privilege, though part of the law of the land, is to a certain extent, an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity.

It is interesting to note that just as a court has an undoubted right to cite persons in contempt who obstruct its proceedings or offend the dignity of the

court, the same power is necessarily available to the Houses of Parliament. According to the *Erskine May* text:

> The power to punish for contempt has been judicially considered to be inherent in each House of Parliament not as a necessary incident of the authority and functions of a legislature (as might be regarded in respect of certain privileges) but by virtue of the *lex et consuetudo parliamenti*.

The Latin phrase could be translated as the law and custom of Parliament.

The *Erskine May* text provides a number of nineteenth century judicial considerations affirming parliamentary privilege which I need not cite here as it seems to me inappropriate to do so for the very simple reason that parliamentary privilege has not been a matter determined by the courts, but rather by assertion of Parliament. The history of conflict between the English House of Commons and the Crown in the seventeenth century where the King arrested some Members of Parliament, shows clearly that parliamentary privilege had its origins in assertion by the House of Commons against the Crown and not by any rulings of judges who are, after all, officers appointed by the Crown. With Confederation in 1867 this House became both the heir and beneficiary of this history.

The parliamentary privilege challenged by the two recent court decisions, that is, the immunity from testifying in court during a parliamentary session, is a personal privilege enjoyed by individual Members of Parliament, not for their personal benefit but for the benefit of the House and, according to the parliamentary law texts, is treated the same as the freedom from civil arrest during a session. In this regard, the *Erskine May* text says the following:

> The privilege of exemption of a Member from attending as a witness has been asserted by the House upon the same principle as other personal privileges, viz, the paramount right of Parliament to the attendance and service of its Members.

The discussion in *May* illustrates how ancient is this privilege as it harks back to a citation in *Hatsell*, on page 170, which states:

> On the 13th of February, 1605, Mr. Stepney [a Member of Parliament] complains that seven days before this Session, he was summoned upon a Subpoena in the Star Chamber: On the 14th this matter is examined into, and referred to the Committee of Privileges; on the 15th, it is ordered, "that Mr. Stepney shall have privilege, and that Warren, who served the process, be committed to the Serjeant for three days".

British parliamentary privilege came to Canada with enactment of the *British North America Act* of 1867. Section 18 of the 1867 Act gave the Parliament of Canada all the privileges then possessed by the British Parliament. It reads, in part:

> The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada.

The *Parliament of Canada Act*, in section 4, provides as follows:

> The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise
>
> (*a*) such and the like privileges, immunities and powers as, at the time of the passing of the *Constitution Act, 1867*, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, insofar as it is consistent with that Act; and
>
> (*b*) such privileges, immunities and powers as are defined by Act of the Parliament of Canada, not exceeding those, at the time of the passing of the Act, held, enjoyed and exercised by the Commons House of the United Kingdom and by the members thereof.

Thus it is clearly established that the parliamentary privileges forming part of the parliamentary law and custom of England came to be part of the parliamentary law of Canada today. This was confirmed in 1993 by the Supreme Court of Canada, in the case of *New Brunswick Broadcasting Co. v. Nova Scotia* (Speaker of the House of Assembly). Madame Justice McLachlin, as she then was, speaking with the majority on the decision, spoke of the:

> … manifest intention expressed in the preamble of our Constitution that Canada retain the fundamental constitutional tenets upon which British parliamentary democracy rested. This is not a case of importing an unexpressed concept into our constitutional regime, but of recognizing a legal power fundamental to the constitutional regime which Canada has adopted in its Constitution Acts, 1867 to 1982. Nor are we here treating a mere convention to which the courts have not given legal effect; the authorities indicate that the legal status of inherent privileges has never been in doubt.

More importantly, Chief Justice McLachlin, as she now is, affirmed the necessary independence of the legislative branch of Government when she also said in her judgment in this case:

> It has also long been accepted that these privileges must be held absolutely and constitutionally if they are to be effective; the legislative branch of our government must enjoy a certain autonomy which even the Crown and the courts cannot touch.

The B.C. court allowed the 40-day periods at the beginning and end of each session with respect to freedom from civil arrest but not with respect to freedom from testifying in court. This distinction is not supported by the parliamentary authorities.

The Ontario court did not see the distinction between a session and a sitting of the House and seemed to believe that between sittings, that is, during adjournment periods, Members of Parliament were, if you like, on holiday. The court relied on a dictionary definition of "in session" which included the meaning "not on vacation" and the judge emphasized this by underlining. From this, the judge felt Members of Parliament were available for other matters, such as court appearances. The court's confusion of a session with a

sitting, on the one hand, and its idea of a parliamentary holiday, on the other, are clearly contrary to the parliamentary authorities.

The House requires the availability of its Members throughout an entire session as well as for the traditional 40-day period before and after the start and end of a session. Erskine May points out that the immunity from subpoenas is based on the same principle as other personal privileges; that is, the paramount right of Parliament to the attendance and service of its Members.

The *May* text recounts as the general opinion of the British legal authorities, founded on ancient law and custom, that the privilege of freedom from arrest remains with a Member of the House for 40 days after every prorogation and 40 days before the next session and that this extent of privilege has been allowed by the English courts of law on the ground of usage and universal opinion.

Canadian parliamentary authorities, such as the *Maingot* text on parliamentary privilege, reflect these same views with respect to the parliamentary law of Canada. And the Supreme Court of Canada has said that parliamentary privilege forms part of the constitutional law of Canada.

We have parliamentary privileges to ensure that the other branches of Government, the executive and the judicial, respect the independence of the legislative branch of Government, which is this House and the other place. This independence cannot be sustained if either of the other branches is able to redefine or reduce these privileges.

It has been my clear understanding that periods of 40 days at the beginning and at the end of a session were included in the sessional period to which this privilege applied. I recall for the House a 1989 ruling in this House, which both courts seem to have completely overlooked or blindly ignored, where Mr. Speaker Fraser asserted this privilege:

> Let me state for the record that the right of a Member of Parliament to refuse to attend court as a witness during a parliamentary session and during the 40 days preceding and following a parliamentary session is an undoubted and inalienable right supported by a host of precedents.

Mr. Speaker Fraser did not treat this matter lightly when he added in his ruling:

> I take a serious view of the action of a member of the legal profession in questioning the right of a Member of Parliament to claim immunity from appearing as a witness and alleging that a court, and not Parliament, had the power to make a determination in such a case.

In my view, Mr. Speaker Fraser correctly defended this privilege, and it is my duty and privilege to do so again today. The privileges of this House and its Members are not unlimited, but they are nonetheless well established as a matter of parliamentary law and practice in Canada today, and must be respected by the courts. Judges must look to Parliament for precedents on privilege, not to rulings of their fellow judges since it is in Parliament where privilege is defined and claimed.

Accordingly, I find there is here *prima facie* evidence of two breaches of the privileges of the House and I invite the Government House Leader to put his motion.

Postscript: The Government House Leader moved that the question of the immunity of Members of the House from being compelled to attend court during, immediately before, and immediately after a session of Parliament be referred to the Standing Committee on Procedure and House Affairs. The motion was agreed to.[4] On November 12, 2003, the Second Session of the Thirty-Seventh Parliament was prorogued.

On February 6, 2004, Garry Breitkreuz (Yorkton–Melville) rose on a question of privilege to bring to the Speaker's attention the fact that, as a result of the prorogation, the Committee's Order of Reference had lapsed before it had completed its study on the matter. He asked that the Speaker rule the matter to be a *prima facie* question of privilege again, and allow him to move a motion to refer the matter again to the Committee. Noting that in the previous session he had ruled the matter *prima facie*, the Speaker declared that the matter remained a question of privilege and invited Mr. Breitkreuz to move his motion. Mr. Breitkreuz moved that the matter of the questions of privilege originally raised on May 12 and May 16, 2003, and February 6, 2004, be referred to the Standing Committee on Procedure and House Affairs. The motion was agreed to.[5] On March 8, 2004,

the Standing Committee presented its Eighth Report which stated that it is for Parliament, and not the courts, to review or modify its privileges, and recommended that the House appoint a committee to undertake a comprehensive review of parliamentary privilege.[6] (**Editor's Note**: The Report was not concurred in.)

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1. *Debates*, May 12, 2003, pp. 6089-93.
2. *Debates*, May 16, 2003, p. 6377.
3. The word "the" is missing from the published *Debates*.
4. *Debates*, May 26, 2003, p. 6414, *Journals*, p. 797.
5. *Debates*, February 6, 2004, pp. 243-4, *Journals*, p. 25.
6. Eighth Report of the Standing Committee on Procedure and House Affairs, presented to the House on March 8, 2004 (*Journals*, p. 146).

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: violation of caucus confidentiality; *prima facie*

March 25, 2004 *Debates*, pp. 1711-2

Context: On March 11, 2004, John O'Reilly (Haliburton–Victoria–Brock) rose on a question of privilege with respect to the disclosure to the media of a recording, of uncertain provenance, of the confidential proceedings of a meeting of the Ontario Regional Liberal Caucus. Mr. O'Reilly claimed that his right to privacy in the Parliamentary Precinct pursuant to Section 193 of the *Criminal Code* (interception of a private communication by means of an electromagnetic device) had been violated. After hearing from another Member, the Speaker, noting the gravity of the allegations raised by Mr. O'Reilly, stated that he had ordered an inquiry into the leak of the proceedings and was continuing to examine the matter.[1]

Resolution: The Speaker delivered his ruling on March 25, 2004. He reported that room set-up staff had inadvertently left the broadcasting equipment in the room in a lock-in rather than lock-out mode which could allow for both broadcasting and recording of the meeting, thus resulting in the unauthorized broadcast of the proceedings. With respect to whether the dissemination of the confidential information breached the *Criminal Code*, the Speaker indicated that it was not for him to determine, but Members were free to pursue that dimension elsewhere. The Speaker emphasized that his primary concern was not the leak of this information, but the publication of leaked information from a private meeting. He explained that the concept of caucus confidentiality is central to the operations of the House and to the work of Members. The decision to publish information leaked from a caucus meeting is an example of a contemptuous attitude to the privacy of Members, and that privacy is something upon which all Members depend on to carry out their duties. Stating that the situation could not go unanswered, he ruled that there was a *prima facie* breach of privilege and invited Mr. O'Reilly to move the appropriate motion.

Decision of the Chair

The Speaker: I am also prepared to rule on the question of privilege raised by the hon. Members for Haliburton–Victoria–Brock and Scarborough–Rouge River on March 11, concerning the recording, disclosure to the media and subsequent publication of the confidential proceedings of a meeting of the Ontario Liberal Caucus which took place in room [253-D][2] of the Centre Block on February 25.

I would like to thank the hon. Members for Haliburton–Victoria–Brock and Scarborough–Rouge River for having raised this very serious matter.

In his submission the hon. Member for Haliburton–Victoria–Brock deplored the fact that Sun Media had published a tape of a confidential meeting. He argued that this action was not only a breach of his privacy and that of his constituents, it was also an event that adversely affected his ability to speak out in private on behalf of his constituents.

Noting that the facilities used for the meeting he attended are multi-purpose and often used for many different types of confidential meetings by Members of all parties, the hon. Member for Haliburton–Victoria–Brock asked the Speaker to look into the matter to ensure the protection of his rights as a Member.

In his remarks, the hon. Member for Scarborough–Rouge River asked the Chair to consider three aspects of this matter. First, the hon. Member argued that the disclosure of the February 25 meeting by the *Ottawa Sun* newspaper constituted a breach of privilege. Second, he submitted that an offence under the *Criminal Code* may have been committed. Finally, he brought to the attention of the Chair the relationship between the conduct of the media in and around Parliament, the special privileges granted them by the House, and the media's violation of House rules about the confidentiality of private meetings.

The hon. Member for Scarborough–Rouge River concluded by indicating that he would be prepared to move the appropriate motion should there be a finding of a *prima facie* breach of privilege.

As I indicated on March 11, the Chair takes such matters very seriously. Mr. Speaker Bosley faced a similar situation on January 30, 1986, involving alleged electronic eavesdropping on a caucus meeting. Just as Mr. Speaker Bosley stated on that occasion, and I refer hon. Members to the *Debates* of January 30, 1986, at page 10336, I can assure hon. Members that whenever the Speaker receives such complaints, they are acted on as quickly as is humanly possible.

In the current case, even before the hon. Members raised the matter in the House, I had asked for a full report on the leak of this meeting. That report has revealed that there was indeed a human error made. Specifically, during their verification of equipment prior to the meeting, staff responsible for the room set-up inadvertently left the equipment in lock-in rather than lock-out mode. This mode makes it possible to broadcast the proceedings in a room and for anyone receiving the broadcast on an FM receiver to record the broadcast.

It is important to note, however, that in order for the broadcast to take place, someone had to activate the broadcast button on the console in the meeting room. How that function came to be activated and by whose hand remains unclear. However, I can assure the House that I have asked my officials to take all reasonable administrative precautions to guard against this situation being repeated.

That being said, in certain circumstances, the Chair might consider the matter to end there. Were this case simply to involve a complaint about House services that could be traced back directly to human error, then it would not involve a *prima facie* question of privilege. However, the situation before us is not so simple.

True, human error by staff has been identified. But that error does not explain the eventual activation of the broadcast function that made the leak possible. As hon. Members have stated, this might have involved malicious intent by a person or persons unknown and an offence under the *Criminal Code* may have been committed. That is not for your Speaker to determine, though it is an allegation that Members may wish to pursue elsewhere.

The crux of the matter for the Chair is not the leak of this information, but the publication of leaked information that was manifestly from a private

meeting. The concept of caucus confidentiality is central to the operations of the House and to the work of all hon. Members. The decision to publish information leaked from a caucus meeting is, in my view, an egregious example of a cavalier and contemptuous attitude to the privacy of all Members and that privacy is something upon which all Members depend to do their work. It is a situation in my view that cannot go unanswered.

Accordingly, having examined the situation in the matter of the publication of a leak from the caucus meeting of February 25, I find that there is a *prima facie* breach of privilege and I am prepared to entertain a motion at this time.

Postscript: Mr. O'Reilly moved that the matter be referred to the Standing Committee on Procedure and House Affairs and the motion was agreed to.[3] On April 26, 2004, the Standing Committee presented its Twenty-Second Report in which it concluded that the matter had been adequately handled by the House Administration.[4] (**Editor's Note**: The Report was not concurred in.)

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1. *Debates*, March 11, 2004, pp. 1408-10.
2. The published *Debates* read "253-B" instead of "253-D".
3. *Debates*, March 25, 2004, pp. 1711-2.
4. Twenty-Second Report of the Standing Committee on Procedure and House Affairs, presented to the House on April 26, 2004 (*Journals*, p. 311).

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: Members denied access to the Parliamentary Precinct during visit of the President of the United States; *prima facie*

December 1, 2004 — *Debates*, p. 2137

Context: On December 1, 2004, Michel Guimond (Montmorency–Charlevoix–Haute-Côte-Nord) rose on a question of privilege alleging interference with the free movement of Members of Parliament within the Parliamentary Precinct during the visit of the President of the United States, George W. Bush. Mr. Guimond listed ways in which Members had been impeded in their duties during the President's visit, including: being instructed not to use the hallways of Centre Block; being denied access to Centre Block and Parliament Hill; not having credentials recognized within the Parliamentary Precinct; and being addressed only in English by certain RCMP officers. Other Members also spoke to the matter.[1]

Resolution: The Speaker delivered his ruling immediately. Finding that there was a *prima facie* breach of privilege, and that the matter should be referred to the Standing Committee and Procedure and House Affairs, he invited Mr. Guimond to move the appropriate motion.

Decision of the Chair

The Speaker: The Chair does not need to hear any more on this point.

I am satisfied that the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord has raised a very valid and distinct question of privilege. I know full well that other hon. Members have had the same problem. I have heard the comments from all the hon. Members who participated in this discussion, the hon. Members for Glengarry–Prescott–Russell, Calgary Southeast, and Elmwood–Transcona.

I am satisfied that in my view this is a *prima facie* case and the matter ought to be referred to the Standing Committee on Procedure and House Affairs.

I am quite prepared to allow the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord to move his motion at this point.

The hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord can move his motion.

Postscript: Mr. Guimond moved that the matter be referred to the Standing Committee on Procedure and House Affairs, and the motion was agreed to.[2] On December 15, 2004, the Committee deposited with the Clerk its Twenty-First Report. In it, the Committee concluded that the denial of access and significant delays experienced by Members of the House during the visit of the President of the United States had constituted a contempt of the House. It recommended that remedial action be taken by the various police and security forces concerned, that the Sergeant-at-Arms and RCMP report to the Committee outlining measures to ensure that the situation did not recur, and that the Speaker and the Board of Internal Economy enter into discussions with the Senate on merging security services.[3] The Report was concurred in on May 17, 2005.[4]

1. *Debates*, December 1, 2004, pp. 2134-7.
2. *Debates*, December 1, 2004, p. 2137.
3. Twenty-First Report of the Standing Committee on Procedure and House Affairs, presented to the House on December 15, 2004 (*Journals*, p. 366).
4. *Journals*, May 17, 2005, p. 765.

Parliamentary Privilege

Rights of Members

Freedom of speech: *sub judice* convention; statements by a Member regarding another Member under criminal investigation

April 20, 2005 — *Debates*, pp. 5334-5

Context: On April 4, 2005, Don Boudria (Glengarry–Prescott–Russell) rose on a question of privilege arising from remarks made earlier that day during Oral Questions by Diane Ablonczy (Calgary–Nose Hill), about a Liberal Member allegedly being under criminal investigation.[1] Mr. Boudria argued that when charges have been laid, the *sub judice* convention makes it inappropriate to discuss them in the House. He argued further that, by naming the party affiliation without naming any particular Member, she had, in effect, named everyone on the Government side, including the Speaker. He concluded that accusations of this nature should include names and be made outside the House, and that the Member should withdraw her comments. After Mrs. Ablonczy stated that a *Globe and Mail* article was the origin of her remarks, the Speaker took the matter under advisement.[2]

Resolution: The Speaker delivered his ruling on April 20, 2005. He cautioned Members about the possible injury that could occur by quoting in the House media reports about other Members, noting that the article did not refer to a criminal investigation of a Member, but only that allegations were being investigated. He added that the *sub judice* convention did not apply because no charges had been laid against the Member referred to by Mrs. Ablonczy and that parliamentary custom required Members not to impugn the character of other Members. He concluded that, as the ability of Liberal Members to carry out their duties had not been impaired in any way, he could not find a *prima facie* breach of privilege. However, the Speaker did invite the Standing Committee on Procedure and House Affairs to review the application of the *sub judice* convention.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on Monday, April 4, [2005][3], by the hon. Member for Glengarry–Prescott–Russell arising from a question by the hon. Member for Calgary–Nose Hill during

that day's Question Period in which the hon. Member made reference to a Liberal Member of the House being under criminal investigation.

I would like to thank the hon. Member for raising this matter. I would also like to thank the hon. Member for Calgary–Nose Hill for her intervention.

In presenting his case, the hon. Member for Glengarry–Prescott–Russell stated that during Question Period, when posing a supplementary question to the hon. Minister of Citizenship and Immigration about a matter involving possible abuses of the temporary resident permit system, the hon. Member for Calgary–Nose Hill mentioned that a Liberal Member had been under criminal investigation but without naming the Member. The hon. Member for Glengarry–Prescott–Russell felt this was inappropriate as it "cast a net on every single one of us on this side of the House of Commons" and asked that the hon. Member for Calgary–Nose Hill withdraw the reference she made in her question.

In reply, the hon. Member for Calgary–Nose Hill stated that her remarks were based on an article found in the *Globe and Mail* newspaper for March 31 and she quoted from it. I have myself read this press report and note that immediately following the text quoted by the hon. Member for Calgary–Nose Hill, another press report states that the named Liberal Member denied the allegations made against himself or herself and also states that the RCMP had carried out several interviews but had not talked to the Liberal Member in question nor had laid charges.

It seems to me significant that the reported police investigation did not even go as far as talking to the Member against whom the allegations had been made and, further to this, that no charges were laid. It is also important to note that the press report does not mention a "criminal" investigation of the Liberal Member, in the sense that the Liberal Member was suspected of committing a criminal act. Rather, the press report indicates only that allegations made against the Member were being investigated. It is possible that the allegations were of interest to the RCMP in relation to suspected criminal activities by persons other than the Member named.

For these reasons, I am concerned that all hon. Members be mindful of the injury that may be done by quoting in the House media reports about other

Members. All Members of Parliament are hon. Members and are entitled to be treated with respect in this Chamber and to be given the benefit of the doubt regarding allegations of such a serious nature.

At first glance, the situation here seems to be one where the *sub judice* convention might apply and constrain Members from making the kind of comments made here. However, the difficulty in this matter is that it falls below the threshold for application of the *sub judice* convention by which Members are restrained from making any comments in this House relating to a matter that is before the courts because the convention only applies once charges have been laid. The reference by the hon. Member for Calgary–Nose Hill was to a criminal investigation, without any reference to charges being laid against the Liberal Member, and before any charges were laid. Furthermore, charges have not been laid since.

Members of Parliament as elected public figures are often subject to criticisms and comments in the media which, on occasion, rightly or wrongly reflect poorly on their actions, if not also their character. The usual rules about defamation do not apply, at least not to the same extent, in respect to Members of Parliament. We are expected to accept public criticism and unfavourable personal comment from time to time, however difficult this might be. This applies inside this Chamber as well. However, parliamentary custom expects Members not to impugn the character of other Members. The mention of a criminal investigation of a Liberal Member would seem to have this effect, though the hon. Member for Calgary–Nose Hill may not have intended this.

I cannot find that there is a *prima facie* breach of privilege in this case as I cannot see that the ability of the Liberal Members of Parliament to carry out their duties has been impaired. I would encourage all hon. Members, however, to respect the usual courtesies and practices of this House, and I would invite the Standing Committee on Procedure and House Affairs to review the application of the *sub judice* convention as to whether it should also apply when an investigation is alleged or reported before charges are laid, which is a little more work for the Committee.

1. *Debates*, April 4, 2005, p. 4625.
2. *Debates*, April 4, 2005, p. 4631.
3. "2005" is missing from the published *Debates*.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: third parties blocking Members' fax lines and registering Internet domain names associated with Members

June 8, 2005 *Debates*, pp. 6826-8

Context: On May 31, 2005, Don Boudria (Glengarry–Prescott–Russell) rose on a question of privilege. He alleged that individuals or groups had blocked his and other Members' fax lines by sending massive volumes of faxed communications, thus preventing their constituents from reaching them and the Members from doing their work. He also claimed that some of the faxes had been sent by someone who was impersonating a Member of Parliament.[1] After hearing from other Members, the Speaker took the matter under advisement.

On June 2, 2005, Mr. Boudria rose again noting that in addition to his fax lines being blocked, he and other Members had been the targets of "cybersquatting", the taking over of Internet domain names associated with particular persons by unrelated parties. He explained that in some cases when the domain names had been taken over they had been used for Web sites that were made to look like a Member's official site, but in fact contained content that attacked the Member's character. Having heard from other Members, the Speaker again took the matter under advisement.[2]

Resolution: On June 8, 2005, the Speaker delivered his ruling. He set aside the allegation that someone was impersonating a Member, given that only one such fax had been found and no complaint had been received from a Member that he or she was being impersonated. He further ruled that while Members had been inconvenienced, they had not been prevented from communicating with their constituents. Furthermore, on the matter of "cybersquatting", the Speaker noted that, since Mr. Boudria's ownership of the domain name had lapsed, it had been purchased legitimately by another party. Accordingly, he recognized there existed legitimate grievances, but in neither case could he find a *prima facie* breach of privilege because Members had not been prevented from performing their parliamentary duties. He concluded by suggesting these matters could be taken up by the Standing Committee on Procedure and House Affairs.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on Tuesday, May 31, 2005 and on Thursday, June 2, 2005 by the hon. Member for Glengarry–Prescott–Russell concerning the blocking of fax lines and the registration of Internet domain names of certain Members of the House of Commons by individuals or organizations with no affiliation to the House, which the hon. Member claimed has prevented them from carrying out their work as parliamentarians.

I would like to thank the hon. Member for raising this matter. I would also like to thank the hon. Deputy House Leader of the Official Opposition and the hon. Members for Charlesbourg–Haute-Saint-Charles, British Columbia Southern Interior, Cambridge, and Prince Albert for their interventions on May 31. In addition, I would like to thank the hon. Members for Halton, Scarborough–Rouge River, Edmonton–Sherwood Park, Yorkton–Melville, and Elmwood–Transcona for their contributions to the discussion on June 2.

On May 31 the hon. Member for Glengarry–Prescott–Russell claimed that his right to carry out his duties as a Member of Parliament had been interfered with by a group called Focus on the Family Canada which was blocking his and other Members' office telephone lines by sending multiple computer-generated faxes.

To illustrate, he indicated that during the course of one day he had received over 800 facsimiles. Only a handful of these faxes had been from constituents, whereas on a normal business day his office would receive an average of 30 to 40 faxes from constituents. He argued that because of this, his constituents had been unable to communicate with him and that he had not had access to notices sent out concerning committee and House business. He further claimed that some of the faxes had been sent by someone who was impersonating a Member of Parliament.

In his arguments, the hon. Member cited the ruling I had given on a similar matter on February 12, 2003, concerning mass e-mails. He also referred to a judgment handed down in the Ontario Court of Justice by Mr. Justice A.L. Eddy on November 22, 2000, in the case of Her Majesty

the Queen against a citizen of Ontario who was found guilty of harassing a member of the Ontario Legislature.

In conclusion, the hon. Member cited *Marleau and Montpetit* at page 84 which states that Speakers have consistently ruled that Members have the right to carry out their parliamentary duties free from obstruction, intimidation and interference. He asserted that, by interfering with the work of individual Members, the organization responsible was in contempt of the House. He indicated that if the Chair found a *prima facie* case of privilege, he was prepared to move the appropriate motion.

In his intervention, the hon. Member for Charlesbourg–Haute-Saint-Charles confirmed that his office had also received over 1,000 faxes and 2,300 e-mails in a span of 36 hours, thus monopolizing the tools provided to him as a Member of the House, as well as the time of his staff. In addition, he argued that this action was an infringement on the privileges of Members of Parliament because they are unable to carry out their parliamentary duties or remain in contact with their constituents.

The Deputy House Leader of the Official Opposition challenged the claim of harassment, asserting that all Canadian citizens have the right to communicate with all Members of Parliament on matters of public interest. He dismissed as absurd the contention that citizens wishing to communicate with Members of Parliament on an issue of public moment constituted an attack on anyone. He maintained a logistical solution could be found to the problem and warned against censoring Canadians from communicating with their Members of Parliament.

The hon. Members for British Columbia Southern Interior, Cambridge, and Prince Albert contributed to the discussion by seeking clarification of certain points raised by the hon. Member for Glengarry–Prescott–Russell.

On June 2 the hon. Member for Glengarry–Prescott–Russell rose again to bring to the attention of the Chair that in addition to the communication difficulties he and other Members were experiencing as he had described on May 31, an organization called Defend Marriage Coalition had taken over the Internet domain names of approximately 40 to 50 Members of Parliament. This, he alleged, was not a legitimate use of the domain names.

He also claimed that in the case of 15 of these sites, this organization not only was using the Members' names to access the sites, it had also published information about these Members of Parliament. These sites, he alleged, were designed to look like the official Web sites of the Members concerned, of which he also questioned the legitimacy. He contended that this constituted a *bona fide* case of privilege.

In response, the hon. Deputy House Leader of the Official Opposition argued that it was incumbent upon Members to register their domain names and that this matter was not within the purview of the House or the Speaker.

The hon. Member for Halton, in his intervention, informed the Chair that he was one of the Members whose domain name had been taken over by the organization in question and it was using his House of Commons photo on its site, thereby creating the impression that it was his official Web site. The hon. Member for Scarborough–Rouge River wondered if this might be a case of impersonation or identity theft, which would interfere with the duties of the Members and the functions of the House.

I want to assure all hon. Members that I consider this situation to be very troubling. Allegations of obstruction, interference and misrepresentation should not be taken lightly.

Over the years, Members have brought to the attention of the House instances which they believed were attempts to obstruct, impede, interfere, intimidate or molest them, their staffs or individuals who had some business with them or the House. Since these matters relate so closely to the right of the House to the services of its Members, they are often considered to be breaches of privilege.

That being said, Members of Parliament come into contact with a wide range of individuals and groups during the course of their work and are subject to all manner of influences, some legitimate and some not.

First of all, I wish to address the matter of the blocking of Members' fax machines and e-mail systems.

The hon. Member for Glengarry–Prescott–Russell claimed that he had been obstructed from fulfilling his duties with respect to his constituents

because of multiple computer-generated faxes that were preventing them from contacting his office in an expeditious manner. To support his contention, he cited the ruling I gave on February 12, 2003, at pages 3470 and 3471 of the *Debates*, concerning the disruption a mass e-mailing from a Member's office had on the House's e-mail system. I did not find that there was a *prima facie* question of privilege, but encouraged hon. Members to use alternative means of communication and set in motion administrative changes to rectify the situation.

The hon. Member also referred to a decision rendered in a court case before the Ontario Court of Justice in November 2000. I have now had an opportunity to review the particulars of the judgment and wish to share these with you.

In 2000 a resident of Ontario was charged with and found guilty of mischief by wilfully interrupting and interfering with the lawful use and operation of the property of Mr. William Murdoch, a member of the Ontario Legislature, by continually sending numerous lengthy facsimile messages to his Queen's Park and constituency offices.

The judge looked at the broad issue of what were the constraints, if any, on the right of a constituent to contact, consult and relate to his elected member of the provincial parliament and whether it was open to the court to set reasonable limits.

The judge determined that the faxes were not sent by the accused in any realistic effort to inform and assist the Member in carrying out his duties but, rather, they were sent in anger and in frustration in an effort to express his dissatisfaction.

In addition, the judge found that the citizen's actions had the effect of monopolizing the Member's fax machines, thereby precluding the ordinary and reasonable use of them by constituents and others, and impeding the Member and his staff from carrying out the orderly operation, activity and responsibilities of the Member's office.

The judge ruled that the right of a citizen to communicate with a Member is not without reasonable limits and that, when a constituent, by his or her actions, affects the ability of others to access and exercise their rights, a boundary has

been crossed. The judge found that there is an inherent responsibility on the part of the constituent in his or her dealings to act in a manner that respects others' rights of access.

In the matter raised on May 31, the Chair has examined all the material supplied by the hon. Member for Glengarry–Prescott–Russell and has found only one facsimile attributed to a Member of the House. In the absence of any complaint from a Member that he or she was or is being impersonated, the Chair will set aside the claim that facsimiles had been received from individuals falsely claiming to be Members of this House.

With regard to the second issue raised on May 31, namely, whether or not the hon. Member has clearly demonstrated that his constituents have been limited or prevented from contacting him in a reasonable and ordinary fashion, it is evident from its Web site that Focus on the Family Canada is encouraging Canadians to contact the members of the legislative committee and express their views with regard to Bill C-38.

Unlike the court case referred to by the hon. Member for Glengarry–Prescott–Russell, where only one individual was involved in a deliberate attempt to obstruct the Ontario MPP, with no intent to inform or influence, dozens or perhaps hundreds of individuals are contacting Members as they are free to do. I must ask myself, is the intent of these communications to prevent the Members' constituents from contacting them? This is impossible to tell.

While it is clear that large numbers of faxes and e-mails have been sent to the offices of the hon. Member for Glengarry–Prescott–Russell, Charlesbourg–Haute-Sainte-Charles and others, and have interfered with the smooth functioning and ordinary routines of those offices, the hon. Members and their constituents have still been able to communicate, albeit somewhat erratically, by facsimile and e-mail, as well as by letter post and telephone.

Most certainly, the hon. Member does have a grievance, but does it constitute a *prima facie* contempt of the House? As is pointed out in *Marleau and Montpetit*, at pages 91 to 95, there are numerous examples of Members raising similar, legitimate complaints, but Speakers have regularly concluded that Members have not been prevented from performing their parliamentary

duties. Therefore, though the work and the offices of certain Members may have been slowed, I cannot find a *prima facie* question of privilege in this regard.

I now wish to deal with the matter raised by the hon. Member on June 2 concerning the cybersquatting of Members' domain names and the creation of Web sites that resemble those of Members.

I am very concerned about this situation and the potential negative impact it is having on some Members. When this situation was first brought to my attention, I visited the official Web site of the hon. Member for Glengarry–Prescott–Russell to see for myself what the problem was. On the Web site, listed under LINKS, I clicked on the link to the federal party association and up came the cybersquatting site. I worried at the time that this indicated that the hon. Member's official site had been tampered with. Had that been the case, I might well have been inclined to find a *prima facie* case of privilege.

However, I have since learned that the offending link was not the result of some hacker, but that there was a far less sinister explanation. Simply put, the link occurred because the cybersquatters had bought the domain name when the hon. Member's ownership of his name lapsed and the link, which predated the change in ownership of the domain name, had not been modified to take account of that change.

As a number of hon. Members pointed out on June 2, like many things on the Internet, it may well be that it is impossible to resolve this. As was noted, it is incumbent upon Members to register their domain names if they wish to prevent others from registering similar or even identical ones. I would urge all hon. Members to take such precautionary measures immediately, for once a Member's domain name has fallen into other hands, it is not easy to find a remedy to the situation.

In such cases, it appears to the Chair that hon. Members may certainly have a grievance in this situation, and a serious grievance, but I cannot find that Members have been prevented in any way from carrying out their parliamentary duties. Therefore, I cannot find that this constitutes a *prima facie* case of privilege.

The question of privilege raised by the hon. Member for Glengarry–Prescott–Russell raises important issues in an era where communications technology is ubiquitous and the demand for accessibility grows daily more aggressive. It is, of course, the right of all Canadians to communicate with their Members of Parliament, but when does the exercise of the right to communicate with Parliament become unreasonable? What role, if any, should the House take in regulating such communication?

Similarly, with regard to "cybersquatting", is this a legitimate means of engaging in debate and holding a Member accountable in the public square for his or her stand on an issue? Is the inconvenience to the Member and the potential confusion in the minds of constituents and citizens irrelevant to that legitimacy? Or ought the House look at safeguarding the Internet identity of its Members in the interests of ensuring clear democratic discourse? Or ought this situation simply be left to the forces of the marketplace, leaving Members who have not taken steps to protect their domain names to bear the consequences?

In conclusion, it is [evident][3] that the matters raised last week are serious and bear further discussion and examination. It seems clear to the Chair that, given the realities of communication technologies in 2005, Members of all parties will doubtless be faced with similar situations in the future. As it happens, Standing Order 108(3)(*a*)(i) mandates the Standing Committee on Procedure and House Affairs, which is chaired coincidentally by the hon. Member for Glengarry–Prescott–Russell, "to review and report on the provision of services and facilities to Members".

Accordingly, the hon. Member for Glengarry–Prescott–Russell may well wish to take these matters up with the Committee to explore, at a minimum, the ramifications of new communication technologies, including the Internet, as they affect Members in the performance of their duties.

I thank all hon. Members for their interventions on this very important matter.

1. *Debates*, May 31, 2005, pp. 6415-8.
2. *Debates*, June 2, 2005, pp. 6564-7.
3. The published *Debates* read "evidence" instead of "evident".

Parliamentary Privilege

Rights of Members

Freedom of speech: *sub judice* convention; question on the *Order Paper* left unanswered because the matter was before the courts

November 15, 2005 — *Debates*, pp. 9664-5

Context: On September 28, 2005, John Cummins (Delta–Richmond East) rose on a question of privilege with regard to written question Q-151 that he had placed on notice on May 17, 2005. By replying that it was unable to respond as the matters raised were before the courts, Mr. Cummins stated that the Government was not only withholding information necessary for him to perform his parliamentary duties, but it was also misleading the House. When Dominic LeBlanc (Parliamentary Secretary to the Leader of the Government in the House of Commons), asked for time to return with a formal response, the Speaker took the matter under advisement.[1] On September 29, 2005, Mr. LeBlanc stated that the Government had not intended to interfere with Mr. Cummins' work, but rather protect and respect the integrity and work of the courts.[2] On October 3, 2005, Mr. Cummins intervened again, arguing that Members had the right to submit questions, and receive answers, on matters before the courts, provided that they were civil matters and not at trial.[3] The Speaker took the matter under advisement.

Resolution: On November 17, 2005, the Speaker delivered his ruling. He ruled that the Government had the right to state that an answer to a question could not be provided, and that it was not up to the Chair to determine whether the Government had interpreted the *sub judice* convention properly. Accordingly, he concluded that he could not find a *prima facie* breach of privilege.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on Wednesday, September 28, 2005, by the hon. Member for Delta–Richmond East concerning the reply to Question No. 151 on the *Order Paper*.

I would like to thank the hon. Member for Delta–Richmond East for raising this matter, as well as the hon. Parliamentary Secretary to the Leader of the Government in the House for his interventions.

The hon. Member for Delta–Richmond East stated that the Government's response to his question was that it could not provide an answer because the matters raised therein were presently before the courts. The hon. Member charged that the Government was withholding information necessary for the execution of his parliamentary duties and was misleading the House. He therefore asked that I find a *prima facie* breach of privilege.

The following day, the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons rose to reply to these allegations. He responded that the Government declined to provide the information sought because it wished to protect the integrity of the judicial process. He also denied that there had been any attempt to interfere with the parliamentary work of the hon. Member for Delta–Richmond East. The hon. Deputy Leader of the Government in the House of Commons tabled a piece of correspondence in relation to this matter.

On October 3, the hon. Member for Delta–Richmond East rose again in the House to reply to the comments put forward by the hon. Parliamentary Secretary. In his argument, the hon. Member for Delta–Richmond East referred to the 1977 Report of the Special Committee on Rights and Immunities of Members. He cited the following statement from paragraph 13 of the Report:

> It is clear… [that] no restriction ought to exist on the right of any Member to put questions respecting any matter before the courts particularly those relating to a civil matter, unless and until that matter is at least at trial.

Finally, the hon. Member argued that a Minister has the obligation to justify any refusal to answer a question on *sub judice* grounds. He suggested that, in the present case, the Government had not provided sufficient justification for its refusal, particularly since the matter is a civil case not yet gone to trial.

I have reviewed the presentations on this question and have looked at the relevant precedents. Certainly, disagreements over responses to written questions are not new. In fact, the hon. Member for Delta–Richmond East has himself raised several questions of privilege relating to written questions.

Our practices with respect to replies to written questions are clear. The Government may indicate in a response that it cannot supply an answer to a written question. To illustrate this, I refer hon. Members to a ruling given by Speaker Lamoureux on May 5, 1971, found at page 5515 of the *Debates*, where he said:

> It is correct, of course, to state as a general principle that a Member should not be impeded in the discharge of his parliamentary duties. I suggest that this in itself does not create an obligation on the part of the government to supply any and all information sought by a Member, either by way of an oral question or a written question. Indeed, there are many precedents to indicate that from time to time ministers have refused to answer questions on the grounds that it would not be in the public interest to do so.

In addition, as I indicated on February 9, 2005, when the hon. Member for Delta–Richmond East raised a similar point, the Speaker does not have the authority to review Government responses to written questions.

In this instance, however, the hon. Member has asked me to rule on whether the Government is interpreting the *sub judice* convention properly.

So, it may be helpful for me to describe the convention briefly. The *sub judice* convention is a practice whereby hon. Members refrain from making reference in debate to matters awaiting judicial decisions, whether it be before a criminal court, civil court or court of record. This convention also applies to motions and to oral and written questions.

Although the Speaker's role in enforcing this convention has not been defined in our rules, the Chair does exercise a certain discretion in these matters. Thus, on numerous occasions the Chair has warned of the need for caution in referring to matters pending judicial decisions.

In 1977, the Special Committee on the Rights and Immunities of Members recommended that the Chair play a limited role during Question Period with regard to the *sub judice* convention. This recommendation can be found in paragraph 23 of the Special Committee's Report which the hon. Member for Delta–Richmond East cited in part. Specifically, the Committee stated:

> The Minister could refuse to answer the question on these grounds, bearing in mind that refusal to answer a question is his prerogative in any event. It is the view of your Committee that the responsibility of the Chair… should be minimal as regards the *sub judice* convention, and that the responsibility should principally rest upon the Member who asks the question and the Minister to whom it is addressed.

By extension, this principle also applies to written questions and their responses.

That being said, I agree with the comments of Madam Speaker Sauvé on December 16, 1980, comments cited by both the hon. Members who intervened, that there could be instances where refusal to answer a question amounts to improper interference with a Member's duties. However, I do not believe that is the case in the present matter and I acknowledge that it is in the best interests of the House to have questions answered as completely as possible.

Indeed, Speaker Parent stated this very well in a ruling on February 9, 1995 at page 9426 of that day's *Debates*:

> It is incumbent upon all those involved on both sides of the process—the Members formulating the questions, House officials reviewing those formulations, the individuals drafting the replies and the Ministers of the Crown tabling those replies in the House—to ensure that every care is taken so that these exchanges remain as fruitful and as useful as possible.

In conclusion, then, I do not believe that the Chair can determine whether the Government has interpreted the *sub judice* convention properly. Nor is it the Chair's responsibility to oblige the Government to answer a question when the Government has stated that it is unable to respond because the matter is before the courts, as is the case in this instance.

Therefore I do not find that the matter raised by the hon. Member for Delta–Richmond East constitutes a *prima facie* question of privilege.

I thank the hon. Member, however, for his continued vigilance in these matters.

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1. *Debates*, September 28, 2005, pp. 8150-1.
2. *Debates*, September 29, 2005, p. 8228.
3. *Debates*, October 3, 2005, pp. 8331-3.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: public servants' refusal to communicate with a Member during dissolution

May 3, 2006 *Debates*, pp. 844-5

Context: On April 6, 2006, Tom Wappel (Scarborough Southwest) rose on a question of privilege with regard to the refusal of public servants to communicate with Members while Parliament was dissolved, emphasizing his understanding that he retained his status as a Member even during a dissolution. Explaining that he had wished to discuss with them some proposed recommendations that arose from committee work carried out prior to dissolution, he alleged that this refusal impeded him in the discharge of his duties as a Member of Parliament.[1] The following day, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons and Minister for Democratic Reform) replied that the Privy Council Office had no policy prohibiting public servants from being in contact with Members of Parliament during an election campaign. He argued that, in any case, the Member had had no parliamentary duties to fulfil because dissolution terminates all parliamentary business, including business before committees,[2] and that therefore his privileges could not have been breached. The Speaker took the matter under advisement.

Resolution: The Speaker delivered his ruling on May 3, 2006. He noted that the *Parliament of Canada Act* implies that Members remain Members for the purpose of allowances payable during a dissolution and the By-laws of the Board of Internal Economy of the House of Commons permit Members to continue to use their offices to serve constituents. While acknowledging that serving constituents may involve communicating with public servants, the Speaker ruled that Mr. Wappel had not been obstructed in the performance of his parliamentary duties as Parliament was dissolved. He concluded that, accordingly, he could not find a *prima facie* breach of privilege.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on Thursday, April 6, 2006, by the hon. Member for Scarborough Southwest, alleging that public servants refused to communicate with him during the recent election campaign.

I would like to thank the hon. Member for raising this matter, as well as the hon. Member for Prince George–Peace River, the hon. Member for Saint-Hyacinthe–Bagot and the hon. Member for Halifax for their interventions. I also want to thank the hon. Parliamentary Secretary to the Government House Leader and Minister for Democratic Reform for his intervention on April 7, 2006.

In presenting his case, the hon. Member for Scarborough Southwest stated that departmental officials refused to meet with him during the recent general election to discuss the *Anti-terrorism Act*. In the last Parliament, the hon. Member had been a member of the Subcommittee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. The Subcommittee had been reviewing the operations of the *Anti-terrorism Act*, but before it had the opportunity to finalize its report, the Thirty-Eighth Parliament was dissolved on November 29, 2005.

After dissolution, the hon. Member attempted unsuccessfully to contact departmental officials from various departments to discuss some of his proposed recommendations. He was advised on two separate occasions that a policy directive had been issued prohibiting public servants from communicating with Members of Parliament during the campaign period.

The Member alleged that this directive impeded his ability to discharge his duties as a Member of Parliament. In support of his position, the hon. Member argued that, after dissolution, Members of Parliament remain in office until election day, and thereafter if re-elected, and during this period are still considered by their constituents to be Members.

In his intervention, the hon. Parliamentary Secretary indicated that the Privy Council Office did not have a policy prohibiting public servants from communicating with Members during a dissolution period. That being said, he went on to argue that a Member of Parliament is a Member only for such period as the Parliament exists, referring in particular to the *Parliament of Canada Act*, which deems that Members continue in office for purposes of allowances payable only. He posited that the dissolution of Parliament terminates all parliamentary business, including committee work, and concluded that the Member's parliamentary privileges were not breached.

The hon. Member for Scarborough Southwest has raised two important issues, namely, the status of a Member during a general election period and the issue of the relationship between Members of Parliament and public servants. Let me deal first with the matter of whether or not a Member remains a Member during a dissolution period.

As the hon. Parliamentary Secretary noted, this gives rise to certain questions. At dissolution, Parliament, comprised of the Crown, the Senate and the House of Commons, no longer exercises its powers; however, the Government continues to exist and Ministers remain in office until they are replaced. Members are discharged from their parliamentary duties, in other words, from the requirement to attend sittings of the House and its committees.

One could argue, as did the hon. Parliamentary Secretary, that the wording of the *Parliament of Canada Act* implies that once Parliament is dissolved, Members are only Members for purposes of allowances payable. Section 69 of the *Parliament of Canada Act* states that for purposes of allowances payable under sections 55.1 and 63, anyone who was a Member as of dissolution "shall be deemed to continue to be a Member of the House until the date of the next following election".

Nonetheless, as all returning Members and their staff are aware, constituents do not stop requiring assistance just because Parliament is dissolved. To this end, bylaw 305 of the Board of Internal Economy permits Members to continue to use their offices to serve their constituents.

It might be argued, therefore, that during the election period, a Member's role in assisting constituents continues, and this might include contacting Government departments on behalf of their constituents.

This brings us to the second matter: the relationship between Members and Government departments. Specifically, if Parliament had not been dissolved, would the difficulties experienced by the Member in meeting with public service officials constitute a *prima facie* breach of privilege or contempt of the House?

For the sake of new Members in the House, I believe it would be useful if I briefly described what is meant by parliamentary privilege. The classic definition of parliamentary privilege is found in Erskine May's *Treatise on the Law, Privileges, Proceedings and Usages of Parliament*:

> 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.

Obstructing Members in the discharge of their responsibilities to the House or in their participation in its proceedings is considered a contempt of the House. My predecessors have consistently upheld the right of the House to the services of its Members free from intimidation, obstruction and interference. However, before the protection of parliamentary privilege can be invoked, the Member's activity must be linked to a proceeding in Parliament.

The 22nd edition of *Erskine May*, on page 121, puts the matter succinctly:

> Correspondence with constituents or official bodies, for example, and the provision of information, sought by Members on matters of public concern will very often, depending on the circumstances of the case, fall outside the scope of 'proceedings in Parliament'… against which a claim… of privilege will be measured.

As I have already indicated, Members have risen on numerous occasions over the years on questions of privilege, alleging that they have been obstructed

by Government officials in fulfilling their responsibilities. For example, on May 15, 1985, two Members, Mr. Frith, Sudbury, and Mr. Malépart, Montréal–Sainte-Marie, rose in the House to claim that their privileges had been breached, alleging that the Department of Employment and Immigration had directed its officials not to release information on certain projects, thus infringing their ability to serve their constituents. Speaker Bosley ruled that a complaint about the action or inaction of Government departments could not constitute a question of parliamentary privilege as it did not infringe on Members' freedom of speech or prevent Members from fulfilling their duties. This ruling can be found at page 4768 of the *Debates* for May 15, 1985.

On another occasion, in ruling on a question of privilege raised by hon. Member for Wild Rose concerning information allegedly denied to him by an official of the Department of Indian Affairs and Northern Development, Speaker Parent found that the situation had not precluded the Member from participating in a parliamentary proceeding. The Speaker ruled, therefore, that a contempt of Parliament had not occurred. This ruling is found at pages 687 to 689 of the *Debates* for October 9, 1997.

These precedents, where no *prima facie* case of privilege was found, arise in cases where the House was actually in session, whereas in the case before us not only was the House not in session, Parliament was actually dissolved. Accordingly, while I will concede that the hon. Member may very well have a grievance, I have to conclude that the hon. Member has not been obstructed in the performance of his parliamentary duties. I cannot, therefore, find a *prima facie* case of privilege.

I thank the hon. Member for Scarborough Southwest for bringing this matter to the attention of the House as well as those Members who contributed to the discussion.

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1. *Debates*, April 6, 2006, pp. 55-6.
2. *Debates*, April 7, 2006, pp. 188-9.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: Member casting aspersions on another Member over a matter before the Ethics Commissioner

June 1, 2006 *Debates*, pp. 1853-4

Context: On May 31, 2006, Jim Flaherty (Minister of Finance) rose on a question of privilege,[1] calling upon Mark Holland (Ajax–Pickering) to apologize for having alleged, during Statements by Members on May 18, 2006, that the Minister had used his position to benefit a family member.[2] The Minister then tabled a letter from the Ethics Commissioner declaring that there was no conflict of interest.[3] On June 1, 2006, Mr. Holland responded that his concerns were well-founded and that the Ethics Commissioner's letter did not exonerate the Minister.[4]

Resolution: The Speaker interrupted Mr. Holland during his intervention and reminded him that it is contrary to the practice of the House to raise a question on a matter that has been referred to the Ethics Commissioner. Consequently, the Speaker asked the Member to take up any concerns that he might have with the Ethics Commissioner directly.

Decision of the Chair

The Speaker: Order. I have grave concerns about this matter being raised in this way. When matters are referred to the Ethics Commissioner, Members are not to comment on those matters.

This matter was referred to the Ethics Commissioner. The hon. Member apparently, from what I have heard so far, is dissatisfied with the answer that came back. It seems to me that the proper course for him at this point is not to raise this matter on the floor of the House but to raise the matter with the Ethics Commissioner.

Getting into debate here is contrary to the practice, as he knows. When a matter is referred to the Ethics Commissioner, it is not to be raised on the

floor of the House. In fact, I usually get a letter from the Ethics Commissioner telling me that the matter has been raised with him and therefore I should not permit discussion of that matter here.

I think if the Member is dissatisfied with the answer he has received, his argument is with the Ethics Commissioner. It is not here with the Minister on the floor. He is free to point out to the Ethics Commissioner facts that he thinks are relevant.

It seems to me that he ought to make sure that avenue is fully exhausted before we are having debates about these kinds of matters on the floor of the House. I know that the question can be asked. It clearly was in this case. I assumed it was asked before the matter was referred to the Ethics Commissioner and the reference was then made. The Minister has come back with an answer and tabled it in the House because of the allegation that was made.

I do not know the exact order of all these things, but I am concerned that getting into this kind of debate about Members' personal financial affairs, when there is an avenue for doing this outside the House and that is by an independent person who makes these adjudications, is only going to get us into severe difficulty. I urge the hon. Member to take the matter up with the Ethics Commissioner.

I know that the Minister yesterday asked for an apology. It is clear that he is not going to get it today from what I am hearing so far, but I would rather have the matter resolved properly there than have endless debate about it on questions of privilege in the House which the House cannot resolve and is unlikely to resolve in the circumstances.

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1. *Debates*, May 31, 2006, p. 1772.
2. *Debates*, May 18, 2006, p. 1569.
3. *Journals*, May 31, 2006, p. 221.
4. *Debates*, June 1, 2006, p. 1853.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: Member alleged to have given a misleading response to a question; distinction between a matter of debate and a question of privilege

October 5, 2006 *Debates*, pp. 3718-9

Context: On September 28, 2006, Bill Graham (Leader of the Opposition) rose on a question of privilege arising from a response provided by Jason Kenney (Parliamentary Secretary to the Prime Minister) to a question posed by Marlene Jennings (Notre-Dame-de-Grace–Lachine) during that day's Oral Questions, with respect to an apology to Maher Arar, a Canadian citizen who had been wrongfully incarcerated and tortured in a Syrian jail.[1] Mr. Graham argued that by accusing the Liberal Party of actions that had led to Mr. Arar's incarceration in Syria, Mr. Kenney's reply had been misleading because he had not made allegations against specific Members, and he called for Mr. Kenney to withdraw the remarks.[2] After hearing from Mr. Kenney, the Speaker indicated that although at first glance the issue appeared to be a matter of debate rather than one of privilege, he would review the statements made and return to the House with a decision.

Resolution: On October 5, 2006, the Speaker delivered his ruling. He declared that the matter was a dispute as to facts rather than a question of privilege. He also took the opportunity to remind the House of the importance of proper decorum, reminding the House that the conduct of Members should not disrupt proceedings. At the time, excessive noise was triggered by questionable language and provocative statements, and interruptions, interjections and other demonstrations, including applause and standing ovations, seemed designed to drown out those recognized to speak. The Speaker asked for the assistance of the House in ensuring that Members could be heard when recognized to speak.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Leader of the Opposition concerning comments made by the hon. Parliamentary Secretary to the Prime Minister during Question Period on Thursday, September 28, 2006.

I would like to thank the hon. Leader of the Opposition for raising this matter as well as the hon. Parliamentary Secretary for his intervention.

During Question Period on September 28, the hon. Member for Notre-Dame-de-Grâce–Lachine posed a question concerning the Government's response to the O'Connor Report on the imprisonment and torture of Mr. Arar.

In the preamble to the question, the hon. Member noted that the previous Liberal Government had initiated the O'Connor Inquiry. She went on to ask the hon. Parliamentary Secretary to the Prime Minister why the Government did not extend an apology to Mr. Arar.

In his response to the question, the hon. Parliamentary Secretary claimed:

> Mr. Speaker, how ironic that a representative of the Liberal Party should say they took the first step with respect to Mr. Arar. They did by taking actions which ended up putting him in a Syrian jail.

Following Question Period, the hon. Leader of the Opposition rose on a question of privilege to take issue with these comments. He expressed concern that the remarks suggested that the Liberal Government had been involved in the events surrounding the imprisonment of Mr. Arar and he requested that the hon. Member withdraw the remarks.

The hon. Parliamentary Secretary defended his response to the question by quoting from Mr. Justice O'Connor's Report. In conclusion, he asserted that this matter was not a question of privilege but rather a point of debate.

I undertook to look at both Members' statements and return to the House with a ruling on the matter.

As I have stated before in previous rulings, it is rare for the Chair to find a *prima facie* case of privilege when there appears to be a dispute as to facts. In order for there to be a *prima facie* case of privilege, I must find that the hon. Parliamentary Secretary's comments impeded the hon. Leader of the Opposition in the performance of his parliamentary duties.

I have examined the arguments offered by both the Leader of the Opposition and the hon. Parliamentary Secretary to the Prime Minister, as well as questions put by the hon. Member for Notre-Dame-de-Grâce–Lachine and answers provided by the hon. Parliamentary Secretary in Question Period.

Given the differing views of both hon. Members, it is difficult for the Chair to regard the matter as anything other than debate. I am, therefore, unable to find a basis for the charge of *prima facie* breach of privilege.

Despite this conclusion, the raising of this matter in circumstances of high emotion on both sides affords the Chair an opportunity to address broader issues of decorum.

As I noted in a ruling given on October 1, 2003, and which can be found on pages 8040 and 8041 of the *House of Commons Debates*:

> As Members of Parliament, we all deal regularly with differing interpretations of various events or situations and differing views of documents laid before the House. Members can—and often do—disagree about the actual facts of the same situation. Disagreements of this kind form the basis of our debates. Our rules are designed to permit—indeed to encourage—Members to present differing views on a given issue. This tolerance of different points of view is an essential feature of the freedom of speech and the decision-making process that lie at the heart of our parliamentary system.

But the exercise of that freedom of speech ought to be based on the underlying principle of respect to the House and to other Members. Conduct should not cause a disruption to proceedings.

It would be an understatement to say that we have been plagued in recent weeks by what any observer would have to admit is an unusually noisy

Chamber, particularly during Question Period. Some of the disorder is being triggered by questionable language or provocative statements.

But much of it also appears to be generated by interruptions, interjections or other demonstrations, including applause and standing ovations, actions that seem to be designed to drown out or plainly disrupt those asking questions or those answering them. But when the noise reaches levels where no one, not even the Speaker, can hear what is being said, the House as a whole loses some credibility.

So I appeal to all hon. Members for cooperation. I will continue to try to give Members wide latitude in expressing their points of view, but I ask for all Members' assistance in ensuring that we can all hear the Member who has been recognized and who has the floor.

I was tempted to give this ruling at 2:15 p.m., but I thank hon. Members for being patient and listening to it now.

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1. *Debates*, September 28, 2006, p. 3384.
2. *Debates*, September 28, 2006, pp. 3391-2.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: Minister alleged to have made disrespectful comments towards another Member

October 30, 2006 — *Debates*, pp. 4414-5

Context: On October 19, 2006, Denis Coderre (Bourassa) rose on a point of order to seek clarification from Peter MacKay (Minister of Foreign Affairs), asking to which Member he had directed an allegedly disrespectful comment during that day's Oral Questions. Mark Holland (Ajax–Pickering) demanded an apology from the Minister, claiming that the comment was directed to Belinda Stronach (Newmarket–Aurora). After hearing from other Members, the Speaker terminated the discussion.[1] The following day, Ms. Stronach rose on a point of order to ask for an apology from the Minister for the same alleged comment.[2] For his part, the Speaker informed the House that he had reviewed the tapes of the previous day's proceedings, but they were not conclusive in confirming whether the Minister had made any inappropriate comment. On October 25, 2006, in response to a question during Oral Questions, the Minister denied using the unparliamentary expression that had been alleged.[3] Later the same day, Ralph Goodale (Wascana) rose on a question of privilege, arguing that there was compelling evidence on the public record that the Minister's assertions were untrue. He claimed that the House's privileges had been breached by the "lingering untruth".[4] After hearing from other Members, the Speaker took the matter under advisement.

Resolution: The Speaker delivered his ruling on October 30, 2006. He noted that for the Chair to request an apology or a withdrawal of offensive words or gestures, agreement about what had taken place was required. Noting that the official record contained no reference to the alleged words and there was no agreement among Members about what had been said, he stated that it was not the duty of the Chair to resolve the dispute. As he could not find that Members had been impeded in their work nor could he see that the privileges of the House had been breached, he concluded that there was no *prima facie* breach of privilege. Finally, he appealed to Members to be judicious in their language and avoid personal attacks.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on Wednesday, October 25, 2006 by the hon. Member for Wascana concerning comments allegedly made by the hon. Minister of Foreign Affairs last Thursday, October 19, 2006.

I would like to thank the hon. Member for raising this matter as well as the hon. Government House Leader for his response for it gives me the opportunity to clarify the very limited role that the Speaker can play in situations of this sort.

First, let us review the events to date. On October 19, the hon. Member for Bourassa rose on a point of order to object to remarks he alleged were made by the hon. Minister of Foreign Affairs. He was supported by the hon. Member for Ajax–Pickering. Since I had not heard the remarks complained of, I undertook, as I would usually do in such cases, to review the record and return to the House if necessary.

On October 20, the hon. Member for Newmarket–Aurora rose on a point of order and, quoting Standing Order 18, sought an apology for offensive and disrespectful remarks allegedly made by the Minister of Foreign Affairs the previous day. The Chair responded as follows:

> —the news of these statements is something that is new to me because I did not hear the comments or see any of the gestures that are alleged to have taken place.
>
> My staff have carefully reviewed the audio tapes of question period and the written transcript of Hansard, which I myself have seen, and of course there is no reference to these words in either. So I am unable to confirm any of the suggestions that have been made. I know several Members say that they heard these remarks.
>
> However, in the circumstances, there is nothing further I can do at this time.

Now the House Leader of the Official Opposition has risen on a question of privilege on this same matter and has provided the Chair with affidavits signed by several hon. Members stating that they heard the offending remarks.

In the meantime, of course, as the House knows, audio clips of the October 19 proceedings have been aired in the media. Indeed, a transcript of one such report has been sent to me by the hon. Member for Newmarket–Aurora.

However, last Wednesday, when asked by the hon. House Leader of the Official Opposition to apologize, the hon. Minister of Foreign Affairs replied:

> I made no such gesture. I made no derogatory or discriminatory remarks toward any Member of the House.

The hon. Member for Mississauga South argues that the Chair might refer this matter to the Standing Committee on Procedure and House Affairs so that the Committee can get at the truth in these competing claims. Even if I were so inclined, it is not for the Chair to refer matters to a committee but for the House to take that decision.

Historically, when a Member has made a remark considered unparliamentary or inappropriate, the Speaker has asked the Member to withdraw or rephrase the comment. Standing Order 18 prohibits disrespectful or offensive language against a Member of the House and, as *Marleau and Montpetit* states at page 522:

> A Member will be requested to withdraw offensive remarks… directed toward another Member.

But such action by the Chair—that is, requesting an apology or a withdrawal—is predicated on a common agreement about what actually took place, either because the exchange appears in the official record or because both parties acknowledge that the exchange took place.

In this case, the official record is not helpful and the Speaker is faced with a dispute, indeed a contradiction, about what actually happened. Some

hon. Members insist that they heard the offensive remarks; the hon. Minister denies making them.

In examining the precedents, I find guidance in a ruling delivered on December 12, 1991, by Mr. Speaker Fraser. At pages 6218 and 6219 of the *Debates*, he stated:

> The Chair is faced with a dispute and is unable to resolve it. When the official records are not supportive of the allegations, I am convinced that it is not the duty of the Chair to try and resolve it. As far as I am concerned from a procedural point of view and in keeping with our conventions the matter is closed.

In the circumstances, I have listened very carefully to the arguments presented, notably by the hon. Member for Wascana who contended:

> The privileges of Members of this House are thus being infringed: first, by the lingering untruth; and, second, by the inability of the Minister, apparently, to be believed.

While I may agree with the hon. Member that the circumstances surrounding this situation are most regrettable, it is not clear to me how they prevent hon. Members from accomplishing their work. Since I fail to see how the privileges of the House have been breached by this unfortunate situation, I cannot conclude that a *prima facie* breach of privilege has occurred.

This conclusion is consistent with Speakers Lamoureux and Jerome who, in rulings delivered on June 8, 1970, *Journals* page 966, and on June 4, 1975, *Journals* page 600 respectively, both quote citation 113 of Beauchesne's 4th edition, which states that:

> —a dispute arising between two Members, as to allegations of facts, does not fulfill the conditions of parliamentary privilege.

Mr. Speaker Jerome, again on June 4, 1975, *Journals* page 601, further concluded that serious dispute and disagreement about facts and their implications or significance are "ingredients for debate and not ingredients for a question of privilege".

In the case before the House now, the remarks may or may not have been said. However, it is not for the Speaker to decide where the truth lies.

I regret that the Chair can offer no remedy to the House, particularly as it seems apparent that the situation does nothing to enhance the reputation of the House of Commons and its Members. Members on all sides of the House have commented on the erosion of mutual respect in the House. As was stated by the Chief Government Whip on October 20, it is incumbent upon all of us to work harder toward maintaining decorum in this Chamber.

I believe we would do well to recall the words of Mr. Speaker Fraser on December 11, 1991, when he said:

> Few things can more embitter the mood of the House than a series of personal attacks, for in their wake they leave a residue of animosity and unease.

I appeal, therefore, to all hon. Members to be judicious in their language and avoid personal attacks on other Members, so that they do not bring themselves and this House into disrepute.

As for this particular case, in keeping with the rulings of my predecessors, Messrs. Lamoureux, Jerome and Fraser, I must now consider the matter closed.

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1. *Debates*, October 19, 2006, p. 4012.
2. *Debates*, October 20, 2006, pp. 4057-8.
3. *Debates*, October 25, 2006, p. 4223.
4. *Debates*, October 25, 2006, p. 4229.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: access to information allegedly blocked by a public servant

February 4, 2008 *Debates*, pp. 2539-40

Context: On January 29, 2008, Paul Szabo (Mississauga South) rose on a question of privilege arising from efforts on his part to obtain information from Health Canada on behalf of a constituent. He claimed that, while speaking to a public servant, he had been asked to confirm that he was a member of the opposition. This information, he had been told, was required so that the official could complete a detailed response form to determine what he could be told and to prepare the department should the matter be raised during Oral Questions. Mr. Szabo noted that the public servant had also informed him that, if a constituent had called directly, the answer would have been provided to them immediately. He concluded that he had been impeded in his ability to serve his constituents. After hearing from other Members, the Speaker took the matter under advisement. Later Tony Clement (Minister of Health and Minister for the Federal Economic Development Initiative for Northern Ontario) responded that asking whether a Member was a member of the opposition was not a standard practice, and undertook to inform public servants that it was neither a relevant nor an appropriate question to ask.[1] On January 31, 2008, the Minister again spoke to the matter, explaining the standard process followed for enquiries and advising that Mr. Szabo had been provided with the information he had sought. The Minister also confirmed that the forms, which had been inherited from the previous Government, had since been modified to remove all references to a Member's party affiliation. In reply, Mr. Szabo insisted that the Minister had misled the House, that what had transpired was not as described by the Minister and that the information he had requested had not been supplied. The Speaker, in taking the matter under advisement, encouraged the Minister and the Member to meet to resolve the issue.[2]

Resolution: The Speaker delivered his ruling on February 4, 2008. He noted that, while there were a number of important issues involved in the question, the issue of concern to the Chair was whether the manner in which public servants served Members dealing with constituency matters constituted a *prima facie* breach of

privilege or contempt of the House. The Speaker acknowledged that legitimate concerns regarding the efficiency of the procedures used by public servants had been raised, but ruled that activities in and for constituencies generally fell outside of "proceedings in Parliament", and accordingly, as the Member had not been obstructed in the performance of his parliamentary duties, there was no *prima facie* case of privilege or contempt of the House.

Decision of the Chair

The Speaker: Before we turn to Government Orders, I have a ruling to give.

I am now prepared to rule on the question of privilege raised on Tuesday, January 29, [2008][3], by the hon. Member for Mississauga South alleging that Members of the opposition were impeded in carrying out their responsibilities when requesting information from public servants.

I would like to thank the hon. Member for raising this matter and for providing the Chair with further comments since that time. I also want to thank the hon. Member for Joliette, the hon. Member for Vancouver East, and the hon. Parliamentary Secretary to the Leader of the Government in the House for their interventions when the matter was raised as well as the hon. Member for Yukon and the hon. Member for Scarborough–Rouge River who later provided their views on this issue. Finally, I thank the hon. Minister of Health for rising twice in the House to provide clarification on the procedures in his department and on steps the department is taking to ameliorate its practices.

In presenting his case, the Member for Mississauga South charged that officials at the Department of Health treated requests from Members of the opposition differently than those from Members of the governing party.

He indicated that when his staff tried to obtain information from the department on behalf of a constituent, officials asked his staff if the Member requesting the information was a member of the opposition.

Later, the hon. Member himself was informed by the department that in responding to Members, officials were required to fill out a form and monitor the details of the Member's request.

The hon. Member argued that this requirement caused delays in his being given the information requested and he claimed further that the departmental official acknowledged that this same information would have been communicated immediately to constituents who called the department themselves. The hon. Member concluded that this approach constituted an impediment to his performance as a Member of Parliament.

The Members for Joliette and Vancouver East expressed serious concern regarding this particular case, noting the impact of this kind of conduct on the ability of opposition Members to fulfill their duties without obstruction.

The Member for Scarborough–Rouge River underlined that the process complained of constituted an obstruction to the work of Members because it delayed access to information which an ordinary citizen could obtain more expeditiously. He argued that this situation undermined the Members' capacity to serve their constituents efficiently and well.

For his part, the Minister of Health, in his original intervention, indicated that it was not the standard operating procedure of the department to ask callers to identify the affiliation of the Member who requires the information.

Later, however, the Minister rose to explain that the department did indeed have responding officials fill out a form which included party affiliation of the questioner.

He went on to explain that this practice aimed simply to keep the department's parliamentary affairs officials apprised of issues and the need for possible follow-up. He acknowledged that seeking to learn the party affiliation of inquiring MPs might be misconstrued and that the practice would be changed immediately.

The Chair sees two important issues in the case raised by the hon. Member for Mississauga South. The first focuses on public service procedures when providing information to Members of Parliament and the alleged difference in which such requests are processed depending on which side of the House the Member sits.

The second issue relates to a possible obstruction of Members' ability to provide services to their constituents in a timely fashion, an obstruction that can create a perception in the mind of constituents that Members of Parliament are not able to serve their constituents effectively.

From the Chair's point of view, however, the question is a good deal simpler: does the manner in which public servants serve Members of Parliament when dealing with constituency matters constitute a *prima facie* breach of privilege or contempt of the House?

In ruling on a question of privilege raised by two Members alleging that a department had directed its officials not to release information on certain projects, thus infringing on their ability to serve their constituents, Mr. Speaker Bosley indicated on May 15, 1985, at page 4769 of the *Debates*:

> I think it has been recognized many times in the House that a complaint about the actions or inactions of government Departments cannot constitute a question of parliamentary privilege.

The 23rd edition of *Erskine May* on page 143 also refers to this principle:

> Correspondence with constituents or official bodies, for example, and the provision of information sought by Members on matters of public concern will very often, depending on the circumstances of the case, fall outside the scope of "proceedings in Parliament" against which a claim of breach of privilege will be measured.

Furthermore, with respect to a similar question of privilege, Mr. Speaker Parent in a ruling on October 9, 1997, at page 687 of the *Debates*, stated:

> —in order for a Member to claim that his privileges have been breached or that a contempt has occurred, he or she must have been functioning as a Member at the time of the alleged offence, that is, actually participating in a proceeding of Parliament. The activities of Members in their constituencies do not appear to fall within the definition of a "proceeding in Parliament".

And he went on to say:

> In instances where Members have claimed that they have been obstructed or harassed, not directly in their roles as elected representatives but while being involved in matters of a political or constituency related nature, Speakers have consistently ruled that this does not constitute a breach of privilege.

Let me assure the House that the Chair understands that all hon. Members wish to serve their constituents as expeditiously and efficiently as possible. Indeed, in another incarnation, as the representative for Kingston and the Islands, I share that laudable objective with all of my colleagues.

However, as Speaker, I must view matters through the rather narrow prism of parliamentary privilege. In that light, it does not appear to the Chair that the hon. Member has been obstructed in the performance of his parliamentary duties and therefore, I cannot find that a *prima facie* breach of privilege has occurred.

That said, the hon. Member for Mississauga South and other Members have raised legitimate concerns regarding the efficiency of the procedures used by public servants as they relate to requests from Members of Parliament. There are other avenues where Members could raise these concerns, notably in the appropriate standing committees, where they might enquire about the procedures in place in various departments and agencies and make helpful recommendations for assisting them to respond more efficiently and effectively to the needs of Members of Parliament seeking information to assist constituents.

I thank the hon. Member for Mississauga South for bringing this matter to the attention of the House.

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1. *Debates*, January 29, 2008, pp. 2269-71, 2282, 2313-4.
2. *Debates*, January 31, 2008, pp. 2432-4.
3. "2008" is missing from the published *Debates*.

Parliamentary Privilege

Rights of Members

Freedom of speech and right to vote: libel suit and recusal of a Member; *prima facie*

June 17, 2008 — *Debates*, pp. 7072-4

Context: On May 26, 2008, Derek Lee (Scarborough–Rouge River) rose on a question of privilege with regard to a report of the Conflict of Interest and Ethics Commissioner that Robert Thibault (West Nova) should not participate in debate or vote in the House on matters related to the Mulroney-Schreiber Airbus affair.[1] The Ethics Commissioner contended that the fact that Mr. Thibault was named as a defendant in a libel suit was tantamount to having a private interest, and thus it constituted a liability under the *Conflict of Interest Code for Members of the House of Commons*. Mr. Lee claimed that the Commissioner's extension of the meaning of the word liability to include the sort of contingent liability represented by being named a defendant in a libel suit was unreasonable, and could open the way to limiting the rights of Members through the simple act of filing a lawsuit. Mr. Lee argued that such a decision had breached Mr. Thibault's privilege of freedom of speech, had infringed upon his right to participate as a Member without obstruction or interference, and was an unwarranted interpretation of the *Conflict of Interest Code for Members of the House of Commons*. Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform) argued that the Commissioner was simply applying the *Conflict of Interest Code* as established by the House and that the rights to vote and to freedom of speech were not absolute. After hearing from other Members, the Speaker took the matter under advisement.[2]

Resolution: On June 17, 2008, the Speaker delivered his ruling. He stated that, while the Government House Leader's arguments were valid, it was his duty as Speaker to safeguard the very existence of Members' privileges. The Speaker also made the point that there was no mechanism that provides the House with the opportunity to disagree with such a report. In this instance, a Code adopted by the House was being applied in a way that was clearly contrary to the original intentions of the House since this application meant that any Member could effectively be silenced by a libel suit, a situation that could potentially affect all Members. The Speaker

ruled, accordingly, that there was a *prima facie* case of privilege and he invited Mr. Lee to move his motion.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Scarborough–Rouge River on May 26, 2008, regarding the report of the Conflict of Interest and Ethics Commissioner in relation to the hon. Member for West Nova.

I would like to thank the hon. Member for Scarborough–Rouge River for having raised the matter and I would also like to thank the hon. Government House Leader, the hon. Member for Winnipeg Centre and the hon. Member for Mississauga South for their interventions.

In raising this question of privilege, the Member for Scarborough–Rouge River underlined the importance of the privileges of freedom of speech and the right to vote for Members, privileges that are of such fundamental significance that they are claimed explicitly by the Speaker at the beginning of each Parliament. It was with this in mind that he questioned the validity of the *Conflict of Interest Code for Members* being interpreted in such a way as to limit unduly the freedom of speech and right to vote in the House and in committee not only of the Member for West Nova but of all Members. This concern was echoed by the Members for Winnipeg Centre and Mississauga South.

The Member for Scarborough–Rouge River took issue with the Conflict of Interest and Ethics Commissioner's contention that being a defendant in a libel suit was tantamount to having a private interest since this interpretation would open the way to limiting the rights of Members through the simple act of filing a lawsuit.

Specifically, he challenged the interpretation given by the Commissioner of the term liability as used in the Code, claiming that the Commissioner's extension of the meaning of the word liability to include the sort of contingent liability represented by being named defendant in a libel suit was unreasonable.

In his remarks, the Government House Leader pointed out that the rights to free speech and to vote were not absolute and in support of this view, he

cited a passage from page 26 of Maingot's *Parliamentary Privilege in Canada*, wherein it is indicated clearly that there are limits to the privileges enjoyed by Members. He stated that the House itself established the Code and gave to the Ethics Commissioner the authority to interpret it.

Further, the Leader of the Government in the House of Commons argued that if Members feel that the Code requires amendment, this ought not to be accomplished under the guise of a question of privilege but rather through the Standing Committee on Procedure and House Affairs, whose mandate it is to review the Code.

It should be noted at the outset that no one is suggesting that the Conflict of Interest and Ethics Commissioner, in her consideration of the present case, did not recognize the importance of the rights and privileges of Members. Nor was any concern expressed that she had not exercised the highest standards of diligence or that she had not acted in good faith.

As Speaker, I am profoundly aware both of the importance of the particular rights and privileges which Members are accorded in order to allow them to carry out their functions and of the special responsibility that I have in that regard. My role in relation to privilege is very clear.

House of Commons Procedure and Practice contains several key passages which will be of interest to the House. First, at page 261, *Marleau and Montpetit* states that:

> It is the responsibility of the Speaker to act as the guardian of the rights and privileges of Members and of the House as an institution.

Further, at page 262, it goes on to say that:

> The duty of the Speaker is to ensure that the right of Members to free speech is protected and exercised to the fullest possible extent—

Then, at page 125 there is the following guidance to the Chair when it is deliberating on whether there are sufficient grounds to find a case of *prima facie* privilege:

> —the Chair will take into account the extent to which the matter complained of infringed upon any Member's ability to perform his or her parliamentary duties.

This brings me to the questions raised by the Government House Leader regarding the propriety of attempting to remedy the current situation via a question of privilege. The hon. Government House Leader is quite correct in pointing out that the Standing Committee on Procedure and House Affairs has a mandate to review and report on the Standing Orders and the *Conflict of Interest Code*. However, it must be pointed out that there are other paths available to the House to effect changes to the Standing Orders or to the Code and that the House has on occasion seen fit to take them. Ultimately the fundamental requirement for any change to our Standing Orders or by extension to the *Conflict of Interest Code*, which is an appendix to our Standing Orders, is that any such change must [be][3] agreed to by the House as a whole.

As *House of Commons Procedure and Practice* states at page 215:

> Although the means by which the House reviews the Standing Orders vary greatly, the Standing Orders may be added to, changed or repealed only by a decision of the House, which is arrived at either by way of consensus or by a simple majority vote on a motion moved by any Member of the House.

The reference given for this passage is a ruling by Mr. Speaker Fraser in *Debates*, April 9, 1991, pp. 19236-7.

An example of this freedom each Member has may be found in the *Order Paper* where there is at present a motion to amend the Standing Orders standing in the name of the hon. Member for Crowfoot.

The Chair notes, as additional information before the House, that in the case at hand no mechanism is in place that guarantees an opportunity for the House to disagree with a report such as the one at the centre of this question of privilege. Although there are provisions for a debate on concurrence in the report in the usual fashion, no deadline exists to bring such a motion, were it to be moved, to a vote. All that the Code provides for, in section 28(10), is for the automatic concurrence in such report after 30 sitting days after the day on which the report is tabled provided the question has not been disposed of earlier.

Let me turn now to the substance of this question of privilege, namely the impact of this report by the Commissioner on the ability of Members to carry out their parliamentary duties.

There is the suggestion, not entirely unfounded in my view, that unless steps are taken to clarify the notion of liability in the Code, the mere launching of a libel suit will now be sufficient to limit Members' freedom of speech and their ability to vote.

It is this particular aspect of the situation which the Chair finds most problematic from a procedural point of view since, as was noted, the current case carries with it the very real potential of affecting every Member of the House.

I want to stress that as your Speaker I am not being asked to pass judgment on the decision of the Commissioner in this case. Rather, the Speaker is being asked, given the facts presented, to determine whether, on the face of it, the matter is sufficiently grave and of immediate consequence for Members to warrant consideration by the House on a priority basis.

I put it to the House that when the mere filing of a libel suit against a Member, whatever the ultimate disposition of the suit may be, has the effect of placing restrictions on the ability of that Member to speak and to vote in the House and in committee, it appears reasonable to conclude that the privileges of all Members are immediately placed in jeopardy.

These privileges are not absolute. For as the Government House Leader has pointed out, Members themselves have agreed to impose certain limitations on them. In fact, there was further agreement on this matter the other day when a motion was passed on a supply day dealing with this very issue.

Nonetheless, I believe it remains my duty as your Speaker to ensure that all measures to safeguard their very existence are taken. This is particularly true in the circumstances before us where an interpretation of the rules that we have adopted entails consequences which appear to be so obviously unintended by the very Members who created the rules.

For these reasons, I believe the matter has met the necessary conditions to be given priority consideration by the House. Accordingly I rule that this is a *prima facie* matter of privilege and I invite the hon. Member for Scarborough–Rouge River to move his motion.

Postscript: Mr. Lee moved that the subject matter of the Speaker's ruling be referred to the Standing Committee on Procedure and House Affairs. Peter Julian (Burnaby–New Westminster) then moved an amendment. Following debate, the amendment and the motion, as amended, were agreed to on division.[4] The Committee did not report on the question of privilege prior to the dissolution of the Thirty-Ninth Parliament.

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1. The Thibault Inquiry tabled in the House by the Speaker on May 7, 2008 (*Journals*, p. 783).
2. *Debates*, May 26, 2008, pp. 6006-10.
3. The word "be" is missing from the published *Debates*.
4. *Debates*, June 17, 2008, pp. 7072-88, 7090-2, *Journals*, pp. 1003, 1006.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: franking privileges; alleged misuse for political purposes

December 4, 2008 *Debates*, pp. 605-6

Context: On November 27, 2008, Wayne Easter (Malpeque) rose on a question of privilege with regard to a letter sent by David Anderson (Parliamentary Secretary to the Minister of Natural Resources and for the Canadian Wheat Board), which allegedly encouraged grain producers to support certain candidates in an upcoming election for directors of the Canadian Wheat Board. Mr. Easter argued that Mr. Anderson had inappropriately used confidential mailing lists, his letterhead as a Member of Parliament and the franking privileges of the House for political purposes. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: On December 4, 2008, the Speaker delivered his ruling. On the question of whether franking privileges were used inappropriately, he stated that the issue was best addressed through administrative channels. As to whether Mr. Anderson's actions breached Mr. Easter's privileges, the Speaker declared that he could not find sufficient grounds for a *prima facie* question of privilege because the distribution of the material in question did not defame Mr. Easter or interfere with his ability to carry out his duties.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Malpeque on November 27, 2008, concerning a letter that the hon. Parliamentary Secretary to the Minister of Natural Resources and for the Canadian Wheat Board sent to grain producers to encourage them to support particular candidates in upcoming elections for directors of the Canadian Wheat Board.

I would like to thank the hon. Member for Malpeque, who kindly provided the Chair with a copy of the letter sent by the Parliamentary Secretary, for

having raised this important matter, as well as the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons, the hon. Member for Winnipeg South Centre, and the hon. Member for Yukon for their comments.

In raising this question of privilege, the hon. Member for Malpeque alleged that the Parliamentary Secretary to the Minister of Natural Resources and for the Canadian Wheat Board inappropriately used confidential mailing lists and the franking privileges of the House for political purposes. He argued that the use of a Member's parliamentary letterhead and franking privileges to influence a democratic process constituted a violation of Members' privileges.

The Parliamentary Secretary to the Leader of the Government in the House of Commons, in his reply, suggested that the actions of the Parliamentary Secretary to the Minister of Natural Resources and for the Canadian Wheat Board did not impede any Member's ability to carry out his or her parliamentary duties. He added that there was no evidence that the Parliamentary Secretary had used any confidential list.

The Members for Winnipeg South Centre and Yukon reiterated the concerns expressed by the Member for Malpeque regarding the use of franking privileges, parliamentary letterhead and confidential lists, and questioned whether the Parliamentary Secretary's use of some of the House's resources for this purpose was appropriate.

It might be useful to remind hon. Members of some of the principles involved. Franking privileges are granted to Members of Parliament by way of the *Canada Post Corporation Act*.

The question of franking privileges has arisen and been ruled on in the past. One of the cases dealt with the use of the frank by some Members of the House to send messages in support of a political party in a provincial election. In his ruling, found in the *Debates* of October 16, 1986, on pages 405-6, Mr. Speaker Fraser stated:

> I think it is clear that there could be cases where, depending upon the content of the communication sent under the frank, it could be a

> question of privilege if the content worked against the right of Members to free expression and the carrying out of their obligations as Members.

In that instance, he ruled that there was no question of privilege.

Another case pertained to a Member's use of householder mailings of a partisan political nature in the course of a by-election. Just as with the interventions of the Members for Winnipeg South Centre and Yukon, several Members at that time questioned the interpretation of the House's guidelines and use of resources in this regard.

In that case, Speaker Fraser stated on March 18, 1987, on page 4301 of the *Debates*:

> In any case, the breach of guidelines does not necessarily constitute a breach of privilege. (…) It seems to the Chair that nothing which has been complained of has in any way obstructed the House or any of its Members in carrying out the activities for which they were elected.

As in the cases cited, the current dilemma contains two elements. First, the question of whether the franking privileges granted by law to Members were used appropriately. Such questions are better addressed through administrative avenues.

The second component is whether the mailing affected the Member's privileges. The Chair could find a *prima facie* privilege in this case if arguments had been made that the distribution of the material in question defamed or in some way interfered with the Member's ability to carry out his parliamentary duties. But no such arguments have been made in this instance and there is no evidence to this effect.

The Chair listened carefully to the arguments of hon. Members and reviewed the content of the letter sent by the Parliamentary Secretary to the Minister of Natural Resources and for the Canadian Wheat Board. I have considered the matter in light of earlier Speakers' decisions on the same subject and the wording of the House of Commons Board by-laws.

The Chair has concluded that there are not sufficient grounds for finding a *prima facie* breach of privilege in this case.

The Member for Malpeque may wish to pursue administrative avenues on the general issue of franking privileges or the contents of frank[ed][2] mail.

I thank hon. Members for their interventions in this matter.

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1. *Debates*, November 27, 2008, pp. 320-1.
2. The published *Debates* read "frank" instead of "franked".

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: alleged misuse of parliamentary resources and services; e-mail

February 12, 2009 *Debates*, pp. 713-4

Context: On February 4, 2009, Marlene Jennings (Notre-Dame-de-Grâce–Lachine) rose on a question of privilege with respect to an e-mail sent to all Members by Maria Mourani (Ahuntsic). Ms. Jennings alleged that the e-mail contained text and images supporting groups which had been deemed by the Government to be terrorist organizations, and argued that the material could be characterized as hate propaganda. She considered this a misuse of parliamentary resources and services, maintaining that the e-mail had exposed the recipients to anti-Semitic propaganda. After acceding to a request to allow Ms. Mourani to respond at a later time, the Speaker deferred further consideration of the matter.[1]

On February 5, 2009, Ms. Mourani rose in the House and acknowledged that she should have reviewed all of the material accessible via the links included in her e-mail before sending it. Having stated that she condemned the material in question as hateful propaganda, she apologized to the House and to all Members for having sent the e-mail, and promised that she would be more vigilant in the future. After hearing from other Members, the Speaker took the matter under advisement.[2]

Resolution: The Speaker delivered his ruling on February 12, 2009. He declared that he considered the crux of the issue to be whether Ms. Jennings had been impeded in the fulfillment of her duties as a Member of the House. Reminding the House of the guidelines regulating the use of Members' e-mail accounts, the Speaker noted that it was not the role of the Chair, but rather Members, to monitor the content of their e-mails and other electronic communications. While Members were undoubtedly offended by the material they received, he declared that he could not find that the privileges of Ms. Jennings had been violated. Noting that Ms. Mourani had apologized and undertaken to be more vigilant in the future, he declared the matter closed.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Notre-Dame-de-Grâce–Lachine on Wednesday, February 4, concerning the alleged misuse of parliamentary equipment and services by the hon. Member for Ahuntsic.

I would like to thank the hon. Member for Notre-Dame-de-Grâce–Lachine for raising this important matter, the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord and the hon. Parliamentary Secretary to the Minister of Justice for their contributions and the hon. Member for Ahuntsic for her statement.

In raising this question of privilege, the hon. Member for Notre-Dame-de-Grâce–Lachine explained that on Monday, February 1, she had received on her House of Commons BlackBerry an e-mail from the Member for Ahuntsic, which appeared to have been sent to all Members of the House.

According to the hon. Member, the e-mail "contained text and images supporting and glorifying three organizations that the federal Government has deemed to be terrorist organizations". In fact, she characterized some of these as constituting anti-Semitic propaganda.

The Member argued that the dissemination of this e-mail was a clear misuse of parliamentary equipment and services. Noting that the hon. Member for Ahuntsic had indicated that she had not viewed all the images, the hon. Member for Notre-Dame-de-Grâce–Lachine argued that it is the duty of every Member to ensure that they do not intentionally or unintentionally expose Members of the House to this kind of material.

The hon. Member for Notre-Dame-de-Grâce–Lachine went on to say that the misuse of parliamentary services in this manner constituted a violation of her privileges as a Member of Parliament. In making her arguments, she drew to the Chair's attention a ruling given on what she believed was a related question of privilege raised by the former Member for Saskatoon–Humboldt, Mr. Pankiw, on February 12, 2003, in the *House of Commons Debates*, pages 3470 and 3471.

For the information of the House, I should say that that ruling concerned a mass e-mail survey originating in the Member's office that had been blocked by various government departments because it disrupted their systems.

I have carefully reviewed the interventions made by all hon. Members in this case and it seems to me that the crux of the issue here is whether the actions of the hon. Member for Ahuntsic in any way impeded the hon. Member for Notre-Dame-De-Grâce–Lachine in the fulfillment of her duties as a Member of this House.

House of Commons Procedure and Practice, at page 52, reminds us that "individual Members cannot claim privilege or immunity on matters that are unrelated to their functions in the House". Thus, unless it can be demonstrated that the actions complained of were closely linked to a parliamentary proceeding, the Chair cannot intervene.

Having reviewed the ruling invoked by the hon. Member for Notre-Dame-de-Grâce–Lachine in support of her argument, I have concluded that the ruling focused on the right of the Member to seek information in the context of parliamentary proceedings, but I have not found in it the procedural grounds for a finding of *prima facie* privilege in the case now before us. I did, however, find that at that time I had enjoined all Members to heed the guidelines regulating the use of their e-mail accounts.

These guidelines, which I have again consulted, state categorically that Members "are responsible for the content of any electronic messages sent using their account", and that account holders "will not use their network accounts for accessing data or participating in activities which could be classified as obscene, harassing, racist, malicious, fraudulent or libellous".

As I noted in a ruling involving the Internet given on June 8, 2005, at page 6828 of the *Debates*, the use of new communication technologies has ramifications that affect Members in the performance of their duties. One important consideration Members must take into account is that communications via the Internet and e-mail may not be protected by privilege and may expose Members to the possibility of legal action for material they disseminate.

It is not, however, the role of the Chair to monitor the contents of e-mails and other electronic communications that Members send and receive, nor is it possible or desirable to do so. That responsibility falls to Members themselves.

In rising to address the House on February 5, 2009, the hon. Member for Ahuntsic acknowledged that she should have viewed all of the material in the links included in her e-mail before sending it. Having now done so, she admitted that she found the material to be hateful propaganda and condemned it, and she apologized to the House and to all Members for having sent the e-mail in the first place. The hon. Member for Ahuntsic then stated that she would be more vigilant in future and assured the House that such a lapse on her part would not happen again.

Having reviewed the facts of this case, the Chair cannot find that the privileges of the hon. Member for Notre-Dame-de-Grâce–Lachine have in any way been violated by this unfortunate incident, although there is no doubt that she and other Members were offended by the material they received.

In addition, by the admission of the hon. Member for Ahuntsic, the House of Commons guidelines on the appropriate use of e-mail were not respected in this case. However, in view of the unequivocal apology by the hon. Member for Ahuntsic, the Chair believes the matter is now resolved and will consider the matter closed.

I thank the House for its attention to this matter.

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1. *Debates*, February 4, 2009, pp. 353-4.
2. *Debates*, February 5, 2009, p. 409.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: casting aspersions on a Member

February 12, 2009 *Debates*, pp. 765-6

Context: On February 3, 2009, Bill Casey (Cumberland–Colchester–Musquodoboit Valley) rose on a question of privilege with respect to a report which had been brought to his attention by a journalist and which suggested that the Conservative Party had made a complaint of embezzlement against him to the Royal Canadian Mounted Police (RCMP) (**Editor's Note:** Mr. Casey had been expelled from the Conservative Caucus and was sitting as an independent Member). Mr. Casey argued that the association of his name with allegations of theft and embezzlement, especially when the document in question identified him but the source or precise nature of the complaint had been blacked out, undermined his credibility and impeded him in the performance of his duties. After hearing from other Members, the Speaker took the matter under advisement.[1] The following day, in reply to a question posed during Oral Questions, Peter Van Loan (Minister of Public Safety) stated that the RCMP confirmed the file was closed and that Conservative Party officials did not believe that the Member had done anything wrong.[2]

Resolution: On February 12, 2009, the Speaker delivered his ruling. He noted that the document caused confusion due to the contradictions in it and because of redactions to conceal the names of the complainants and the nature of the complaint, while Mr. Casey's name was revealed. The Speaker also reminded the House that the Minister had indicated that the RCMP had closed its file and that Conservative Party officials had made it clear that they did not believe that Mr. Casey had done anything wrong. He concluded that, despite the seriousness of the complaint, he could not find that Mr. Casey had been impeded in the performance of his parliamentary duties and that there was, therefore, no *prima facie* question of privilege.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Cumberland–Colchester–Musquodoboit Valley on February 3, 2009, concerning an RCMP investigation into charges of embezzlement and theft of funds which he believes have damaged his credibility and, thus, his capacity to fulfill his duties as a Member of Parliament.

I would like thank the Member for Cumberland–Colchester–Musquodoboit Valley for having raised this serious matter, as well as the hon. Chief Government Whip, the hon. Member for Windsor West and the hon. Member for Halifax West for their comments.

In raising this question of privilege, the hon. Member for Cumberland–Colchester–Musquodoboit Valley noted that he was first made aware of accusations against him by a journalist who contacted him after having obtained a copy of an RCMP report through an access to information request, a copy of which the Member has kindly provided to the Chair.

He stressed that had the journalist in question not chosen to share the report with the Member, he would not have had the opportunity to defend himself.

The hon. Member went on to explain that much of the information in this report had been redacted or removed from the report, including the names of those who asked the RCMP to investigate and the exact nature of the allegations. This led him to conclude: "—so I do not know exactly what the charges are".

Despite these specific omissions, the hon. Member pointed out that his own name could be identified at the end of the document and that the document also stated that the allegations were brought forward by members of the Conservative Party of Canada. As well, the report noted a sum of $30,000.

From these clues, the Member inferred that what was at issue was the transfer of funds, also in the amount of $30,000, between what was then his riding association and campaign accounts. It was thus presumably these

financial transactions that were the basis of the allegation of embezzlement filed with the RCMP in September 2008.

In his submission, the hon. Member took great care to stress that it was the riding association and the campaign team that necessarily executed these transfers, acting independently of the hon. Member himself, and that the people involved "… followed the letter and spirit of the law, along with Elections Canada regulations".

The hon. Member contends that the report, despite stating that the matter warrants no further investigation, is ambiguous in its conclusion and so still has the potential to cast doubt on his credibility and honesty and thus prevent him from effectively fulfilling his duties as a Member of Parliament.

The hon. Chief Government Whip, in his reply, stated that the hon. Member for Cumberland–Colchester–Musquodoboit Valley made reference to party members rather than any specific Member of Parliament and that the Member's submission was tantamount to a personal statement and not a question of privilege.

The hon. Members for Windsor West and Halifax West were supportive of the concerns expressed by the hon. Member for Cumberland–Colchester–Musquodoboit Valley. The hon. Member for Windsor West noted how unfounded allegations of this nature can affect the public perception of an individual and the individual's contribution to public life in Canada, while the hon. Member for Halifax West underscored the danger of false accusations.

The Chair is of course entirely sympathetic to the plight of the Member for Cumberland–Colchester–Musquodoboit Valley. However, in adjudicating questions of privilege of this kind, the Speaker is bound to assess whether or not the Member's ability to fulfill his parliamentary functions effectively has been undermined.

House of Commons Procedure and Practice, on pages 91 to 95, goes on at some length to stress the importance in this type of situation of establishing a link to parliamentary duties.

Two examples are useful to illustrate the importance of this linkage. In a 1978 ruling, Mr. Speaker Jerome rejected a claim by a Member that a civil suit launched against him when he repeated on a radio talk show statements first made in committee was calculated to obstruct him in the performance of his parliamentary duties. The Speaker, in ruling that he could find no *prima facie* case of privilege, stated at page 5411 of *Debates* on May 15, 1978, that:

> It seems quite clear that this matter has caused the Member certain difficulties in the performance of his duties as a Member of Parliament, but I have trouble in accepting the argument that these difficulties constitute obstruction or harassment in the narrow sense in which one must construe the privilege of freedom from molestation—

In the second example, which dates from 1994, *House of Commons Procedure and Practice*, pages 94 and 95, states that a Member:

> … claimed he was being intimidated by the media and had received blackmail threats as a result of media reports concerning the authenticity of the Member's academic credentials. In finding that there was no *prima facie* question of privilege, the Speaker stated: "Threats of blackmail or intimidation of a Member of Parliament should never be taken lightly. When such occurs, the very essence of free speech is undermined. Without the guarantee of freedom of speech, no Member of Parliament can do his duty as is expected…. While the Chair does not in any way make light of the specifics that have been raised…. I cannot, however, say that he has sufficiently demonstrated that a case of intimidation exists such that his ability to function as a member of Parliament has been impeded.

The following quotation from pages 91-92 summarizes the view taken by successive Speakers:

> … rulings have focussed on whether or not the parliamentary duties of the Member were directly involved. While frequently noting that Members raising such matters might have legitimate complaints, Speakers have regularly concluded that Members have not been prevented from performing their parliamentary duties.

As the hon. Member for Cumberland–Colchester–Musquodoboit Valley pointed out, the document had been severely edited, to remove the names of all the individuals involved, except for his own name which still appears in the document's file name at the end of the report. It was this that allowed the journalist to identify the Member for Cumberland–Colchester–Musquodoboit Valley as the object of the criminal complaint. Had his name not appeared in the document's file name, his identity might arguably have been protected.

Having reviewed the report in question, it is apparent to the Chair that the authors of the report were no more meticulous, not to say incredibly careless, than those who edited the document to comply with the usual practices in access to information requests.

The report contradicts itself repeatedly, first stating that there are "insufficient grounds or cause to warrant launching an investigation", then referring to "the outcome of the investigation", then going further to refer to the possibility of reopening the said investigation and then returning full circle to state that "no investigation will be occurring".

The redactors of the report who prepared it for release under access to information took pains to delete the names of the complainant or complainants, but left the name of the hon. Member for Cumberland–Colchester–Musquodoboit Valley in the filename at the end of the document. Such apparent carelessness and the confusion that can result are no doubt just cause for concern. In fairness, it should be pointed out that on February 4, 2009, as can be seen on page 342 of Hansard, the Minister of Public Safety advised the House that the RCMP had confirmed that "this file was closed" and that "… Conservative Party officials have also made it clear that they do not believe that the hon. Member in question, the hon. Member for Cumberland–Colchester–Musquodoboit Valley, did anything wrong".

However, without minimizing the seriousness of the complaint or dismissing the gravity of the situation raised by the hon. Member, it is difficult for the Chair to determine, given the nature of what has occurred, that the Member is unable to carry out his parliamentary duties as a result. Accordingly, the Chair must conclude that there is no *prima facie* question of privilege.

This does not take away from the potential reverberating effects of this case. By raising the matter in the House as he did, the hon. Member for Cumberland–Colchester–Musquodoboit Valley forcefully defended himself from these allegations, explaining that the facts show no hint of any wrongdoing whatsoever on his part.

His complaint is legitimate and he is correct when he laments that "The report is here forever. It is not going to go away." and when he spoke about the integral nature of trust and credibility to our work as Members of Parliament.

Once again, I would like to thank the hon. Member for Cumberland–Colchester–Musquodoboit Valley for bringing this important matter to the attention of the House.

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1. *Debates*, February 3, 2009, pp. 269-72.
2. *Debates*, February 4, 2009, pp. 341-2.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: use of Government resources to promote political activities

March 24, 2009 *Debates*, pp. 1836-7

Context: On March 5, 2009, Wayne Easter (Malpeque) rose on a question of privilege alleging that Gail Shea (Minister of Fisheries and Oceans) had allowed her department's Web site and letterhead to be used by a Conservative Senator to disseminate misleading partisan information, thereby misusing her office, violating Treasury Board communications policy and compromising his privileges. The Speaker took the matter under advisement.[1]

Resolution: On March 24, 2009, the Speaker delivered his ruling. He stated that it was unusual and a cause of concern to him that a departmental press release should include comments critical of Members of the Senate and of the House. He pointed out that his authority was limited to judging whether Members' privileges had been compromised, and did not extend to determining whether the Minister had followed the Government's communications policy. Since the Member did not demonstrate a link to his parliamentary duties or that there was an undesirable effect on the reputation of the House, the Speaker declared that he could not find that the Member's ability to perform his work had been obstructed or that the House's reputation had been harmed. He therefore concluded there was no *prima facie* question of privilege.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Malpeque on March 5, 2009, concerning information disseminated by the Department of Fisheries and Oceans. I would like to thank the Member for having raised this matter.

In raising this issue, the Member alleged that the Minister of Fisheries and Oceans misused the privileges of her office in allowing the dissemination of

misleading information for partisan purposes on her department's letterhead and Web site under the name of a Conservative Senator. The Member contended that the actions of the Minister, the department and the member of the other place compromised his privileges as a Member of Parliament.

The Member for Malpeque explained that a press release by the Senator was issued with the department's letterhead on its Web site. He also indicated that the Senator was not an official spokesperson for the department. The press release concerning the seal hunt was critical of a Member of the other place, the Leader of the Opposition and the Liberal Party and, according to the Member, distorted the position of the Liberal Leader and the Liberal Party.

The Member argued that it was the responsibility of the Minister to ensure that media resources were used only for departmental purposes and that she had failed to do so. He quoted at length from the communications policy of the Government of Canada, illustrating how the news release had violated that policy. He further argued that, as a consequence of the Minister's allowing the department's letterhead and Web site to be used in a partisan way by someone with no departmental affiliation, his privileges as a Member had been violated.

The release of a departmental communiqué that is critical of Members of the Senate and of the House is extremely unusual and is a serious matter that causes me considerable concern.

However, while the Member may well be right that it is the responsibility of ministers to adhere to the Government's communication policy, it is not within my purview to judge whether the Minister did or [did][2] not follow that policy. In the present case, my only role is to ascertain whether the actions of the Minister and the department have violated the hon. Member's privileges.

In the past, Speakers have been called upon to rule on questions of privilege relating to actions taken by Government departments that have affected the privilege of Members, for example, Government advertising anticipating decisions of the House. In rare cases, such actions have been viewed as obstruction.

More often than not, however, as noted in *House of Commons Procedure and Practice*, on pages 91 and 92:

> —rulings have focused on whether or not the parliamentary duties of the Member were directly involved. While frequently noting that Members raising such matters might have legitimate complaints, Speakers have regularly concluded that Members have not been prevented from performing their parliamentary duties.

In the current matter, I do not think that the Member has demonstrated a link to his parliamentary duties. Likewise, it has not been demonstrated that the events described have had an undesirable effect on the reputation of the House of Commons. For those reasons, I cannot find that the Member's ability to perform his work has been obstructed and, therefore, I cannot find a *prima facie* question of privilege.

I wish to thank the hon. Member for his vigilance. In raising the matter, he has drawn public attention to a serious situation that needed to be remedied. His views have been heeded from media reports and, on examination of the Web site of the Department of Fisheries and Oceans, it appears that the offending communiqué has been removed and the departmental officials have apologized.

No doubt Ministers and their officials have taken cognizance of these unfortunate events and will ensure that nothing like this happens again.

I thank the House for its attention to this important matter.

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1. *Debates*, March 5, 2009, p. 1364.
2. The word "did" is missing from the published *Debates*.

Parliamentary Privilege /062

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: bulk mailings to another Member's constituency of flyers ("ten percenters") containing misleading statements; *prima facie*

November 19 and 26, 2009 — *Debates*, p. 6982 and p. 7277

Context: On November 3, 2009, Peter Stoffer (Sackville–Eastern Shore) rose on a question of privilege with respect to a bulk mailing of flyers ("ten percenters") to some of his constituents by Maurice Vellacott (Saskatoon–Wanuskewin), which contained statements about Mr. Stoffer's voting record. Mr. Stoffer alleged that the flyers contained information regarding his position and voting record on the long-gun registry that was factually incorrect, and that impugned his reputation and the work he had done. Mr. Stoffer asked Mr. Vellacott for an apology. Mr. Vellacott conceded that Mr. Stoffer, contrary to claims made in the flyers, had absented himself from the vote on the long-gun registry, and thanked him for his opposition to that piece of legislation. After hearing further interventions, the Speaker reserved his decision.[1]

On November 19, 2009, Irwin Cotler (Mount Royal) rose on a similar question of privilege with regard to ten percenters sent to some of his constituents by Joe Preston (Elgin–Middlesex–London). Mr. Cotler argued that these bulk mailings, which were targeted to ridings with identifiable Jewish communities, comparing the positions of the Conservative and Liberal parties on fighting anti-Semitism, fighting terrorism, and on their support for Israel, were not only false and misleading, but also contained allegations that were slanderous, damaging, and prejudicial to him and to his party. After hearing from other Members, the Speaker, noting that the majority of the arguments presented had concerned the facts of the matter, which were not for him to determine, reserved his decision.[2]

Resolution: On November 19, 2009, immediately after the exchanges on Mr. Cotler's question of privilege, the Speaker delivered his ruling on Mr. Stoffer's question of privilege. Referring to a similar case from 2005,[3] he concluded that the items mailed to the constituents of Sackville–Eastern Shore had indeed distorted the Member's true position and, by doing so, had infringed on his privileges by affecting his

ability to function as a Member, and had the potential to create confusion in his constituents' minds, and that may have unjustly damaged his reputation and credibility with voters. Accordingly, he ruled that a *prima facie* case of privilege did exist, and he invited the Member to move his motion.

On November 26, 2009, the Speaker delivered his ruling on Mr. Cotler's question of privilege. He agreed that the contents of the ten percenters had been damaging to Mr. Cotler's reputation and credibility, and left a wrong impression about his long-standing positions. The Speaker therefore found that a *prima facie* question of privilege did exist, consistent with other rulings. Accordingly, he invited Mr. Cotler to move his motion. (**Editor's Note**: Both decisions are reproduced below.)

Decisions of the Chair

November 19, 2009

The Speaker: I am now prepared to rule on the question of privilege raised on November 3, 2009 by the hon. Member for Sackville–Eastern Shore concerning the mailing of a ten percenter to some of his constituents by the hon. Member for Saskatoon–Wanuskewin. The mailing was critical of the voting record of the Member for Sackville–Eastern Shore on the issue of the long-gun registry.

I would like to thank the hon. Member for raising this matter and providing the Chair with a copy of the material in question, as well as the Member for Saskatoon–Wanuskewin for his contribution on the issue.

In presenting his case, the Member for Sackville–Eastern Shore claimed that the Member for Saskatoon–Wanuskewin had sent a mailing to some of the constituents of Sackville–Eastern Shore that contained information that was factually wrong regarding his position on the long-gun registry as well as on his voting record on this matter. He accused the Member for Saskatoon–Wanuskewin of deliberately misleading his constituents and impugning his reputation on the work that he had done on legislation regarding the long-gun registry.

In his comments, the hon. Member for Saskatoon–Wanuskewin obliquely acknowledged, without apologizing, that he had made an error and that the ten percenter in question was incorrect in reference to the Member for Sackville–

Eastern Shore. The Member for Saskatoon–Wanuskewin then thanked the hon. Member for his long-standing opposition to the long-gun registry.

The situation before us today is analogous to one in 2005 in which a similar mailing was sent to the constituency of the hon. Member for Windsor West. That mailing had the effect of distorting the Member's voting record, again on the gun registry and thereby misinforming his constituents. In finding a *prima facie* case of privilege, on April 18, 2005, *Debates*, page 5215, I stated:

> This may well have affected his ability to function as a Member and may have had the effect of unjustly damaging his reputation with voters in his riding.

The Thirty-Eighth Report of the Standing Committee on Procedure and House Affairs tabled on May 11, 2005, on the same matter concurred in that view.

Again, I quote:

> The Member for Windsor West noted that he had received complaints from constituents as a result of the mailing. By unjustly damaging his reputation with voters in his riding, it thereby impairs his ability to function as a Member.

Having reviewed the material submitted, as well as the arguments made, the Chair can only conclude that the mailing sent to the constituents of Sackville–Eastern Shore did distort their Member's true position on the long-gun registry and, at the very least, had the potential to create confusion in their minds.

It may also have had the effect of unjustly damaging his reputation and his credibility with the voters of his riding and, as such, infringing on his privileges by affecting his ability to function as a Member.

Accordingly, I find that a *prima facie* case of privilege does exist and I invite the hon. Member for Sackville–Eastern Shore to move his motion now.

November 26, 2009

The Speaker: I am now prepared to rule on the question of privilege raised on November 19, 2009, by the hon. Member for Mount Royal concerning the mailing of a ten percenter to some of his constituents by the hon. Member for Elgin–Middlesex–London comparing the positions of the Conservative Party of Canada and the Liberal Party of Canada on certain aspects of Canada's policy in the Middle East.

I would like to thank the hon. Member for Mount Royal for having raised this important matter. I would also like to thank the Parliamentary Secretary to the Prime Minister and the Minister of Intergovernmental Affairs, the Whip of the Bloc Québécois, the Member for Windsor West, the Member for Saint-Laurent–Cartierville, the Leader of the Government in the House of Commons and the Member for Eglinton–Lawrence for their comments.

In outlining his case, the hon. Member for Mount Royal stated that a mailing purporting to contain information on three issues, namely, fighting anti-Semitism, fighting terrorism and supporting Israel, was sent to some of his constituents, as well as to other ridings with identifiable Jewish communities.

The Member went on to claim that this mailing was not only, in the words of the hon. Member, "false and misleading", but also "slanderous, damaging and prejudicial" to the Liberal Party and, by extension, himself.

This argument was supported by the Whip for the Bloc Québécois, the hon. Member for Windsor West, the hon. Member for Saint-Laurent–Cartierville and the hon. Member for Eglinton–Lawrence.

In response, the hon. Parliamentary Secretary to the Prime Minister explained in some detail the content of the ten percenter in question and defended its veracity. For his part, the hon. Leader of the Government in the House of Commons pointed out that all parties are engaged in this style of communication.

As hon. Members know, in deciding on a question of privilege, the Speaker is not charged with determining the facts; the Chair's ruling is limited to whether on first impression, *prima facie*, the matter before the House merits

priority consideration. In cases where a Member alleges that he has experienced interference in the performance of his parliamentary duties, the Speaker's task is particularly difficult. As *O'Brien and Bosc* states at page 111:

> It is impossible to codify all incidents which might be interpreted as matters of obstruction, interference, molestation or intimidation and as such constitute *prima facie* cases of privilege. However, some matters found to be *prima facie* include the damaging of a Member's reputation, the usurpation of the title of Member of Parliament, the intimidation of Members and their staff and of witnesses before committees, and the provision of misleading information.

The Chair has examined the numerous documents submitted in this case. Having heard all the arguments presented, I must agree with several Members who suggested that there is no denying the critical role that context played in shaping the cumulative net effect of the words used in this mailing. In my view, the end result was a negative effect that spilled over to the Member for Mount Royal in a very direct and personal way.

It is not for the Chair to comment either way on the accuracy or inaccuracy of the comparisons drawn on the bulk mailing complained of by the Member for Mount Royal. That said, however, the Chair has no difficulty concluding that any reasonable person reading the mailing in question, and this would, of course, include the constituents of Mount Royal, would have likely been left with an impression at variance with the Member's long-standing and well-known position on these matters.

Therefore, I must conclude that the Member for Mount Royal, on the face of it, has presented a convincing argument that the mailing constitutes interference with his ability to perform his parliamentary functions in that its content is damaging to his reputation and his credibility.

Consistent with the ruling given on November 19, 2009, in relation to the hon. Member for Sackville–Eastern Shore and with other rulings in relation to mailings in 2005, and I suggest hon. Members look at the ruling on November 3, 2005, pages 9489-90 of the *Debates*, the Chair finds that a *prima facie* question of privilege does exist. I therefore invite the hon. Member for Mount Royal to move his motion.

Postscript: On November 19, 2009, Mr. Stoffer moved that the matter of his question of privilege be referred to the Standing Committee on Procedure and House Affairs. The motion was adopted that day without debate.[4]

On November 29, 2009, Mr. Cotler moved that the matter of his question of privilege be referred to the Standing Committee on Procedure and House Affairs. Following debate, the question was put on the motion, and a recorded division was deferred. On November 30, 2009, the motion was adopted.[5]

On December 30, 2009, the Second Session of the Fortieth Parliament was prorogued. On March 15, 2010, in the Third Session of the Fortieth Parliament, the House adopted an Order of Reference reinstating the Standing Committee on Procedure and House Affairs' consideration of both Mr. Stoffer's and Mr. Cotler's questions of privilege.[6] However, in light of a subsequent decision by the Board of Internal Economy to limit the use of bulk mailings, the Committee recommended, in its Sixth and Seventh Reports, presented to the House on April 16, 2010, that the matters of the two questions of privilege be discharged without prejudice.[7] The House concurred in both Reports later that day.[8]

Editor's Note: On March 21, 2005, Brian Masse (Windsor West),[9] on May 3, 2005, Mark Holland (Ajax–Pickering)[10] and John Reynolds (West Vancouver–Sunshine Coast–Sea to Sky Country),[11] on May 10, 2005, Michael Chong (Wellington–Halton Hills),[12] and on October 27, 2005, Denis Coderre (Bourassa)[13] rose on five similar questions of privilege with respect to bulk mailings to the constituents of various Members. In each instance, the Speaker found the question of privilege to be *prima facie*. In the first four instances, the House agreed to refer the questions of privilege to the Standing Committee on Procedure and House Affairs. The Committee reported back to the House on Mr. Masse's question of privilege on May 11, 2005.[14] The questions of privilege raised by Mr. Holland, Mr. Reynolds and Mr. Chong were considered simultaneously by the Committee, which reported back to the House on June 22, 2005.[15] No motion of concurrence was moved for the Report covering Mr. Masse's question of privilege, or for the Report covering the questions of privilege from Mr. Holland, Mr. Reynolds and Mr. Chong. On November 15, 2005, the House defeated the motion to refer Mr. Coderre's question of privilege to the Standing Committee on Procedure and House Affairs.[16]

1. *Debates*, November 3, 2009, p. 6568.
2. *Debates*, November 19, 2009, pp. 6977-82.
3. *Debates*, April 18, 2005, pp. 5214-5.
4. *Debates*, November 19, 2009, p. 6982, *Journals*, p. 1058.
5. *Debates*, November 30, 2009, pp. 7403-4, *Journals*, pp. 1107-8.
6. *Debates*, March 15, 2010, pp. 459-60.
7. Sixth Report of the Standing Committee on Procedure and House Affairs, presented to the House on April 16, 2010 (*Journals*, p. 217); Seventh Report of the Standing Committee on Procedure and House Affairs, presented to the House on April 16, 2010 (*Journals*, p. 217).
8. *Journals*, April 16, 2010, p. 217.
9. *Debates*, March 21, 2005, pp. 4377-8; *Debates*, April 18, 2005, pp. 5214-5, 5220, *Journals*, pp. 642, 645.
10. *Debates*, May 3, 2005, pp. 5548-9, *Journals*, p. 685; *Debates*, May 4, 2005, p. 5674, *Journals*, p. 701.
11. *Debates*, May 3, 2005, pp. 5584-5, *Journals*, p. 688.
12. *Debates*, May 10, 2005, pp. 5885-9, *Journals*, p. 728.
13. *Debates*, October 27, 2005, pp. 9190-3; November 3, 2005, pp. 9489-509; November 4, 2005, pp. 9513-20; November 14, 2005, pp. 9555-77, 9595; *Journals*, November 3, 2005, pp. 1250-1.
14. Thirty-Eighth Report of the Standing Committee on Procedure and House Affairs, presented to the House on May 11, 2005 (*Journals*, p. 738).
15. Forty-Fourth Report of the Standing Committee on Procedure and House Affairs, presented to the House on June 22, 2005 (*Journals*, p. 958).
16. *Journals*, November 15, 2005, pp. 1273-4.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: damaging the reputation of a Member; improper use of House resources

October 5, 2010 *Debates*, pp. 4780-1

Context: On September 22, 2010, Candice Hoeppner (Portage–Lisgar) rose on a question of privilege with regard to an e-mailed media release issued by the Press Secretary to Michael Ignatieff (Leader of the Official Opposition). Ms. Hoeppner argued that, in addition to containing comments she considered a grave slur upon her reputation, the release had constituted an improper use of House resources to transmit inaccurate information about a Member. After hearing from other Members, the Speaker reserved his decision.[1]

Resolution: On October 5, 2010, the Speaker delivered his ruling. With regard to the alleged misuse of House resources, he referred to a February 12, 2009 ruling[2] and reaffirmed that it was the role of Members, and not of the Chair, to monitor the contents of e-mails and other electronic communications. He also indicated that such communications may not be protected by privilege and may therefore expose Members to legal action. With respect to comments or statements made outside the House, the Speaker stated that his predecessors had consistently ruled that these were not matters in which the Chair intervenes. Concerning the allegation that the press release had tarnished the reputation of Ms. Hoeppner, the Speaker addressed the precedents cited by her, specifically one concerning mailings sent into the constituency of Sackville–Eastern Shore, where the Speaker had found a *prima facie* question of privilege.[3] He stated that the two were not analogous and that they differed in several respects. First, the Stoffer case involved mailings paid for from a central budget in the House. Second, the mailings were mailed by another Member into the complaining Member's constituency. Finally, the information in those mailings was factually incorrect, thereby directly distorting the Member's position on an issue. The Speaker ruled that Ms. Hoeppner had not been impeded or obstructed in the carrying out of her duties and that therefore the incident did not provide grounds for a finding of a *prima facie* question of privilege.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on September 22, 2010, by the hon. Member for Portage–Lisgar concerning an e-mailed media release issued by the Press Secretary to the Leader of the Official Opposition.

I would like to thank the hon. Member for Portage–Lisgar for having raised this matter, as well as the hon. Government House Leader, the hon. House Leader of the Official Opposition and the hon. Member for Outremont, for their interventions.

The Member for Portage–Lisgar, in presenting her question of privilege, stated that she believed that in addition to containing comments about her, which she called a grave slur upon her reputation, the media release at issue constituted an improper use of House resources.

The House Leader for the Official Opposition argued that, read carefully in their full context, the statements contained in the media release were reasonable interpretations of comments the Member for Portage–Lisgar had made in a CBC radio interview and, thus, were simply matters of public discourse and debate.

Let me deal first with the Member for Portage–Lisgar's contention that House of Commons resources were misused in this case. I wish to remind the House that in a ruling on February 12, 2009, at pages 713-4 of *Debates*, I stated that it is not the role of the Chair to monitor the contents of e-mails and other electronic communications. I added that:

> … one important consideration Members must take into account is that communications via the Internet and e-mail may not be protected by privilege and may expose Members to the possibility of legal action for material they disseminate.

Obviously, in cases where the staff of a Member is involved, it is ultimately the Member who bears responsibility for ensuring that House resources are used appropriately.

With regard to the main argument raised by the Member for Portage–Lisgar, the Chair wishes to state at the outset that it takes very seriously matters in which the reputation of a Member is involved. In adjudicating such cases, the Chair is guided by well-established principles. As is stated in *House of Commons Procedure and Practice*, Second Edition, at page 111:

> In ruling on such matters, the Speaker examines the effect the incident or event had on the Member's ability to fulfill his or her parliamentary responsibilities. If, in the Speaker's view, the Member was not obstructed in the performance of his or her parliamentary duties and functions, then a *prima facie* breach of privilege cannot be found.

Consistent with this, in a ruling by Mr. Speaker Fraser from May 5, 1987, at page 5766 of the *Debates*, which can also be found at pages 111 to 112 of *O'Brien and Bosc*, it states:

> The privileges of a Member are violated by any action which might impede him or her in the fulfilment of his or her duties and functions. It is obvious that the unjust damaging of a reputation could constitute such an impediment. The normal course of a Member who felt himself or herself to be defamed would be the same as that available to any other citizen, recourse to the courts under the laws of defamation with the possibility of damages to substitute for the harm that might be done.

In support of her argument, the Member for Portage–Lisgar referred to a ruling by Speaker Sauvé from October 29, 1980. But I would invite the House to a closer reading of the ruling at pages 4213-4 of *Debates*, in which the Speaker stated:

> … it seems to me that to amount to contempt, representations or statements about our proceedings, or of the participation of Members should not only be erroneous or incorrect, but rather should be purposely untrue and improper and import a ring of deceit…. My role, therefore, is to interpret the extracts of the document in question not in terms of their substance, but to find whether, on their face, they represent such a distorted interpretation of the events or remarks in our proceedings that they obviously attract the characterization of false.

Members will note that in this 1980 case, Madam Speaker Sauvé is speaking about the interpretation of statements made in the course of our proceedings; in the case now before us, the statements at issue were made in the context of a media interview. This is a significant difference.

In the past, when Members have raised concerns about comments made outside the House and whether or not they constituted breaches of privilege, successive Speakers have been consistent in ruling that these are not matters in which the Chair intervenes. In support of that, I refer Members to *House of Commons Procedure and Practice*, Second Edition, page 614.

Speaker Sauvé succinctly summarized the issue in an October 12, 1983, ruling (*Debates*, p. 27945), when she stated:

> Parliamentary privilege is limited in its application…. If Members engage in public debate outside the House, they enjoy no special protection. To invoke privilege, the offence must be attached to a parliamentary proceeding.

In view of these key precedents, it is therefore not surprising that there have been very few instances where the Speaker has found a *prima facie* breach of privilege related to the damaging of a Member's reputation. The Member for Portage–Lisgar recalled one such instance in my ruling of November 19, 2009, which can be found at page 6982 of the *Debates*, concerning mailings sent into the constituency of Sackville–Eastern Shore.

However tempting it is to regard that particular instance as analogous to the one currently before us, it did differ materially in several respects. First, that case involved mailings paid for from a central budget in the House. Then, these mailings were sent directly by another Member into the complaining Member's riding to large numbers of his constituents. Finally, the information in those mailings was factually incorrect, thereby directly distorting the Member's position on an issue.

Instead of the case just described, I believe that the ruling I gave on February 12, 2009, at pages 765-6 of the *Debates*, is more helpful in this case. On that occasion, I stated:

> In adjudicating questions of privilege of this kind, the Speaker is bound to assess whether or not the Member's ability to fulfill his parliamentary functions effectively has been undermined…. [W]ithout minimizing the seriousness of the complaint or dismissing the gravity of the situation raised by the hon. Member, it is difficult for the Chair to determine, given the nature of what has occurred that the Member is unable to carry out his parliamentary duties as a result.

On balance, based on the arguments presented in this instance, and given the relevant precedents, I cannot find that the Member has been impeded or obstructed in carrying out her duties. While the Chair is sympathetic to the concerns of the Member for Portage–Lisgar, in view of the strict exigencies the Chair is bound to observe in cases of this kind, I cannot find a *prima facie* question of privilege.

The House will have noted that in rising on her question of privilege, the Member for Portage–Lisgar did get an opportunity to correct the record: she has been able to dispel any wrong impression of what her true position is on the issue raised in the e-mail media release at the centre of this controversy.

I therefore thank hon. Members for their attention on this matter.

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1. *Debates*, September 22, 2010, pp. 4253-4.
2. *Debates*, February 12, 2009, pp. 713-4.
3. *Debates*, November 19, 2009, p. 6982.

Parliamentary Privilege

Rights of Members

Freedom from obstruction, interference, intimidation and molestation: occupation of Member's parliamentary office

March 25, 2011 *Debates*, pp. 9245-6

Context: On March 10, 2011, John Duncan (Minister of Indian Affairs and Northern Development, Federal Interlocutor for Métis and Non-Status Indians and Minister of the Canadian Northern Economic Development Agency) rose on a question of privilege, alleging that the unauthorized occupation of his Parliament Hill office by Niki Ashton (Churchill), a delegation of the Sayisi Dene, and several members of the media constituted a sit-in and was tantamount to the intimidation or obstruction of the Minister's staff. The Minister claimed that Ms. Ashton had facilitated the Sayisi Dene delegation in getting access to the building which housed his office. The Speaker advised that he would delay ruling on the matter until he could hear from Ms. Ashton.[1] Later in the sitting, Ms. Ashton rose to respond to the allegation and stated that she had simply been trying to organize a meeting between her visiting constituents and the Minister. She added that the elders were invited to sit in the office until a response could be given. She concluded that, throughout the visit, the tone of conversation had been one of the utmost respect and that this had been confirmed by the elders who had led the delegation. The Deputy Speaker (Andew Scheer) advised Members that the Speaker would take the matter under advisement.[2]

Resolution: On March 25, 2011, the Speaker delivered his ruling. He stated that while Members need access to Ministers to fulfill their parliamentary functions, there are various well-known, entirely acceptable avenues available to them to secure such access. He criticized Ms. Ashton for her abuse of these usual practices and disregard of the common courtesies between Members and praised the calm, measured approach taken by the Minister's staff in handling the situation. In the absence of evidence to suggest that the staff of the Minister were obstructed in the fulfillment of their duties, the Speaker ruled that there was no *prima facie* question of privilege.

Decision of the Chair

The Speaker: Order, please. I am now prepared to rule on the question of privilege raised on March 10, 2011, by the Minister of Indian Affairs and Northern Development concerning an alleged sit-in at his Parliament Hill office.

I wish to thank the Minister for having raised this matter and the Members for Churchill and Yukon for their comments.

In raising this question of privilege, the Minister of Indian Affairs and Northern Development explained that on Wednesday, March 9, 2011, the Member for Churchill arrived at his office, uninvited and accompanied by a group of the Sayisi Dene and media representatives, pressing his staff for an immediate meeting despite his absence. In his view, this constituted a protest and a sit-in. Characterizing the incident as a serious breach of trust and a serious matter from a security standpoint, the Minister expressed concern that his employees were made uncomfortable and prevented from doing their work.

The Member for Churchill countered that the visit was simply an attempt to obtain a meeting with the Minister and not an orchestrated event with the intention of obstructing the work of the Minister's office.

As all hon. Members will recall, *House of Commons Procedure and Practice*, Second Edition, at page 108 states:

> Speakers have consistently upheld the right of the House to the services of its Members free from intimidation, obstruction and interference.

It also notes, on the same page, that:

> Over the years, Members have regularly brought to the attention of the House instances which they believed were attempts to obstruct, impede, interfere, intimidate or molest them, their staffs or individuals who had some business with them or the House.

In the case before us, the Chair is being asked to determine whether the unauthorized presence in the Minister's office of the Member for Churchill, a delegation of the Sayisi Dene and the media was tantamount to intimidation or obstruction of the Minister's staff. To assist me, I reviewed the report on this matter prepared by House of Commons security, who attended the scene after being called upon for assistance by the Minister's staff. It is clear to the Chair from the submissions, as well as the security report, that those occupying the Minister's office were uninvited and did not have proper authorization to be there. As well, the Chair believes that the Minister's staff was indeed uncomfortable, though they appeared to have handled the situation with aplomb and good grace.

I am troubled that the Member for Churchill, without prior warning, took it upon herself to lead a group to another Member's office. That media representatives were part of this group makes the situation that much more unfortunate. No matter how well intentioned the Member for Churchill was, or how amicable the outcome of this particular incident, it was an unauthorized presence in a Minister's office that left ministerial staff uncomfortable enough to warrant the assistance of security. It is a credit to the Minister's staff, and it must be said to the unexpected visitors as well, that this incident did not escalate further and that the tone of the exchange was respectful.

It is well understood that Members need access to Ministers to fulfill their parliamentary functions but it is equally true that there are various well-known, entirely acceptable avenues available to secure such access. Members are expected to avail themselves of these mutually agreed upon opportunities rather than resorting to other unorthodox means that may place colleagues in untenable situations. Because of the actions of the Member for Churchill, for almost an hour, her guests occupied the office of the Minister without a previously arranged appointment. This is a clear abuse of the usual practices that all Members are expected to follow. The Chair is disappointed that the Member for Churchill showed a complete disregard for the common courtesies that are to be observed between Members. In this case, the situation was well managed, but we may not always be so lucky.

It does not require a great deal of imagination to foresee the kind of circus atmosphere that could result if all Members took it upon themselves to escort

constituents, delegations or other citizens—however worthy their cause or objective—to whichever other Member's office they chose.

That being said, in this particular case, in large part due to the calm, measured approach taken by the Minister's staff in handling the situation, there is little evidence to suggest that the staff of the Minister were obstructed in the fulfillment of their duties. The Minister himself was careful not to overstate the impact of the incident on his staff. In view of the very high threshold required in adjudicating such situations, in this circumstance the Chair cannot find that a *prima facie* question of privilege has arisen in this matter.

The Chair expects that all Members will heed the lesson of this incident in an effort to maintain the integrity of the precinct as a work environment where all Members feel secure and respected.

I ask for the active collaboration of all Members in this and I thank all Members for their attention.

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1. *Debates*, March 10, 2011, pp. 8913-4.
2. *Debates*, March 10, 2011, p. 8936.

Parliamentary Privilege

Procedure

Procedure for dealing with matters of privilege: time of raising and notice requirements

October 29, 2001 *Debates*, p. 6671

Context: On October 29, 2001, John Reynolds (West Vancouver–Sunshine Coast) rose on a question of privilege to claim that David Collenette (Minister of Transport) was in contempt of the House because he had made a statement about Government policy outside the House. Mr. Reynolds maintained that this brought the authority and dignity of the House into question. After hearing from other Members, the Speaker ruled immediately that the matter was not a *prima facie* breach of privilege.[1] He then took the opportunity to remind the House of what elements Members should include when giving notice of a question of privilege. (**Editor's Note:** Only the section of the Speaker's decision describing notice requirements for raising questions of privilege is reproduced below.)

Statement of the Chair

The Speaker: I would remind all hon. Members that apart from the one-hour notice requirement for questions of privilege, there are other rules governing notice of intention to raise a question of privilege.

House of Commons Procedure and Practice, the Marleau and Montpetit book we all read so rigorously, at pages 123 and 124 describes them as follows:

> The notice submitted to the Speaker should contain four elements:
>
> 1. It should indicate that the Member is writing to give notice of his or her intention to raise a question of privilege.
>
> 2. It should state that the matter is being raised at the earliest opportunity.

3. It should indicate the substance of the matter that the Member proposes to raise by way of a question of privilege.

4. It should include the text of the motion which the Member must be ready to propose to the House should the Speaker rule that the matter is a *prima facie* question of privilege.

The letters I have been receiving lately have been deficient in respect of these matters. I draw them to the attention of the hon. Members in case some time I fire the letter back and say I will not hear it today and you will have to send me proper notice. Notice has been accordingly given. Of course we all want to comply with the rules.

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1. *Debates*, October 29, 2001, pp. 6669-71.

Parliamentary Privilege

Procedure

Procedure for dealing with questions of privilege: notice requirements; questions of privilege based on committee reports

March 3, 2011 — *Debates*, pp. 8629-30

Context: On February 18, 2011, Libby Davies (Vancouver East) rose on a point of order with regard to the process whereby Members give notice of their intention to raise questions of privilege arising from committee reports. She expressed concern that a Member had given notice of his intention to raise a question of privilege arising from a committee report before the report had actually been presented, and was then given priority over another Member who had given notice immediately after the presentation of the report. Ms. Davies asked the Speaker to examine the matter and to clarify when it was appropriate to give notice of one's intention to raise a question of privilege arising from a committee report.[1]

Resolution: The Speaker delivered his ruling on March 3, 2011. He cited *House of Commons Procedure and Practice*, 2009, which specifies that a report must be presented to the House before a Member can give notice of a question of privilege related to its contents. Accordingly, in the interest of bringing clarity to this procedure, the Speaker declared that he would no longer accept notices of questions of privilege based on committee reports until the reports in question had been presented to the House.

Decision of the Chair

The Speaker: I am now ready to rule on the point of order raised by the hon. Member for Vancouver East on February 18 concerning the need to clarify the process by which Members give notice of questions of privilege arising out of committee reports. I thank the hon. Member for bringing this matter to the attention of the House.

The House will recall that on February 17, [2011],[2] two Members gave notice of questions of privilege related to the Sixth Report of the Standing Committee on Foreign Affairs and International Development. One Member

did so before the Report was tabled, while the other waited until the Report had actually been tabled and, as a result, the Member who chose to wait to give notice until the Report had been tabled was not the first to be recognized.

In reference to the procedures Members are to follow in raising questions of privilege, *House of Commons Procedure and Practice*, Second Edition, at page 142 states:

> A Member wishing to raise a question of privilege which does not arise out of the proceedings during the course of a sitting must give notice before bringing the question to the attention of the House. The Member must provide a written statement to the Speaker at least one hour before raising the question of privilege in the House.

For questions of privilege arising out of committee proceedings, *O'Brien and Bosc* states on page 151:

> If the committee decides that the matter should be reported to the House, it will adopt the report which will be presented to the House at the appropriate time under the rubric "Presenting Reports from Committees" during Routine Proceedings.
>
> Once the report has been presented, the House is formally seized of the matter. After having given the appropriate notice, any Member may then raise the matter as a question of privilege.

This passage implies that a report must have been presented to the House before a Member can give notice of a question of privilege related to its contents. This is akin to our procedures with regard to notices of motions to concur in committee reports, which cannot be submitted until the report in question has been presented.

The Chair is cognizant that to do otherwise with regard to notices of questions of privilege might well give rise to situations in which a Member could give notice as soon as a committee begins to consider a matter, or perhaps even earlier, when there is but an inkling that something may arise. This is neither desirable nor practicable.

Accordingly, in the interest of bringing clarity to this procedure, from now on, the Chair will not accept notices of questions of privilege based on committee reports until after the reports are tabled.

I thank hon. Members for their attention.

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1. *Debates*, February 18, 2011, pp. 8393-4.
2. The published *Debates* read "2001" instead of "2011".

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Chapter 2 — The House and Its Members

Introduction

Speakers of the House of Commons are, from time to time, called upon to rule on matters touching on the status of individual Members of Parliament and their affiliation with parties and other less formal groupings. The Speaker's responsibility for the administration of the House, its resources and its employees may also necessitate rulings from the Chair, with regard to, for example, the introduction and use of new technologies in the conduct of the business of the House, and to the availability and content of parliamentary publications and documents.

In addition, a number of decisions have been included in this chapter which relate to the authority of the Speaker with respect to motions and amendments, to their procedural admissibility, and to the formula for the number of allotted days. Three rulings in particular exemplify the breadth and character of the decisions included in this chapter.

First, on September 19, 2001, Peter MacKay (Pictou–Antigonish–Guysborough) rose on a point of order to ask, on behalf of the 20 Members forming the Progressive Conservative Party/Democratic Representative (PC/DR) Coalition (12 Members of the Progressive Conservative Party and 8 independent Members, formerly with the Canadian Alliance), that they be granted all the privileges and rights afforded to recognized parties. On September 24, the Speaker ruled that, as the PC/DR Coalition had more than 12 Members, he did not find any procedural objection to the request that they be allowed to sit together and to represent themselves as a group for parliamentary purposes. However, he also concluded that, since the group had declined to present themselves as a party in the Chamber, they could not be awarded any of the additional privileges associated with that status.

In the spring of 2005, the Conservatives threatened to force an election on the Liberal minority Government by moving a no-confidence motion on an allotted day. Not only did the Government decide to postpone the designation of allotted days, but Tony Valeri (Leader of the Government in the House of Commons) undesignated an allotted day previously announced. In turn, the Official Opposition used a motion to concur in a committee report as a

means of testing the confidence of the House in the Government. The ruling on a challenge to an amendment to that concurrence motion is illustrative of the Speaker's view that it was not up to the Chair to judge the substance of a motion, but to ensure that the proper procedures for its presentation were respected.

Last, on April 1, 2010, the Speaker ruled on a matter regarding the use of a social networking site to reference the presence or absence of Members in the House. In noting the impossibility for the Chair to monitor the use of Members' personal digital devices, the Speaker suggested that the Standing Committee on Procedure and House Affairs consider issues related to new technologies and their impact on the House and its committees. The Committee undertook a study on the matter and reported back to the House recommending, in part, that the Speaker be guided by his own discretion in enforcing the Standing Orders and the accepted procedures and practices regarding the use of new technologies.

The House and Its Members

Standing Orders: Unprovided Cases; documents relevant to proposed amendments to the Standing Orders available in one official language only

March 15, 2001 *Debates*, pp. 1726-8

Context: On March 1, 2001, André Bachand (Richmond–Arthabasca) rose on a point of order with respect to Government Business No. 2 (amendments to Standing Orders 76(5) and 76.1(5) (regarding the Speaker's power to select amendments at report stage)) adopted on Tuesday, February 27, 2001.[1] In particular, he referred to the following specification in the proposed amendments to the Standing Orders: "in exercising this power of selection, the Speaker shall be guided by the practice followed in the House of Commons of the United Kingdom." Mr. Bachand argued that, since any relevant documentation from the United Kingdom would be available in English only, the proposed change to the Standing Orders would interfere with his ability and with that of all francophone Members of the House to prepare report stage amendments and to have an equal opportunity to know and understand what constitutes satisfactory amendments, and that the text in question also failed to respect the *Official Languages Act* (**Editor's Note:** The Speaker cannot rule on matters of law). Mr. Bachand asked that the Chair suspend the implementation of the changes to the Standing Orders until his rights and those of other francophone Members had been protected and respected. After hearing from other Members, the Speaker took the matter under advisement.

Resolution: On March 15, 2001, the Speaker delivered his ruling. He noted that Standing Order 1 directs the Speaker to resolve procedural questions which have not been provided for or mentioned in the Standing Orders or other Orders of the House by referring first to the usages, forms, customs and precedents of the House of Commons of Canada; then to parliamentary tradition in Canada; then to practices in other jurisdictions outside Canada, so far as they are applicable to the House. The Speaker emphasized that this last provision referred not so much to the rules of those jurisdictions but to the traditions on which they are based. Having affirmed the Speaker's responsibility to protect the right of Members to work in both official languages, he noted that the availability of documents in either of the official languages is not a consideration, since it is the Speaker's interpretation of those practices and their application in the House that ought to concern Members. The Speaker also added that he could not grant the request made by Mr. Bachand

to suspend the implementation of the amendments in question because they had already become part of the Standing Orders and only the House, and not the Speaker, had the authority to change them.

Decision of the Chair

The Speaker: Order, please. I am ready to rule on the point of order raised on Thursday, March 1, by the hon. Member for Richmond–Arthabaska.

The hon. Member's concerns stem from the adoption by the House, on February 27, 2001, of a Government motion to amend the note to section (5) of Standing Order 76 and the note to section (5) of Standing Order 76.1. As you no doubt know, these sections deal with the Speaker's power to select amendments at the report stage. The hon. Member's problem lies in the fact that the notes contain the following phrase:

> —in exercising this power of selection, the Speaker shall be guided by the practice followed in the House of Commons of the United Kingdom.

The hon. Member argues that, to do his job properly if he has to draft amendments, he must have access to the rules governing the selection of amendments in his own language, French. He indicates that documents from the United Kingdom are available in English only and that, as a result, he cannot do his work effectively, since he cannot understand the nuances and subtleties of the rules.

He asks the Chair to suspend the implementation of the adopted amendments until his rights and those of other francophones are protected and respected.

I wish to thank the Government House Leader, the Whip of the Bloc Québécois, the Parliamentary Secretary to the Government House Leader, the Leader of the Progressive Conservative Party and the Member for Regina–Qu'Appelle for their interventions.

As hon. Members know well, the role of the Speaker is to preside over the business of the House of Commons and to rule on procedural matters,

whether this involves interpreting Standing Orders or deciding issues of privilege or decorum.

The discussion on this point of order made various references to specific statutes. The hon. Member for Richmond–Arthabaska referred to the *Official Languages Act* and the *Constitution Act, 1867*, while the Parliamentary Secretary to the Government House Leader referred to the *Parliament of Canada Act*, noting that Act's specific reference in section 4 to the House of Commons of the United Kingdom.

While these references are an interesting backdrop, it must be remembered that it is not the Speaker's role to rule on the application of any act, but rather to examine issues in light of possible transgressions of procedural practice and procedural precedent.

The hon. Member insists that he will not have access to the rules governing the drafting of amendments because they will be "in English".

I would point out that the House has simply decided to amend the note to section (5) of Standing Order 76 and the note to section (5) of Standing Order 76.1 by making explicit reference to the practice followed in the House of Commons of the United Kingdom.

Moreover, Standing Order 1 states the following:

> In all cases not provided for hereinafter, or by other Order of the House, procedural questions shall be decided by the Speaker or Chairman, whose decisions shall be based on the usages, forms, customs and precedents of the House of Commons of Canada and on parliamentary tradition in Canada and other jurisdictions, so far as they may be applicable to the House.

This Standing Order stipulates that if, during proceedings in matters of public interest, a procedural question arises that has not been provided for or mentioned in the Standing Orders or other Order of the House, the Speaker of the House must base his or her decision first on the usages, forms, customs and precedents of the House of Commons of Canada; then on parliamentary

tradition in Canada; then on that in other jurisdictions, to the extent that it may be applicable to the Canadian House of Commons. This provision does not refer directly to the codified rules or Standing Orders of other jurisdictions, but primarily to the tradition on which they are based.

Standing Order 1, which has existed since 1867, recognized the origins of our Westminster Parliament and stated that this House would be guided by British precedent. From 1867 to 1986, it stated this explicitly:

> In all cases not provided for—, the rules, usages and forms of the House of Commons of the United Kingdom—shall be followed.

In 1986, the House amended Standing Order 1 recognizing that parliamentary practice in Canada had evolved to the point where, in unprovided cases, it might seek guidance from the wider community of parliaments. The members of the Special Committee on the Reform of the House of Commons considered that the practices of the Canadian House of Commons need no longer be tied to those of any other assembly or any other country. However, they recognized that in unprovided cases, there was still great usefulness in examining the precedents and authorities in other legislatures and parliaments, especially those in the Commonwealth.

Thus, on the Committee's recommendation, the House adopted the current wording for Standing Order 1 to reaffirm that the House of Commons had the freedom to tailor its procedure to its own needs while preserving Canadian traditions.

I have drawn such a detailed history of Standing Order 1 to show you that the House of Commons of Canada has often turned to the United Kingdom in cases that were not provided for. Of course, the situation has evolved, and now we also consult other jurisdictions to the extent that their rules or practices are applicable to the House. However, the fact remains that if, at the report stage, a situation arises that is not covered by our practices or by the practices of the United Kingdom, I would be required, under Standing Order 1, to consult the practices of other jurisdictions.

In such circumstances, the availability of documents in either of our official languages is not a consideration. Instead, I would respectfully suggest that it is the interpretation of such practice and the Chair's judgement on how such practice will be applied in this House that is the key concern for Members.

The House has a long history of consulting the precedents in other parliaments that have followed the Westminster tradition, and the language of these documents has never seemed to be an obstacle. When we discuss procedural matters during the daily business of the House, we frequently consult the various editions of *Erskine May* to develop our arguments. The wide range of documents that we consult on parliamentary precedent are not necessarily available in both official languages, but we have been able to work with them.

The House recognizes that Members are entitled to receive service in both official languages. Simultaneous interpretation is provided in the House and in committees and Members have access to free translation services. One of the roles of the Speaker is to protect and defend Members' rights to work in the official language of their choice.

In that regard, in keeping with what I said earlier about the application of other practice in this Chamber, I am currently studying the application of these notes to Standing Orders 76 and 76.1, and I will return to the House with a statement on how this note will be interpreted. The statement will, of course, be available in both official languages and Members can govern themselves accordingly.

Meanwhile I cannot grant the request made by the hon. Member for Richmond–Arthabaska to suspend the implementation of the amendments in question. Because the motion was adopted by the House, these amendments are now part of the Standing Orders of the House, and it is my duty to be governed by the Standing Orders. Only the House can decide to change the Standing Orders. As always, the Chair is in the hands of the House, which may decide if and when it will modify the rules under which its deliberations are conducted.

I wish to thank the hon. Member for having raised this issue, and all those who made a useful contribution to the discussion.

Rt. Hon. Joe Clark: Mr. Speaker, I rise on a point of order. For my clarification, does that mean that it is no longer a requirement that documents respecting the procedures of the House of Commons be in both official languages?

The Speaker: The hon. Member will want to read the judgment the Chair has just given. I think he will find the answer in that judgment. I do not want to confuse him by giving answers to questions. I think the judgment is quite clear, and I know that he will find it so when he has a chance to review it.

Mr. Stéphane Bergeron (Verchères–Les Patriotes): Mr. Speaker, I simply would like you to clarify for me what you just said.

Am I right to think that the motion, as passed, does not change the Standing Orders of the House of Commons, but is meant to provide guidance to the Chair? May I ask you also if the subject matter of the motion in question does not involve a number of existing practices in Canada, which would eliminate the need to look at what is done in the United Kingdom?

I do not know, Mr. Speaker, if you understand what I am asking. I will make it clearer. I would like you to tell me if this motion is simply meant to guide you in your rulings and does not change the Standing Orders of the House of Commons.

The motion refers to a practice followed in the United Kingdom. However, according to the ruling you just gave, foreign practices have to be taken into account only when there is no existing practice here, in Canada.

My question is this: since there is a practice that has been followed in Canada for a number of years with regard to the selection of motions at report stage, does what you just told us eliminate the need to refer to a foreign practice?

The Speaker: Once again, I think the Member will find the answer to his question in the Speaker's ruling I just made, which he will soon be able to read.

I also indicated in my ruling that there will be another presentation by the Chair regarding the acceptability of amendments at report stage. There will be something on this subject soon.

With the ruling I gave today and with the presentation I will soon make to the House, the Member will certainly have all the answers he needs, or at least I hope he will.

Postscript: On March 21, 2001, the Speaker made a statement to the House explaining his interpretation of the notes to Standing Orders 76 and 76.1 regarding the selection of report stage amendments.[2]

1. *Debates*, February 27, 2001, pp. 1249-51, *Journals*, pp. 139-40.
2. *Debates*, March 21, 2001, pp. 1991-3.

The House and Its Members

Status in the House: Progressive Conservative Party/Democratic Representative Caucus Coalition

September 24, 2001 *Debates*, pp. 5489-92

Context: On September 19, 2001, Peter MacKay (Pictou–Antigonish–Guysborough) rose on a point of order to request that the Speaker recognize the 20 Members of the Progressive Conservative Party/Democratic Representative Coalition (PC/DR) (12 Members of the Progressive Conservative Party and 8 independent Members, formerly with the Canadian Alliance) as the "fourth largest political entity" in the House with the privileges and rights associated with recognized party status. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: On September 24, 2001, the Speaker delivered his ruling. He cited procedural authorities that defined "party" and "recognized party" as a group of Members that satisfied certain criteria—namely: a minimum of 12 Members; a slate of House Officers as official spokespersons; that they work as a cohesive unit, and that they serve under the same banner. He confirmed that since the Progressive Conservatives retained their status as a recognized party, the PC/DR Coalition would continue to enjoy the precedence afforded to the Progressive Conservatives. He added that the officers named by the PC/DR Coalition would be recognized as the Coalition's spokespersons in the usual operations of the House and its committees, and that he could not find any procedural objection to the request that Members be seated together in the House. He noted, however, that the Coalition had declined to present itself as a party in the Chamber, and ruled that, in the absence of this, questions of precedence and allotment of time would be matters for negotiation between the Coalition and the four recognized parties. He concluded that he could not grant full party recognition to a group which disavowed that title and which was clearly an amalgam of a party and a group of independent MPs.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Member for Pictou–Antigonish–Guysborough concerning the status in the House of the Progressive Conservative/Democratic Representative Coalition.

First, though, I want to thank all hon. Members for their gracious cooperation with the Chair when the House met last week. This cooperation made it possible to make appropriate interim arrangements without prejudice to any decision on this matter, and facilitated the orderly conduct of urgent business by postponing to an opportune time full consideration of this point of order.

The hon. Member for Pictou–Antigonish–Guysborough referred to a letter he had written to me concerning the establishment of the 20-member Progressive Conservative/Democratic Representative Coalition, its membership and the appointment of its officers. Meant to function, as he says, "within the machinery of the House of Commons", the Coalition seeks to be recognized officially in the House for certain procedural purposes. It is requesting "all of the privileges and rights" associated with recognition as the "fourth largest political entity" in the House, namely with respect to seating in the House, precedence and the allocation of time in all deliberations.

I thank the hon. Member for Pictou–Antigonish–Guysborough for having raised the matter on behalf of the Coalition. I would also like to thank the House Leader of the Official Opposition, the House Leader for the Bloc Québécois, the Government House Leader, the House Leader of the New Democratic Party and the hon. Member for Fraser Valley for their contributions to the discussion.

As various Members and many pundits have pointed out, the situation facing us is, in many ways, unprecedented, and I would ask for the House's indulgence as I try to untangle the skeins of argument that have been presented.

Let me deal first with the suggestion that this is perhaps a matter better decided by the House than by the Speaker. In this regard, Members have referred to the 1963 ruling by Mr. Speaker Macnaughton concerning the

fragmentation of the Social Credit Party and the resulting claims of the Ralliement des créditistes. That ruling is of some assistance and I will return to it later in my remarks but, like so many other references, it is not entirely on point. In the almost four decades since that ruling, our practice has evolved and I do not believe that it is inappropriate for the Chair in the present case to consider the matters that have been laid before it. Indeed, I believe that to do otherwise would be to shirk the Chair's undoubted responsibility to protect the rights of all minorities in the House.

Thus, I find it difficult to understand why, if it was appropriate for the New Democratic Party to argue for recognition before the Speaker in 1994, it is inappropriate for the Coalition to put its case to the Speaker today. In my view the Speaker must rule on these matters as he did in 1994.

I draw to Members' attention the words of Mr. Speaker Fraser, as reported in the *Debates* of September 24, 1990, on page 13216:

> I think we have a great tradition of protecting the rights of minorities, and I can assure the hon. Member that the rights of minorities will be protected by the Speaker in a way that is fair and equitable for all other Members.

Before we consider the arguments for and against the case for recognition presented by the hon. Member for Pictou–Antigonish–Guysborough, let us set aside the many points raised during the discussion that may be of peripheral interest but that are not relevant—let alone illuminating—to the question to be decided.

For example, there were several references made to the definition and recognition of political parties in statutes, notably the *Canada Elections Act* and the *Parliament of Canada Act*.

Of course it is a long held principle that the Speaker does not interpret matters of law. Nonetheless, political parties are a fundamental part of our electoral process and detailed requirements concerning their registration are

set out in Part 18 of the *Canada Elections Act*. The hon. House Leader for the New Democratic Party said:

> I do not think the House of Commons can be completely isolated from what takes place outside it and from the status people enjoy outside the House.

To be sure there are political parties outside the House and there are recognized parties and caucuses inside the House and these may be closely linked. In matters relating to the status or designation of individuals or groups in the House, the House makes its own decisions without necessarily limiting itself to standards and definitions used outside the House of Commons. Definitions used in the House of Commons are not drawn from statute; they are drawn from the practice of the House.

After a general election, the statutory focus shifts from the *Canada Elections Act* to the *Parliament of Canada Act* which latter Act, for example, stipulates the composition and role of the Board of Internal Economy. The bylaws of the Board in turn govern the execution of those statutory responsibilities through the administration of the House of Commons.

The arguments advanced by hon. Members referring to either of these statutes to the bylaws of the Board of Internal Economy or to the Board's responsibility for matters of finance and administration do not concern us here. The hon. Member for Pictou–Antigonish–Guysborough has rightly explained that he intends to raise these issues with the Board in due course, so these statutory and resourcing matters need not detain us.

The hon. Member for Winnipeg–Transcona implied in argument that recognition by the House involved an application of the rules surrounding a marriage ceremony. The hon. Member is an expert in holy matrimony with wide experience in performing marriages. His comments were of great assistance to a Speaker untutored in these matters. However, I would remind him that even common-law relationships sometimes attract a sort of legal recognition. Society may recognize certain things. The House is another matter.

Let us turn to the crux of the problem, that is, whether House of Commons procedure will permit the recognition of what the hon. Member for Pictou–Antigonish–Guysborough has described as "the fourth largest political entity" in the House, the PC/DR Coalition.

It might be helpful to return to first principles here, because so many extraneous elements have been invoked on this question in the widespread speculation that this controversial, highly publicized situation has provoked.

Let us return to the opening of a Parliament and the convening of a newly elected House. Once a general election has been held and the writs of election issued, attention turns from external political realities to the internal realities of a new Parliament. The political focus shifts from the electors and the election to the elected MPs sitting in the House of Commons and its committees.

Deliberations in the Chamber and in committee are governed by the Standing Orders and by House procedure and practice. In these procedural authorities, the terms "party" or "recognized party" refer to a group of Members with a number of identifying features: first, there are at least 12 Members in the group; second, they appoint a slate of House officers as their official spokespersons; third, they work as a cohesive unit; and fourth, they serve under the same banner.

In a newly constituted House for the duration of a Parliament, each individual for whom a writ of election has been received will work as an MP usually within a party. The machinery of the party caucus, that is, its officers, staff and research bureau, will serve to organize each party's work in the House and in committee.

During the course of a Parliament we have seen Members change parties, Members suspended from caucus and Members expelled from caucus. Each Member was elected to the House. Each Member elected to the House may live out the vicissitudes of that Parliament as he or she sees fit. Indeed, each Member may self-designate his or her affiliations or lack thereof.

In this regard, a basic question is how a Member will be identified. It is an accepted part of our practice that individual Members and groups are permitted

to select the manner in which they will be designated for parliamentary purposes. As Mr. Speaker Fraser stated in the *Debates* of December 13, 1990, on page 16705:

> —the Chair must advise that it can find no prescription limiting the designations inserted under political affiliation in the Appendix to *Debates* to those parties officially recognized as such pursuant to the *Canada Elections Act*.
>
> The absence of such a limiting prescription must be weighed against the combined weight of our past practice in this regard and our longstanding tradition of respecting the word and legitimate demands to self-definition of individual Members.

In the case before us we have 12 Members of the recognized Progressive Conservative Party and 8 independent Members who comprise the Democratic Representative Caucus, in total a group of 20 MPs who have identified themselves to the Speaker as Members of the Progressive Conservative/Democratic Representative, or PC/DR Coalition. This is the title of the caucus under which they will henceforth be known.

The Coalition composed of these 20 Members has further announced that it will function as a group for parliamentary purposes and has informed the Chair of its slate of officers. Here again these are matters that the House has always left entirely to the discretion of MPs. They identify themselves as individuals and are free to identify themselves as a group. Their spokespersons are theirs to select. Neither the Speaker nor other Members has a say in such matters.

Therefore I have concluded that the officers named by the PC/DR Coalition will be recognized as the Coalition's spokespersons in the usual operations of the House and its committees. They are: the Rt. Hon. Member for Calgary Centre as Leader; the hon. Member for Fraser Valley as Deputy Leader; the hon. Member for Pictou–Antigonish–Guysborough as House Leader; the hon. Member for Prince George–Peace River as Whip; and the hon. Member for Edmonton North as Caucus Chair.

Just as I must conclude that the Coalition's officers must be recognized, I can find no procedural objection to the request that Members who share the PC/DR designation and the leadership of these officers should be seated together in the configuration that their Whip may determine. In my view this is not a matter where the Chair has any grounds to object or to intervene.

However what I have granted to this point is not all of what is being sought. On the basis that it possesses more than the basic 12 Members required for status as a recognized party in the House, the Coalition seeks additional recognition. Specifically it argues that by virtue of its 20-member composition, the PC/DR Coalition should have precedence over the 13-member New Democratic Party. In other words, the Coalition seeks to be recognized as the fourth party in the House, or seen another way, as the third party in opposition.

It is here that the Chair encounters considerable difficulty. Earlier I listed what can be extrapolated as the hallmarks of a party or a recognized party under our procedure and practice, namely at least 12 Members with a set of House officers working as a cohesive unit, serving under the same banner.

My problem is simple. By its very name the Coalition acknowledges that it is a composite entity. An analysis of the arguments finds it successfully passes the first two tests set by our practice for any recognized party, and to the extent that a single set of House officers are its spokespersons, it can be said that it meets the third criterion of working as a cohesive unit.

Yet the Coalition has declined to present itself as a party in this place. It may speak as a party does, it may operate as a party does, but until such time as its Members present themselves as a party, the recognition the Coalition seeks with regard to precedence and allocation of time must remain at best a matter for negotiation between the Coalition and the four recognized parties.

In discussing the process of debate, *Marleau and Montpetit* states at page 506:

> The Speaker subsequently "sees" Members from opposite sides of the House in a reasonable rotation, bearing in mind the membership of the various recognized parties in the House, the right of reply, and the nature of the proceedings.

In determining the allocation of precedence and time during debate, during Question Period and Statements by Members, in the distribution of allotted days and the composition of committees, the Speaker receives the advice of the House Leaders and Whips who negotiate agreements on these matters based on party strength in the House. Agreements reached through the negotiations of House officers greatly facilitate the work of all Members here in the House and in committee and are of immeasurable value to the Chair in its presiding role.

For such negotiations to be genuine, all officers concerned must be given an equal opportunity to participate. I am sure that the hon. House Leader and the other officers of the PC/DR Coalition seek no more than this and I know they will be afforded the usual courtesies by their counterparts. Only under the most extreme circumstances where the fundamental rights of Members were threatened would the Speaker feel compelled to intervene in such matters.

I remind the House of the words of Mr. Speaker Macnaughton in the *Journals* of September 30, 1963, at page 387:

> It is not (a situation) where the Speaker ought by himself to take a position where any group of Members might feel that their interests as a group or a party have been prejudiced. Nor should the Speaker be put in a position where he must decide, to the advantage or to the disadvantage of any group or party, matters affecting the character or existence of a party, for this surely would signify that the Speaker had taken what was almost a political decision—

In summary then, after careful scrutiny of all our precedents and of various analogous situations in the United Kingdom and in the Commonwealth, the Chair has concluded that our practice has uniformly dealt not with the recognition of groups but with that of parties.

The Chair acknowledges and recognizes the PC/DR Coalition as the regrouping of, on the one hand, a recognized party, and on the other, a group of dissident Members, together operating as a single caucus. The officers of the Coalition will therefore be recognized as the official spokespersons for the Coalition and the members of the Coalition will be permitted to sit together in any arrangement they wish. Since the Progressive Conservatives retain their

status as a recognized party, the PC/DR Coalition will continue to enjoy the precedence afforded to the Progressive Conservatives.

However, the Chair is unable at this time to grant full party recognition to the PC/DR Coalition since I cannot extend recognition as a party to a group which disavows that title and which is clearly an amalgam of a party and a group of independent MPs.

If circumstances change, the Chair will of course be prepared to revisit this question.

I thank hon. Members for the contributions they made on this difficult and important question and of course for the free advice offered over the past few months by our media.

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1. *Debates*, September 19, 2001, pp. 5296-306.

The House and Its Members

Written committee proceedings on Bill C-36 (*Anti-terrorism Act*) unavailable: request for delay of consideration of report stage

November 26, 2001 *Debates*, pp. 7477-8

Context: On Thursday, November 22, 2001, Don Boudria (Minister of State and Leader of the Government in the House of Commons) announced that the Government would call Bill C-36, *Anti-terrorism Act*, for debate at report stage on Monday, November 26, 2001. Peter MacKay (Pictou–Antigonish–Guysborough) rose immediately on a point of order, objecting that neither transcripts of the deliberations of the Standing Committee on Justice and Human Rights nor copies of the Bill, as reported by the Committee with amendments, were available.[1]

Pursuant to a Special Order adopted on October 31, 2001, the deadline for the submission of notices of motions in amendment at report stage to the Bill was 2:00 p.m. on November 23, 2001, a day on which the House was not scheduled to sit.[2] Mr. MacKay asked that the Government House Leader delay consideration of the Bill until all the Committee *Evidence* was published and copies of the Bill, as amended, were available to all Members. After hearing from other Members, the Speaker declared that the "blues", the unedited transcription of Committee *Evidence*, were accessible and that a reprint of the Bill would be available at 4:00 p.m. that same afternoon. He also remarked that the rules applicable to the matter were clear and had been respected. He suggested that Mr. MacKay seek a solution through other channels. Later in the sitting, Mr. MacKay returned to the matter, noting that neither the Bill nor the Committee *Evidence* was available. The Speaker promised to look into the matter of the transcripts and later informed the House that the reprint of the Bill would not be ready until the next day. Following consultations, the House agreed to extend the deadline for notice first to 2:00 p.m., Saturday, November 24, 2001, and then to 6:00 p.m., on the same day.[3]

On Monday, November 26, 2001, Mr. MacKay rose on a point of order. Although the deadline for the submission of notices of motions in amendment at report stage to the Bill had been extended to 6:00 p.m., Saturday, November 24, 2001, he noted that half of the Committee proceedings had not yet been published. He again asked that the consideration of the Bill at report stage be delayed. The Government House Leader argued that the deadline for notice had been extended three times and that

often in the past the publication of committee *Minutes* and *Evidence* occurred after the House had taken up consideration of a bill at report stage. Other Members also spoke to the matter at issue.[4]

Resolution: The Speaker ruled immediately. He stated that he had no power to defer the business the Government had chosen to bring forward that day and that there was no precedent that established that a bill in the House which was up for discussion could not be proceeded with until the *Evidence* had been filed. He concluded that the Chair ought not to intervene in the matter or to change a process agreed to by the House, and that it was the right of the Government to set the business of the House and to proceed with the Bill.

Decision of the Chair

The Speaker: The Chair appreciates the interventions of all hon. Members who have had something to say on this important issue.

It is not the first time that Members in the House have criticized the Government for the speed with which it proceeds with a bill. I am sure this will happen again.

Even allowing for that, I think hon. Members have to recognize, as the hon. Member for Pictou–Antigonish–Guysborough did in his point of order, that he was raising not a point of order. He was raising a request to the Government to consider deferring the matter.

The Government House Leader has in effect given his answer. As I understand it he is not prepared to defer it. Now the suggestion seems to be that perhaps the Speaker is somehow able to be involved in the matter and ought to take some steps to defer the matter and prevent the House from considering the business the Government has chosen to bring before the House today.

I do not think it is for the Chair to make that decision. I respectfully draw the attention of all hon. Members to the words of Mr. Speaker Macnaughton on March 17, 1965, as reported on page 12479 of Hansard of that day, when he said:

> The basic question is whether or not a bill in the House of Commons can be discussed, assuming that the *Evidence* has not been completely

> finished in its English and French printing. I have made a search of the records since Confederation, and there is no case that says that a bill in the House of Commons which is up for discussion cannot be proceeded with until the *Evidence* has been filed. If we were to accept the suggestion of the hon. Member for Lapointe… emotionally pleasing as it may be, nevertheless procedurally in my opinion it would be completely wrong, and would establish a very bad precedent.

I could quote Mr. Speaker Francis from page 4631 of Hansard dated June 13, 1984, when he said:

> I really do feel uncomfortable when hon. Members do not have the transcripts. However, I am guided by the precedent of Mr. Speaker Macnaughton. I am guided by the fact that the rules are silent as to the form of printing.

I realize hon. Members are uncomfortable with the fact that certain of the transcripts of committee proceedings in relation to this Bill are not available or, if they are, have only just become available, whatever the case may be. However, in spite of that, I believe it is the right of the Government that sets the business of the House in compliance with the rules of the House itself to proceed with this Bill without those transcripts.

As the hon. Leader of the Government in the House said, when he was first elected, the *Minutes* of the committees were not available for at least three weeks after the end of the committee meetings. I clearly remember that myself. When I first came here, 13 years ago, the committee *Minutes* were not available the same week that the meetings had been held.

To look back at our history and our practice, I believe the ruling I have cited from Speaker Macnaughton in 1965 is entirely in accordance with that practice. However inconvenient it may be to proceed with the Bill at this time, if the Government's choice is to do exactly that, I do not believe it is a case where the Speaker ought to be intervening in this matter, either to delay the matter further or to make any changes in the process, which has been agreed to by the House unanimously, in extending the time for filing those amendments and in dealing with the amendments as they have been brought forward.

I therefore now proceed to Orders of the Day.

Postscript: Immediately following the Speaker's ruling, Lorne Nystrom (Regina–Qu'Appelle) rose on a question of privilege on the same matter. He stated that the Bill had only become available in its final form on Saturday, November 24, 2001, notwithstanding the fact that the deadline for the filing of amendments was 6:00 p.m. that day. He charged that this had affected his privileges and those of the NDP Caucus attending the Party's national convention in Winnipeg, as they had been able neither to see the reprint of the Bill nor to meet the notice deadline. The Speaker recognized that all Members had obligations that took them away from Ottawa, but since the House met daily, it was difficult for the Chair to imagine that the Member's privileges had been violated by the fact that he was tied up at another meeting over the course of the weekend and could not file amendments. He did not believe that the Member's privileges had been violated. He suggested that the Member meet with the House Leaders to see if other arrangements could be made or seek unanimous consent to bring forward any amendments.[5]

1. *Debates*, November 22, 2001, p. 7452.
2. *Journals*, October 31, 2001, p. 773.
3. *Debates*, November 22, 2001, pp. 7452-3, 7455-6, 7458, 7464.
4. *Debates*, November 26, 2001, pp. 7474-7.
5. *Debates*, November 26, 2001, p. 7478.

The House and Its Members

Government motion relating to the reinstatement of business from the previous session: dividing complicated questions

October 4, 2002 *Debates*, pp. 299-300

Context: On October 3, 2002, Carol Skelton (Saskatoon–Rosetown–Biggar) rose on a point of order arising from a motion standing on the *Order Paper* (Government Business No. 2) in the name of Don Boudria (Minister of State and Leader of the Government in the House of Commons). The motion was intended to reinstate business from the First Session of the Thirty-Seventh Parliament. Ms. Skelton argued that the motion contained four separate and distinct parts, each capable of standing on its own and that this made it impossible for Members to debate and cast their votes responsibly and intelligently. Citing *House of Commons Procedure and Practice*, 2000, and previous rulings by the Chair, she argued that the Speaker had the authority to divide complicated questions. After hearing from other Members, the Speaker stated that he did not wish to explore the motives of the motion but was concerned about its procedural aspects and whether it met the requirements of practice and the Standing Orders. He took the question under advisement.[1]

Resolution: On October 4, 2002, the Speaker delivered his ruling. He declared that the issues regarding the reinstatement of business from the First Session would be debated together but would form the subject of two separate votes: the first dealing with the reinstatement of evidence adduced by standing and special committees, and the proposal for the reinstatement of Government bills; the second on matters relating to the reappointment of the Special Committee on the Non-Medical Use of Drugs in Canada, the terms of its membership, its powers and its reporting date. On the matter of empowering the Standing Committee on Finance to travel for the purposes of the pre-budget consultations as set out in Standing Order 83.1, the Speaker stated that this was not a matter of reinstating unfinished business, but rather a proposed sessional order related to the work of a standing committee, and added that the established practice of considering travel motions on a case-by-case basis would apply. He concluded that the travel motion would be a stand-alone motion to be debated and voted on separately.[2]

Decision of the Chair

The Speaker: Before I call Orders of the Day I wish to indicate to the House that I am now prepared to rule on the point of order raised yesterday morning by the hon. Member for Saskatoon–Rosetown–Biggar concerning Motion No. 2 on the *Order Paper* standing in the name of the Minister of State and the Leader of the Government in the House, relating to the reinstatement of business from the First Session of the Thirty-Seventh Parliament.

I wish to thank the hon. Member for Saskatoon–Rosetown–Biggar for raising the matter and the hon. Parliamentary Secretary to the Government House Leader, the hon. Member for Fraser Valley, the hon. Member for Lakeland and the hon. Member for Prince George–Bulkley Valley for their comments and the hon. Member for Pictou–Antigonish–Guysborough for his submission on this matter.

The hon. Member for Saskatoon–Rosetown–Biggar, in raising the matter, argued that this motion for reinstatement of business contains four separate and distinct parts. She objected to the fact of having only one debate and one vote when the House is being asked to decide on four subjects and she asked the Speaker to divide the motion to permit separate decisions to be taken on each subject.

The Government House Leader pointed out through his Parliamentary Secretary that the unifying principle of the motion was to allow several matters to be taken up in this session at the point they had reached at the conclusion of the previous session.

The hon. Member for Saskatoon–Rosetown–Biggar cited page 478 of *Marleau and Montpetit* which states:

> When a complicated motion comes before the House (for example, a motion containing two or more parts each capable of standing on its own), the Speaker has the authority to modify it and thereby facilitate decision-making for the House.

The passage goes on to state that any Member may object to a motion that contains two or more distinct propositions and he or she may request that the motion be divided and that each proposition be debated and voted on separately. Ultimately it is the Chair who must make the determination with a view to ensuring an orderly debate on the subject matter before the House.

The matter of dividing a complicated motion has previously arisen in the House. On June 15, 1964, Mr. Speaker Macnaughton, ruled on a request to divide a Government motion regarding a new Canadian flag. After an erudite review of the precedents in British and Canadian parliamentary practice, the Speaker stated the following:

> I must come to the conclusion that the motion before the House contains two propositions and since strong objections have been made to the effect that these two propositions should not be considered together, it is my duty to divide them.

I cite the *Journals* for Monday, June 15, 1964, at page 431.

On April 10, 1991, Mr. Speaker Fraser took a somewhat different approach when ruling on a request to divide a Government motion to amend the Standing Orders of the House. Rather than intervening to divide the motion, he ruled that a single debate would be held on the motion, and its components would be separated into three questions for voting purposes.

Research into Canadian practice reveals few instances where a Speaker has moved to divide a motion. In my view, this indicates that the Chair must exercise every caution before intervening in the deliberations of the House in the manner requested in this instance.

After having carefully examined the precedents and after having reviewed the arguments on both sides of the question, I am inclined to agree that Government Business Item No. 2 does, indeed, present an instance where the Chair is justified in taking some action.

In light of the complex nature of Motion No. 2, it is my ruling that the issues related to the reinstatement of business from the First Session to the Second Session will be debated together but will be the subject of two separate votes.

Specifically, one vote will be held on the matters of the laying on the Table of evidence adduced by standing and special committees and the proposal for the reinstatement of Government bills; and one vote will be held on matters related to the reappointment of the Special Committee on the Non-Medical Use of Drugs in Canada, the terms of its membership, its powers and its reporting date.

Finally, there is the matter of empowering the Finance Committee to travel in consideration of the pre-budget consultations set out in Standing Order 83(1). In the view of the Chair, this motion is not, strictly speaking, a matter of reinstating unfinished business. Rather it is a motion to consider a sessional order relating to the work of a standing committee whose members have yet to be determined and which has yet to be organized. Our usual practice is to adopt travel motions on a case-by-case basis. I believe that this practice should apply in this case. The motion will therefore constitute a stand-alone motion to be debated and voted on separately.

I hope this ruling will permit the House to debate the matters raised originally in Motion No. 2 in an orderly fashion, to propose amendments, if Members wish to do so, and to take decisions that reflect hon. Members' differences on these topics.

I thank all hon. Members for their attention and their assistance in this matter.

Mrs. Carol Skelton (Saskatoon–Rosetown–Biggar, Canadian Alliance): Mr. Speaker, I appreciate all the work you did. Seeing that we have a new proposal on the table, does it not require 48 hours on the table so we can draft our amendments to the motion?

The Speaker: I think all I have done is sever the motion. Members, of course, were free to move amendments to what was there. I have divided the motion in two. I think the practical effect of my ruling, as the hon. Member will see, is to take the last paragraph out of the motion. Everything else is there but we will have the opportunity to have two different votes, as I indicated in the ruling. When the matter comes to a vote, whenever the debate concludes, instead of just one division there will be two. It is a bonanza.

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1. *Debates*, October 3, 2002, pp. 208-10.
2. *Journals*, October 4, 2002, p. 23.

The House and Its Members

Ratification of international treaties

November 28, 2002 *Debates*, pp. 2016-7

Context: On November 25, 2002, Stephen Harper (Leader of the Opposition) rose on a point of order with respect to a Government motion on the *Order Paper* concerning the ratification of the Kyoto Protocol. Mr. Harper argued that the motion should be ruled out of order as it contravened international law as well as established Canadian practices and rules for the ratification of treaties by asking the Government to ratify a treaty prior to the approval of implementation legislation by the House. After the interventions of other Members, the Deputy Speaker (Bob Kilger) stated that he had not heard anything that would lead him to not allow the motion to be called for debate and would come back to the House as soon as possible, well before the end of debate on the motion. Following a number of points of order and questions of privilege, the House took up consideration of the motion.[1]

Resolution: On November 28, 2002, the Deputy Speaker delivered his ruling. Noting that the motion in question was in the nature of a show of support for the Government to ratify and implement the treaty and emphasizing that no rule or practice of the House required the prior passage of enabling legislation, he affirmed that the ratification of such agreements is strictly a prerogative of the Crown exercised through the executive branch and not conditional on Parliament first adopting implementing legislation. Reminding Members that the Speaker has no role in interpreting matters of either a constitutional or legal nature and that he could therefore not rule on the constitutionality or legality of the motion in question, he ruled the motion to be in order.

Decision of the Chair

The Deputy Speaker: I would now like to deal with the point of order raised on November 25 by the hon. Leader of the Opposition relating to Government Motion No. 9, standing in the name of the Minister of the Environment.

The hon. Member argued that the motion calling upon the Government to ratify the Kyoto Protocol on Climate Change was out of order and should not be received by the Chair.

I would like to thank the hon. Leader of the Opposition for raising the matter, the hon. Leader of the Government in the House of Commons, the hon. Parliamentary Secretary to the Minister of Public Works and Government Services, the Rt. Hon. Member for Calgary Centre, the hon. Member for Fraser Valley and the hon. Member for Kootenay–Columbia for their contributions on this matter. The hon. Leader of the Opposition in raising the matter argued that it was both a requirement of international law and established Canadian practice for the Government not to ratify a treaty that required legislation for its implementation until the legislation itself had been passed by this House. He claimed that in order for the Kyoto Protocol to be implemented, enabling legislation must first be passed by Parliament, followed by ratification. He therefore asked the Chair to consider the motion out of order and to remove it from the *Order Paper*.

There is in my view one fundamental issue that needs to be addressed in the case before us: Is there anything in Canadian parliamentary procedure or practice to require that the motion before the House be preceded by enabling legislation? Put another way, in the absence of enabling legislation, must the Speaker find that the motion is not in order?

I have examined with great care the arguments raised by the hon. Leader of the Opposition in this regard and wish to make the following points.

First, it is the view of the Chair that the intent of the motion put by the Minister of the Environment is clearly not in and of itself a ratification of the Kyoto Protocol. The power of ratification lies with the Crown, not with Parliament nor with this House. Rather the motion allows for debate in this House on the issue of ratification of the Kyoto Protocol.

The adoption of this motion would constitute a show of support for the Government to move forward to ratify and implement the agreement.

As has been pointed out in some of the arguments made by Members over the course of the debate, it is one of the prerogatives of the Crown to make treaties without the necessity of parliamentary approval. As R. McGregor Dawson explains on page 205 of the *Government of Canada*:

> Parliament may be consulted and even asked to approve international agreements and treaties, but this is largely a matter of convenience and political strategy: the actual ratification is purely an executive act.

There is no legal or constitutional requirement for parliamentary approval of ratification of international agreements. The Government could choose however to table an agreement in the House. It may also choose to move resolutions in the Commons and the Senate to seek approval for such an agreement. The Government has a third option: to seek approval from the House to introduce enabling legislation to change Canada's Statutes in order to implement the agreement. It is on the latter point that I will focus my comments.

The hon. Leader of the Opposition argues that all necessary legislation to implement the terms of a treaty should be in place prior to ratification. A study of past events would suggest that there may be treaties that actually need no legislation for their implementation. It is also possible that the Canadian Government signs a treaty and never ratifies it or ratifies a treaty and later decides not to implement it for whatever reason. The essential point here is that treaty ratification is an executive action, a prerogative of the Crown. It is not conditional on Parliament first adopting implementing legislation.

A review of House records shows that the House, by resolution, approved the 1965 *Auto Pact between Canada and the United States* without first seeing implementing legislation. It may be the case that a treaty, whether or not already ratified by the Government, requires legislation if it is to be implemented as a matter of Canadian domestic law. In this regard the *Canada-U.S. Free Trade Agreement* of 1988 and the *North American Free Trade Agreement* of 1993, came before the House as appendices to implementing legislation. The bills in each case stated that the Government of Canada had already entered into

the free trade agreements. The title of each bill indicated that the bill was to "implement" the free trade agreement. Each implementing bill contained provisions amending the federal laws of Canada so as to give effect to the free trade agreement already entered into and attached to each bill. There was no indication in these bills that the Government was seeking parliamentary approval of the treaties in order to ratify them.

The issue is whether implementing legislation must be adopted before a treaty is ratified. This does not appear to be a rule of procedure or a practice of this House.

To illustrate with another example, during the Second Session of the Thirty-Sixth Parliament, the House and the Senate passed Bill C-19, enabling legislation which was required to enact or implement Canada's obligations under the treaty entitled the *Rome Statute of the International Criminal Court*. The Bill listed new offences under the *Criminal Code* and amended our extradition and mutual assistance legislation.

As I noted previously, many international agreements do not require enabling legislation. Enabling or implementing legislation is required only when an agreement necessitates amendments to Canadian statute law. Of the more than 1,400 international agreements entered into by Canada from 1928 to 1978, only 111 required enabling legislation and of these 47 dealt with taxation matters. From 1979 to 1986 another 500 agreements were entered into and of these only 33 required legislation.

It is also worth noting that the *United Nations Framework Convention on Climate Change*, adopted at Rio de Janeiro in 1992, was signed by a Minister and ratified by Canada, without any enabling legislation.

When the Government last week tabled its plan to implement the Kyoto Protocol, it did not include as part of its package any enabling legislation. One can only assume that the Government, through consultations with its legal advisers across the relevant departments, has determined that no enabling legislation is necessary at this time.

I join with many of my predecessors in pointing out that it is not part of the Speaker's mandate to comment on points of law. In a ruling delivered on April 9, 1991, Speaker Fraser stated:

> The Speaker has no role in interpreting matters of either a constitutional or legal nature.

This principle is clearly outlined as well in the 4th edition of *Bourinot* at page 180, which states:

> The Speaker… will not give a decision upon a constitutional question, nor decide a question of law, though the same be raised on a point of order or privilege.

It is not up to the Speaker to rule on the constitutionality or legality of measures before the House. The Chair cannot assume that the Kyoto Protocol will require implementing legislation. Perhaps it will. At the moment, the House is being asked to consider a resolution calling upon the Government to ratify the treaty. If Members object to this resolution being before the House when no implementing legislation has been adopted, this might be argued in the debate on the resolution and taken into account when the time comes to vote on the resolution.

While the hon. Leader of the Opposition has raised an interesting point concerning the motion currently before the House, the Chair must conclude that Canadian practice does not support his premise that the ratification of all international treaties necessitates the prior passage of enabling legislation. Accordingly, I must conclude that the motion of the Minister of the Environment is properly before the House.

Editor's Note: See also other rulings on November 25, 2002.[2]

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1. *Debates*, November 25, 2002, pp. 1826-9, 1847.
2. *Debates*, November 25, 2002, pp. 1822-3, 1826, 1829, 1846, 1848-9.

The House and its Members

Failure to table Order in Council appointments in the House following their publication in the *Canada Gazette*; Members prevented from carrying out parliamentary duties

March 9, 2004 *Debates*, pp. 1259-60

Context: On March 8, 2004, Joe Clark (Calgary Centre) rose on a question of privilege, alleging that the Government had contravened Standing Orders 110 and 111 by failing to table several Order in Council appointments within five days of their publication in the *Canada Gazette* between December 20, 2003 and February 7, 2004. Mr. Clark argued that therefore, Parliament, through its committees, had been denied the right to examine those appointments. After hearing from other Members, the Speaker took the matter under advisement.[1] On March 9, 2004, Jacques Saada (Leader of the Government in the House of Commons and Minister responsible for Democratic Reform) informed the House that the appointments made between October 28, 2003 and February 27, 2004, would be tabled later that day, and that the related internal follow-up procedure had been tightened up to avoid a recurrence of the situation. Mr. Clark then acknowledged that it was an administrative error only, but insisted that the question remained as to whether the rights and privileges of the House had been breached.[2]

Resolution: On March 9, 2004, immediately after hearing from the two Members, the Speaker delivered his ruling. He agreed that there had been a breach of the Standing Orders and, referring to Standing Order 110(1), ordered that the 30 sitting days permitted for the consideration of the Order in Council appointments in committee be counted from the date of tabling, rather than from the date on which the Orders in Council ought to have been tabled.

Decision of the Chair

The Speaker: I thank both the Government House Leader and the Rt. Hon. Member for Calgary Centre for their submissions on this point.

The Rt. Hon. Member for Calgary Centre yesterday raised this point of order, and I will again quote to the House Standing Order 110(1):

> A Minister of the Crown shall lay upon the Table a certified copy of an Order in Council, stating that a certain individual has been appointed to a certain non-judicial post, not later than five sitting days after the Order in Council is published in the *Canada Gazette*. The same shall be deemed to have been referred to a standing committee specified at the time of tabling, pursuant to Standing Order 32(6), for its consideration during a period not exceeding 30 sitting days.

Now the Rt. Hon. Member for Calgary Centre has pointed out that in fact these Order in Council appointments have been tabled late.

The Government House Leader indicated that this was an accident and that the problem has now been corrected.

What I am prepared to do, and I think is reasonable in the circumstances based on the submissions of the Rt. Hon. Member, is order that the 30 sitting days will start today, from the date of the tabling, not from the date they should have been tabled, if that argument should arise. Accordingly, there are now 30 sitting days for the committees involved in the appointments that have been tabled today by the Government House Leader to study the matter as they would have been able to do had they been tabled on time.

I quite agree with the Rt. hon. gentleman that this was a breach of our Standing Orders. He indicated that yesterday, and I agree with him. In the circumstances, he I think is inclined, as I am, to accept the apology of the Government House Leader.

We can now move on to the review of these appointments in committee for the period provided under the rules of the House. I believe that this matter is now closed. If there are problems with the committee review, I am sure the Rt. Hon. Member for Calgary Centre will let me know.

Postscript: At the beginning of Routine Proceedings that day, the Government House Leader tabled the Order in Council appointments.[3]

1. *Debates*, March 8, 2004, pp. 1216-8.
2. *Debates*, March 9, 2004, p. 1259.
3. *Journals*, March 9, 2004, pp. 151-3.

The House and Its Members

Concurrence in a committee report: considering the same question twice

May 5, 2005 *Debates*, pp. 5725-7

Context: On May 2, 2005, Tony Valeri (Leader of the Government in the House of Commons) rose on a point of order to challenge the admissibility of an amendment moved on April 22, 2005, by Stephen Harper (Leader of the Opposition), to the motion to concur in the Third Report of the Standing Committee on Finance regarding pre-budget consultations. The Deputy Speaker (Chuck Strahl) had found the amendment in order.[1] The amendment would have had the effect of recommitting the Report, with an instruction to amend it to include a recommendation that the Government resign for refusing to accept some of the Report's key recommendations and for refusing to implement budgetary changes. Mr. Valeri argued that the amendment was procedurally inconsistent with the process set out in Standing Order 83.1, that the amendment included a question that the House had already decided upon, and that provisional Standing Order 66 pertaining to concurrence in committee reports was not designed to vote on ancillary issues through amendments. After hearing from other Members, the Speaker took the matter under advisement.[2]

Resolution: On May 5, 2005, the Speaker delivered his ruling addressing the three objections raised by the Minister. In dealing with the issue of the Finance Committee's mandate to undertake pre-budget consultations under the provisions of Standing Order 83.1 and the Minister's argument that the Committee's authority to report on the budgetary policy of the Government is tied directly to the budgetary cycle and that its mandate lapses once the Government presents its budget, the Speaker stated that unlike a special committee which would have to be reconstituted to reconsider its final report, as a standing committee it could receive an instruction from the House to reconsider any of its reports. Therefore, he did not find the amendment inconsistent with the process set out in Standing Order 83.1. As to the matter of deciding a question twice, the Speaker noted that the House had dealt with three separate motions in relation to the Finance Committee and the budget: a motion to take note of a report; a motion to approve the budgetary policy of the Government; and a motion to concur in a report. For this reason, he declared that he could not agree with the Government House Leader that the House was deciding the same question twice. In addressing the Government House Leader's third objection

that changes to Standing Order 66 relating to the concurrence in committee reports were not designed "to allow ancillary issues to be voted on through amendments", the Speaker reminded the House that the Minister had acknowledged that the amendment to refer the Report back to the Committee with instructions was in order. He also noted that Standing Order 66 merely provided a mechanism by which the House could take decisions on motions to concur in committee reports, and by extension any amendments moved thereto. He concluded by pointing out that it is not up to the Chair to judge the substance of any motion, but rather to ascertain that the proper procedures for the presentation of a motion had been respected, adding that he could not find any procedural grounds to declare the amendment defective. Accordingly, he ruled that the amendment was in order.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on May 2 by the hon. Leader of the Government in the House of Commons regarding the admissibility of the amendment to the motion to concur in the Third Report of the Standing Committee on Finance.

I would like to thank the hon. Minister for raising this matter and the hon. House Leader of the Official Opposition, the hon. House Leader for the Bloc Québécois, the hon. Members for Glengarry–Prescott–Russell and Calgary Southeast for their contributions to the discussion.

Let me begin by giving the background to this question. On April 22, the hon. House Leader of the Official Opposition moved a motion to concur in the Third Report of the Standing Committee on Finance. This Report deals with the pre-budget consultations of the Finance Committee under the provisions of Standing Order 83.1.

During debate on the concurrence motion, the hon. Leader of the Official Opposition moved the following amendment:

> That the motion be amended by deleting all the words after the word "that" and substituting the following:
>
> The Third Report of the Standing Committee on Finance, presented on December 20, 2004, be not now concurred in, but

> that it be recommitted to the Standing Committee on Finance with instruction that it amend the same so as to recommend that the Government resign over refusing to accept some of the committee's key recommendations and to implement the budgetary changes that Canadians need.

The Deputy Speaker found the amendment to be in order and proposed the question, so debate continued on the amendment. The hon. Government House Leader in presenting his point of order laid out very well the process for dealing with amendments to motions to concur in committee reports. As the Minister correctly noted, our practice has been to allow the House to give a permissive or mandatory instruction to a committee to amend the text of a report.

The hon. Government House Leader went on to raise three main objections.

First, he expressed concern that the amendment went beyond the mandate of the Finance Committee as set down in Standing Order 83.1. He argued that the Finance Committee's authority to report on the budgetary policy of the Government pursuant to Standing Order 83.1 is tied directly to the Government's budgetary cycle and that its mandate lapses once the Government presents its budget.

This point was also stressed by the hon. Member for Glengarry–Prescott–Russell. The Minister stated that the amendment is beyond the timetable established in the Standing Order, in effect extending the Committee's Order of Reference for this Report. He concluded that, at a minimum, the amendment should have stated, "Notwithstanding Standing Order 83.1".

Second, the Minister argued that the amendment is out of order in that it is putting a question to the House that has already been decided. He noted that there had been two days of debate on the content of the Third Report of the Finance Committee presented December 20, 2004, and that no motion to concur in the Report had been proposed prior to the budget presentation on February 23.

Stressing that the budget had been adopted on March 9, he asserted that the amendment to the concurrence motion instructs the Finance Committee

to condemn the Government for not accepting its recommendations respecting its budgetary policy, when in fact the House has already approved the Government's budgetary policy. He argued that the amendment in effect asks the House to decide the same question twice.

As his third objection, the Minister raised concerns that the changes to the Standing Orders relating to concurrence in committee reports were not designed "to allow ancillary issues to be voted on through amendments".

In speaking to the matter, the hon. Opposition House Leader noted that the amendment had been ruled admissible by the Deputy Speaker on April 22 and that the motion and the amendment had been debated for one hour and 19 minutes. The hon. Opposition House Leader rejected the notion that the Finance Committee's mandate had lapsed and claimed that the motion of instruction was indeed admissible as it relates to the committee's Order of Reference.

The hon. House Leader for the Bloc Québécois supported the arguments put by the hon. Opposition House Leader. He also asserted that this Report was no different than any other committee report, contrary to what the hon. Government House Leader had argued. He further reminded the House that, notwithstanding the March 9 vote approving the budgetary policy of the Government in general and given recent events, the budget appeared to be a work in progress. He concluded that asking the Committee to reconsider the Report was therefore admissible.

The Member for Calgary Southeast further elaborated on the procedures for concurrence in committee reports.

As Members are well aware, the procedures surrounding motions to concur in committee reports have generated a great deal of attention in these past few weeks. I have considered carefully all the arguments presented and I am now prepared to deal with the various points that were raised.

The hon. Government House Leader questioned whether the Standing Committee on Finance's Order of Reference pursuant to Standing Order 83.1 extended beyond the presentation of any report or reports concerning the budgetary policy of the Government.

Standing Order 83.1 reads as follows:

> Commencing on the first sitting day in September of each year, the Standing Committee on Finance shall be authorized to consider and make reports upon proposals regarding the budgetary policy of the government. Any report or reports thereon may be made no later than the tenth sitting day before the last normal sitting day in December, as set forth in Standing Order 28(2).

While the Standing Order sets down the time frame for presenting a report on the budgetary policy of the Government, it is silent as to whether or when a motion to concur in such a report can be moved.

Standing Order 66(2) provides the mechanism for concurring in committee reports. This Standing Order does not prohibit the moving of concurrence in reports presented pursuant to Standing Order 83.1 nor does it stipulate a time frame during which such concurrence can be moved.

While a review of our precedents reveals that our usual practice has been to consider the content of pre-budget consultation results via take-note debates, in 2001 the House did debate concurrence in such a report.

On November 1 and 7 of that year, the House debated the Government motion "That this House take note of ongoing pre-budget consultations". On November 26, the Standing Committee on Finance presented its Tenth Report (Pre-Budget Consultations). On December 10, the budget speech was delivered; it was debated on December 11 and 12.

On December 13, concurrence was moved in the Tenth Report of the Finance Committee and debated that day. Then, under our old procedure, the motion was transferred to Government Orders. The budget was debated again on January 28 and on January 29, 2002, when it was adopted.

This example differs from the current situation in that the motion was debated before the budget was actually adopted. However, I cite the example only to point out that, at the time, no objections were raised as to the acceptability of moving a motion to concur in the Committee's Report made under Standing Order 83.1, as some are arguing in the current situation.

As to the Minister's concern that the Report could not be referred back to the Finance Committee because its mandate specifically pursuant to Standing Order 83.1 had expired, I would suggest that, unlike a special committee, which would have to be reconstituted in order to reconsider its final report, the Standing Committee on Finance continues in existence and can receive an instruction from the House to reconsider any of its reports. Therefore, I do not agree with the argument that the amendment had to include the words "Notwithstanding Standing Order 83.1".

The second issue that the hon. Government House Leader raised was the matter of deciding a question twice. He was concerned that since the budgetary policy had already been debated and adopted, there was no need to concur in a committee report which essentially deals also with the budgetary policy.

The hon. House Leader for the Bloc Québécois has reminded the House of recent developments which point to continuing discussion on the substance of the budget. My own interpretation of the proceedings that have taken place to date in this regard must remain purely procedural. Seen from that perspective, it seems to me that the House has been asked to consider three separate questions.

First, there was a take-note debate on January 31 and February 1 of this year. The motion before the House at that time was, "That this House take note of the Third Report of the Standing Committee on Finance". As Members will recall, no decision was taken on the motion.

Second, there was the budget debate, which occurred on February 24, and March 7, 8 and 9. The motion before the House on those days was, "That this House approve in general the budgetary policy of the Government".

Third, debate on the motion, "That the Third Report of the Standing Committee on Finance, presented on Monday, December 20, 2004, be concurred in", began on April 22.

As I see it, the House has been asked to take a decision on three different questions: a motion to take note of a report; a motion to approve the budgetary policy of the Government; and a motion to concur in a report. These are three different motions with three different outcomes. Therefore, I cannot agree

with the hon. Government House Leader that the House is deciding the same question twice.

The final issue raised by the Minister has to do with the nature or intent of the amendment. He argued that the provisional Standing Order relating to concurrence in committee reports was not designed "to allow ancillary issues to be voted on through amendments".

Standing Order 66 merely provides a mechanism by which the House can take a decision on motions to concur in committee reports and by extension any amendment moved thereto. In his presentation, the Minister acknowledged that an amendment to refer a report back to a committee with an instruction is in order. The Chair can find no procedural grounds on which the amendment can be found defective.

Indeed, in reviewing the precedent from June 22, 1926, which was referred to by the Official Opposition House Leader and the hon. Member for Glengarry–Prescott–Russell, and which can be found in the *Journals* at pages 461 and 462 for 1926, an amendment containing assertions clearly damaging to the Government of the day was successfully moved to a motion for concurrence in the report of a special committee. I find this example to be not markedly different from the one the House is faced with now.

It is not up to the Speaker to judge the substance of any motion; rather, the Chair must determine whether our procedures have been respected in the presentation of a motion to the House. If the Chair rules an amendment to be in order, then the fate of the amendment and the motion to concur in the report is in the hands of the House.

After considering the arguments presented in this case, I must agree with the Deputy Speaker and rule that the amendment is in order.

Again, I wish to thank the hon. Government House Leader for bringing this matter to the attention of the House.

Postscript: On May 16, 2005, the House adopted a Special Order deeming the debate on the motion to concur in the Third Report of the Standing Committee on Finance to have taken place and a recorded division demanded and deferred until May 18, 2005.[3] The next day, the deferred division was further deferred until May 31, 2005.[4] On May 30, 2005, the House ordered that the amendment of Mr. Harper to the motion to concur in the Report be deemed negatived on division and that the motion to concur in the Report be deemed carried on division.[5]

1. *Debates*, April 22, 2005, p. 5461.
2. *Debates*, May 2, 2005, pp. 5512-7.
3. *Journals*, May 16, 2005, p. 758.
4. *Journals*, May 17, 2005, pp. 764-5.
5. *Journals*, May 30, 2005, pp. 803-4.

The House and Its Members

Business of the House: notice requirement for Government motion during late night sittings

June 21, 2005 *Debates*, p. 7582

Context: On June 21, 2005, Jay Hill (Prince George–Peace River) rose on a point of order contending that Government Business No. 17, submitted for notice on June 20, 2005, should not be allowed to be called for debate until June 23, 2005. On June 20, the House had sat until after midnight, adjourning at 12:12 a.m. The Member pointed out that since the deadline for giving notice had been 6:00 p.m., he should have been able to access the text of Government Business No. 17 at 6:00 p.m. on June 20 rather than at 12:25 a.m. on June 21, the time at which the embargoed items placed on notice became public with the publication of the *Notice Paper*. He reasoned that consideration of the motion should accordingly be delayed by one day. Toni Valeri (Leader of the Government in the House of Commons) noted that the Government had met the notice requirement and that the item was on the *Order Paper*. The Speaker, pointing out that it had been some time since the House had had to deal with late night sittings at the end of June, indicated that he would return to the House on the matter that afternoon.[1]

Resolution: On June 21, 2005, the Speaker delivered his ruling. He found that notice had indeed been given prior to 6:00 p.m. on June 20, that the motion had been placed on the *Notice Paper* on June 21, pursuant to Standing Order 54, and that it therefore would properly be transferred to the *Order Paper* on June 22 following the required 48 hours' notice. He concluded that there had been no breach of the rules or practices of the House and that the Government House Leader could proceed to move Government Business No. 17 the following day if he chose to do so.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised earlier today by the hon. Opposition House Leader concerning the notice period for Government Business No. 17. I would like to thank the hon. Opposition House Leader for raising this matter.

The hon. Opposition House Leader argued that Government Business No. 17 could not be taken up until, at the earliest, 12:25 a.m. on Thursday, June 23, because the text of the notice had been embargoed until the *Notice Paper* became available at 12:25 a.m. this morning, June 21. Only then, he maintained, would the 48 hours' notice required by Standing Order 54 have been met.

However, as *Marleau and Montpetit* states at page 470:

> In practice, the 48 hours' notice requirement is not exactly 48 consecutive hours, but refers instead to the publication of the notice once in the *Notice Paper* and its transfer the next day to the *Order Paper*.

This practice has been confirmed by a ruling by Speaker Lamoureux on October 6, 1970, which can be found on page 1417 of the *Journals*.

As hon. Members are aware, Standing Order 54 states that 48 hours' notice shall be given for any substantive motion, and on Mondays, notices must be laid on the Table or filed with the Clerk before 6 p.m. for inclusion on the next day's *Notice Paper*. This is to provide Members and the House with some prior warning, so that they are not called upon to consider a matter unexpectedly.

The time-honoured practice followed by staff in the Journals Branch in respect of embargoed items placed on notice is that those items are made available upon publication of the *Notice Paper*, invariably after the House adjourns.

In recent times this has meant that items are available a relatively short time after the adjournment hour, often less than an hour after the adjournment. I should point out that in the days before technology allowed electronic publishing, it was not uncommon for interested parties to have to wait until the next morning to read the text of items placed on notice on any given evening.

This practice has served the interests of all parties in the House fairly. In other words, each party has benefited from it at one time or another.

That being said, very often Members furnish copies of the items they are placing on notice to other Members as a matter of courtesy, and that is certainly a practice to be encouraged.

With regard to Government Business No. 17, notice was given prior to 6 p.m. yesterday and the motion was placed on today's *Notice Paper*, pursuant to Standing Order 54. It will be transferred to the appropriate section in tomorrow's *Order Paper*, thus fulfilling the notice requirement according to our practice.

The Chair has concluded that no breach of the rules or practices of this House has occurred. Accordingly, it will be open to the Government House Leader to move Government Business No. 17 at the appropriate time tomorrow if he so chooses.

Postscript: On June 22, 2005, Mr. Valeri moved Government Business No. 17. It was debated that day, and debated and adopted the following day.[2]

1. *Debates*, June 21, 2005, pp. 7543-4.
2. *Journals*, June 22, 2005, pp. 960-1; June 23, 2005, pp. 978-80.

The House and Its Members

Business of Supply: formula for determining allotted days

September 26, 2005 *Debates*, p. 8015

Context: Under the provisions of the Standing Order 81(10), if, for any reason, the number of sitting days in any supply period is fewer than the number prescribed under the parliamentary calendar, the number of allotted days in that period is reduced in proportion to the number of sitting days the House stands adjourned. Likewise, should the House sit more than the prescribed number of sitting days, the total number of allotted days will be increased by one day for every five additional days the House sits. June 23, 2005, was the last sitting day in the supply period ending June 23 and the last sitting day prior to the summer adjournment. Pursuant to the Standing Orders, the House was scheduled to meet again on September 19, 2005. However, on June 23, the House adopted a motion adjourning it to June 27 and providing that "at any time on or after June 27, 2005, a Minister of the Crown may propose, without notice, a motion that, upon adjournment on the day on which the said motion is proposed, the House shall stand adjourned to a specified date not more than 95 days later; the said motion immediately shall be deemed to have been adopted."[1] Under the terms of this Order the House sat on June 27 and 28, thus adding two additional sitting days to the supply period ending December 10, 2005. At the end of the sitting on June 28, 2005, Toni Valeri (Leader of the Government in the House of Commons) moved the adjournment of the House until Monday, September 26, 2005, five sitting days later than prescribed under the parliamentary calendar. Pursuant to the Order made on June 23, the motion was deemed adopted.[2]

On September 26, 2005, the Speaker made a statement with regard to the allotted days for the supply period ending December 10, 2005. He noted that, the House had sat two additional days, but had resumed sitting five days later than usual. Thus, in total, there had been a net reduction of three sitting days over the entire supply period. He added that upon applying the formula contained in Standing Order 81(10)(*b*), it had become clear that a reduction of three sitting days was insufficient to cause a reduction in the number of supply days. Accordingly, the Speaker informed the House that a total of seven days would be allotted for the supply period ending December 10, 2005.

Statement of the Chair

The Speaker: As hon. Members know, the Standing Orders set out the number of supply days in each supply period. The Standing Orders also set out for the Speaker a formula for calculating the addition of supply days when the House sits on days it is not scheduled to sit and another formula for subtracting supply days when the House does not sit on days when it is scheduled to.

We find ourselves in the unusual situation where both formulae could be applied.

Since the end of the last supply period, that is June 23, the House has sat two additional days, namely June 27 and 28.

Similarly, the House, in resuming its sittings today, did so five sitting days later than usual.

The Chair has decided to view this as a net reduction of three sitting days for this supply period. According to the formula contained in paragraph (*b*) of Standing Order 81(10), a reduction of three sitting days is insufficient to cause a reduction in the number of supply days.

Accordingly it is my duty to inform the House that pursuant to Standing Order 81(10) a total of seven days will be allotted for the supply period ending December 10, 2005.

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1. *Journals*, June 23, 2005, pp. 976, 978-80.
2. *Journals*, June 28, 2005, p. 1010.

The House and Its Members

Notice of motion: motion not included in the *Projected Order of Business*

March 12, 2008 — *Debates*, pp. 4056-7

Context: On March 12, 2008, Libby Davies (Vancouver East) rose on a point of order with respect to the supply day motion to be debated that day. Ms. Davies argued that as the Official Opposition had failed to indicate to the Speaker which motion they intended to move in time for the publication of the *Projected Order of Business* for that day, the motion should be ruled out of order. Other Members made interventions.[1]

Resolution: The Speaker ruled immediately. He pointed out that there were 30 opposition motions already on the *Order Paper*, all of them eligible for debate having been on notice for more than 48 hours as required. He ruled that just as the Government is allowed to decide the order of business that the House can consider during Government Orders, an opposition party may likewise do so on its allotted days.

Decision of the Chair

The Speaker: The Chair is prepared to rule on the point of order raised by the hon. Member for Vancouver East.

I point out that contrary to past practice, and I have been here a number of years and remember when there were never any opposition motions sitting on the *Order Paper*, we now have 30 opposition motions sitting on the *Order Paper*, all of which have been placed on notice with more than 48 hours notice and are therefore eligible to be called for debate on days that have been awarded to that party based on the division of opposition days.

These opposition days are assigned to the different parties of the House following meetings between the House Leaders and the Whips. It is not the Speaker who decides all this.

The other important thing about this is that the Government can choose the topic for debate at any time.

I point out that page 406 of *Marleau and Montpetit* says:

> The business that the House is to consider during Government Orders is determined solely by the government. On occasions when the Opposition has protested a change in the projected order of business for a specific sitting day, the Chair has reminded Members of the government's prerogative.

In other words, if the Government decided that tomorrow instead of Bill X it decided to call Bill Y, it could announce it at 10 o'clock tomorrow morning, in effect with no notice, and proceed with Bill Y instead of Bill X, as long as Bill Y is on the *Order Paper* and 48 hours notice of its introduction has been given and it is before the House.

We have in this case, in my view, a similar situation in respect of the opposition. The opposition has placed notices of motions for supply days on the *Order Paper*, as I have indicated. Apparently the choice was not made until earlier this afternoon. I just became aware of it once the point of order was raised. However, whichever one it is, notice has been given, so technically the Members are aware that the subject is one that could be called for debate at a certain time on a certain opposition day, and that is what has happened today.

Accordingly, in my view, the motion that we are about to debate, whenever we complete Routine Proceedings, assuming we get through them before 5:30 p.m., will be the one that is the subject for debate today, and I so rule.

I will not speculate on whether a motion that had not been placed on notice would be eligible. I will [leave] that for another argument for another day, and possibly for one of my fellow Chair Occupants.

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1. *Debates*, March 12, 2008, pp. 4055-6.

The House and Its Members

Parliamentary Publications: correction of the *Debates*

October 29, 2009 *Debates*, pp. 6356-7

Context: On October 28, 2009, Irwin Cotler (Mount Royal) rose on a point of order to report that the word "finally" had been edited out of the text in the published *Debates* of the reply by Lawrence Cannon (Minister of Foreign Affairs) to a question Mr. Cotler had posed during Oral Questions on Tuesday, October 27, 2009.[1] He asked that the Chair ensure that the text faithfully reflected what the Minister had actually said. The Speaker stated that he would look at both the tape of the proceedings and at Hansard to determine whether a correction was necessary.[2]

Resolution: On October 29, 2009, the Speaker delivered his ruling. He explained that the *Debates* are not a literal transcription of what is said in the House and that they are routinely edited. In the case in question, all editorial changes were initiated solely by the editors. The Speaker agreed with Mr. Cotler that the omission of the word "finally" from the edited version of the Minister's answer was significant, and confirmed that he had instructed the editorial staff to restore that word to the final transcript.

Decision of the Chair

The Speaker: Yesterday, the hon. Member for Mount Royal called the attention of the House to what he considered to be inaccuracies in the *Debates* of Tuesday, October 27.

As all Members know, the *Debates* are not a *verbatim ad literatum* transcription of what is said in this House. When producing the *Debates*, House of Commons editors routinely edit interventions for clarity and clean up our grammatical and syntactical lapses. They also of course consider corrections and minor alterations to the blues submitted by the Member to which words are attributed.

Upon verification, I want to first indicate to the House that in the situation before me all editorial changes were initiated solely by the editors. I should add that both the question of the Member for Mount Royal and the answer of the Minister of Foreign Affairs were edited in this case.

For greater certainty, I have also reviewed the audio of the proceedings in question and I agree with the Member for Mount Royal that the omission of the word "finally" from the edited version of the answer of the Minister of Foreign Affairs is significant. Accordingly, I have instructed our editorial staff to restore that word to the final transcript so that it may be a more faithful rendering of what was said last Tuesday.

I thank the hon. Member for Mount Royal for bringing this matter to the attention of the House.

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1. *Debates*, October 27, 2009, p. 6239.
2. *Debates*, October 28, 2009, p. 6283.

The House and Its Members

Use of a social networking site to reference presence or absence of Members

April 1, 2010 *Debates*, pp. 1284-5

Context: On March 24, 2010, Pierre Paquette (Joliette) rose on a point of order with respect to the use on several occasions by Royal Galipeau (Ottawa–Orléans) of the social networking site "Twitter" to report the exact number of Members of each party present in the House, even mentioning the names of some Members who were present or absent. Mr. Paquette made reference to a longstanding practice that Members cannot do indirectly what they are not allowed to do directly and argued that if a Member is not allowed to make comments on the presence or absence of Members in the House, this should also apply when using new technology. The Speaker took the matter under advisement.[1] On March 29, 2010, Mr. Galipeau rose in response to the point of order. He cited *House of Commons Procedure and Practice*, 2009, to the effect that the Speaker has no authority to rule on statements made outside the House and maintained that the site "Twitter" was outside the House. Remarking that the presence or absence of Members was public, not privileged information, he asked the Speaker to reject the point of order.[2]

Resolution: On April 1, 2010, the Speaker delivered his ruling. He indicated that, while he appreciated Mr. Paquette's concerns, it was impossible for the Chair to monitor Members' use of personal digital devices, for example by trying to determine whether or not texting originated in the Chamber. He added that the Chair would not want to change its longstanding practice of refraining from comment on statements made outside the House. However, he asked that Members avoid making statements of the kind complained of because of the possible repercussions for colleagues and for the reputation of the House. Finally, noting the increasing frequency of incidents involving social networking technologies, the Speaker suggested that the Standing Committee on Procedure and House Affairs consider issues related to these technologies and their impact on House and committee proceedings.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on March 24, 2010, by the hon. Member for Joliette, concerning comments made on the social networking site Twitter by the hon. Member for Ottawa–Orléans regarding the presence or absence of Members in the House.

I would like to thank the Member for Joliette for having raised this matter and the Member for Ottawa–Orléans for his comments on March 29, 2010.

In raising his point of order the Member for Joliette informed the House that the Member for Ottawa–Orléans on March 11, 12, 18 and 19, 2010, using the Twitter site, posted the exact number of Members of each party present in the House, as well as the names of some Members who were absent or present.

Noting the longstanding practices that a Member is not allowed to make comments on the presence or absence of Members in the House and that Members cannot do indirectly what cannot be done directly, he contended that these rules should also apply to Members using new technologies.

Intervening on March 29, 2010, the hon. Member for Ottawa–Orléans asserted that the Speaker has no authority to rule on statements made outside the House, citing *House of Commons Procedure and Practice*, Second Edition, at page 614. He stated that not only is the social networking site Twitter outside the House, but that the House Leader for the Bloc Québécois had presented no evidence that the public information shared via Twitter was initiated from the floor of the House or from the galleries.

Furthermore, he noted that, contrary to the claim of the Member for Joliette, the information posted was not privileged but, in fact, very public. He concluded by reiterating that Members have an obligation to respect privileged information, but should not have fewer rights than any other citizen in disseminating public information.

House of Commons Procedure and Practice, Second Edition, contains a number of references to the prohibition against reflecting on the presence

or absence of Members in the House, including the one referred to by both Members at page 614, and others at pages 126, 127 and 213.

In particular, I would like to draw to the attention of Members the passage on page 213 which states:

> One of the Member's primary duties is to attend the sittings of the House when it is in session, unless the Member has other parliamentary or official commitments, such as committee meetings, constituency work or parliamentary exchanges. This obligation is enshrined in Standing Order 15: "Every Member, being cognizant of the provisions of the *Parliament of Canada Act*, is bound to attend the sittings of the House, unless otherwise occupied with parliamentary activities and functions or on public or official business". The Speaker has traditionally discouraged Members from signalling the absence of another Member from the House because "there are many places that Members have to be in order to carry out all of the obligations that go with their office".

As Members are repeatedly cautioned, it is clearly unparliamentary to make reference in debate to the presence or absence of other Members. The case before us is somewhat novel and, while I accept the viewpoint of the hon. Member for Joliette, I also appreciate the argument made by the hon. Member for Ottawa–Orléans. It is clearly impossible for the Chair to police the use of personal digital devices by Members, for example, by trying to distinguish whether certain texting has originated from the Chamber or not. Nor would the Chair want to change its longstanding practice of refraining from comment on statements made outside the House. That said, however, it seems to me that statements like the ones complained of are—at the very least—unfortunate and I would strongly advise all Members to refrain from such behaviour in the future as you undoubtedly understand the possible repercussions on colleagues and on the reputation of the House itself.

All the same, I want to take this opportunity to address the broader issue of the ways in which these new technologies and tools challenge our historic practices and procedures. While they are extremely useful in reaching out to colleagues, constituents and the public, these technologies need to be used

judiciously, not least because of the speed with which messages and images can be distributed once they are on the Internet.

On various occasions over the past months, Members have raised concerns over their use in conjunction with House and committee proceedings. In fact, the very use of the social networking site Twitter has been raised as an issue in this House several times, including the case before us. For example, on October 20 and 27, and again on November 17, 2009, postings on Twitter resulted in Members apologizing to this House.

More recently, a posting on Facebook gave rise to concern for the Member for Saskatoon–Humboldt when a photograph of the Member, and a statement related thereto, were posted on the popular networking site.

The House and the Standing Committee on Procedure and House Affairs have already dealt with some of the issues related to new technologies. For example, in response to concerns about the re-use of parliamentary webcasts on March 5, 2009, the House concurred in the Eighth Report of the Standing Committee on Procedure and House Affairs. This allowed us to strengthen and broaden the Speaker's permission that appears on the back page of *Debates*, concerning the reproduction and use of webcasts of House and committee proceedings.

Given the increasing frequency of incidents involving social networking technologies, I believe it would be helpful if the Standing Committee on Procedure and House Affairs would consider the issues related to these technologies and their impact on House and committee proceedings.

I thank hon. Members for their attention.

Postscript: On June 16, 2010, the Standing Committee on Procedure and House Affairs presented its Twelfth Report to the House regarding new technologies and their impact on the House and committee proceedings.[3] The Committee called upon the House to affirm the longstanding practice that a Member cannot do indirectly what cannot be done directly, including instances in which this is accomplished by the use of technological devices by Members while in the Chamber of the House of Commons and in its committees. The Committee also endorsed

the Standing Orders and accepted procedures and practices for the use of current technological devices, and recommended that the Speaker be guided by his own discretion in enforcing them. Finally, it recommended that he circulate a written reminder of the House's Standing Orders, procedures and practices with respect to the use of technological devices in the Chamber of the House of Commons and in its committees to all Members. The Report was not concurred in.

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1. *Debates*, March 24, 2010, pp. 879-80.
2. *Debates*, March 29, 2010, pp. 1061-3.
3. Twelfth Report of the Standing Committee on Procedure and House Affairs, presented to the House on June 16, 2010 (*Journals*, p. 538).

The House and Its Members

Similar Items on the *Order Paper*: rule of anticipation

October 5, 2010 *Debates*, p. 4780

Context: On September 30, 2010, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons) rose on a point of order with respect to a motion on the *Order Paper* to concur in the Seventh Report of the Standing Committee on Industry, Science and Technology, which, he argued, was essentially the same as a supply motion adopted the previous day.[1] Citing *House of Commons Procedure and Practice*, 2009, Mr. Lukiwski pointed out that the rule of anticipation forbade the same question from being decided twice within the same session, and that the rule was operative only when one of two similar motions on the *Order Paper* was actually proceeded with, as had happened with the supply motion. He contended that the continuation of the debate on the concurrence motion at a later date (as required by Standing Order 66(2)) and any subsequent vote would be redundant. For this reason, he asked the Speaker to strike the motion from the *Order Paper*. After hearing from another Member, the Speaker reserved his decision.[2]

Resolution: On October 5, 2010, the Speaker delivered his ruling. Agreeing with Mr. Lukiwski that the motions were substantially the same, he indicated that it would be a violation of the principle behind the rule of anticipation to allow the proceedings on the concurrence motion to continue. Accordingly, he directed the Clerk to remove from the *Order Paper* the Order for resuming consideration of the motion to concur in the Seventh Report.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on September 30, 2010, by the Parliamentary Secretary to the Government House Leader concerning the disposition of the Order for resuming debate on the motion to concur in the Seventh Report of the Standing Committee on Industry, Science and Technology.

I would like to thank the Parliamentary Secretary for bringing the matter to the attention of the House and the Member for Windsor–Tecumseh for his contribution to the discussion.

The Parliamentary Secretary, in raising this matter, pointed out that the motion to concur in the Seventh Report is essentially the same as the supply motion moved by the hon. Member for Westmount–Ville-Marie on September 28, 2010 and adopted by the House on September 29, 2010.

Quoting *House of Commons Procedure and Practice*, Second Edition, at page 560 on the rule of anticipation, the Parliamentary Secretary argued that to allow the debate to resume on the concurrence motion would violate the principle which forbids the same question from being decided twice within the same session.

Noting that it would be redundant to resume the debate on the concurrence motion at a later date, as required by Standing Order 66(2), he requested that the Chair strike the motion to concur from the *Order Paper* to prevent an unnecessary debate and vote.

The Chair has examined the motions in question and agrees with the Parliamentary Secretary to the Leader of the Government in the House of Commons that they are substantially the same. In his arguments, the hon. Member for Windsor–Tecumseh pointed out that, in his view, this does not mean that the rule of anticipation would necessarily apply and outlined reasons for why he believes that in this case it does not.

I listened to the intervention of the hon. Member for Windsor–Tecumseh with great interest. As he noted, the debate on the motion for concurrence in the Committee Report had already begun when the opposition motion was moved.

In deciding that the opposition motion could proceed, the Chair was guided by the long-standing approach of my predecessors who, as described on page 560 of *O'Brien-Bosc*, have consistently

> "… ruled that the opposition prerogative in the use of an allotted day is very broad and ought to be interfered with only on the clearest and most certain of procedural grounds".

As I see it, at this stage, the Chair is now left to decide how best to proceed so as to respect the principle behind the rule of anticipation which forbids the same question from being decided twice within the same session.

In the present circumstances the House has actually adopted one of the two motions, namely the supply motion of the Official Opposition. As such, to allow the proceedings on the concurrence motion to continue would violate the fundamental principle by which we are guided. The Chair cannot overlook the critical importance of unwritten practices and conventions in the conduct of business in this Chamber.

Accordingly, I have directed the Clerk to remove the Order for resuming consideration of the motion to concur in the Seventh Report from the *Order Paper*.

I thank hon. Members for their attention.

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1. Seventh Report of the Standing Committee on Industry, Science and Technology, presented to the House on September 29, 2010 (*Journals*, pp. 707-9).
2. *Debates*, September 30, 2010, p. 4584.

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Chapter 3 — The Daily Program

Introduction

The conduct of parliamentary business during a sitting of the House follows a pattern prescribed by the Standing Orders. All items that can be called for debate on that day are listed on the *Order Paper*, the official agenda of the House. The daily activities of the House are generally grouped into five categories: Daily Proceedings; Routine Proceedings; Government Orders; Private Members' Business; and Adjournment Proceedings. The decisions in this chapter relate to two of these categories: Daily Proceedings and Routine Proceedings.

The House commences its proceedings each sitting day with a prayer, which on Wednesdays is followed by the singing of the national anthem. The prayer is one of three events in the Daily Proceedings, the other two being Statements by Members and Oral Questions. The timing of these varies with the day of the week. The time devoted to Statements by Members is limited to 15 minutes and provides an opportunity for Members who are not Ministers to speak for up to one minute on subjects of international, national, provincial or local interest. Speakers are guided in this regard by guidelines dating to the origin of Statements by Members in 1983 and supplemented by other restrictions added over the years. A number of Mr. Speaker Milliken's decisions pertained to personal attacks during Statements by Members, which he urged Members to avoid because those being targeted had no opportunity to respond. In another decision arising from a Member's singing a statement, the Speaker asked Members to confine themselves to the spoken word.

Each sitting day, a 45-minute question period (Oral Questions) follows Statements by Members. Broadly speaking, questions may relate to any matter falling within the jurisdiction of the federal Government. The Speaker ensures that the rules of order and procedure are followed. During his tenure, Mr. Speaker Milliken had to rule on a number of occasions on the admissibility of oral questions. He declared some inadmissible because they did not relate to the Government's administrative responsibilities. In addition, he confirmed that rarely asked questions to Chairs of committees may bear on the agenda, schedule and proceedings of a committee, but not on its work. He emphasized that it was not up to the Speaker to pass judgment on the content

and relevance of answers given, unless they contained unparliamentary language. The Speaker also noted that there was no restriction on who could answer questions about committees. Other decisions in this chapter relate to the tabling of documents and to the maintenance of order during Question Period.

During Routine Proceedings, Members may bring a variety of matters to the attention of the House, generally without debate. Separate rubrics are called by the Speaker each day and considered in succession: Tabling of Documents; Introduction of Government Bills; Statements by Ministers; Presenting Reports from Interparliamentary Delegations; Presenting Reports from Committees; Introduction of Private Members' Bills; First Reading of Senate Public Bills; Motions; Presenting Petitions; and Questions on the *Order Paper*. The time of Routine Proceedings varies according to Daily Order of Business and the duration varies according to the number of items considered. Mr. Speaker Milliken's decisions relate to three of these rubrics: Tabling of Documents; Motions; and Questions on the *Order Paper*.

Any report or paper that deals with a matter within the administrative competence of the Government or documents that must be tabled pursuant to a statute are usually tabled during Routine Proceedings under the "Tabling of Documents" rubric. However, the practices for tabling documents allow a Minister to do so at any time during a sitting, without the unanimous consent of the House. One decision in this chapter relates to a document tabled by a Minister.

The kinds of motions permissible under "Motions" consist primarily of motions for concurrence in committee reports and motions of instruction. When the Speaker calls "Motions" during Routine Proceedings, any Member or Minister may rise and move a debatable motion if it has been placed on the *Notice Paper* 48 hours in advance. The motions considered under this heading may also be moved without notice by unanimous consent and adopted without debate. Standing Order 56.1 allows that if, at any time during a sitting, unanimous consent is denied for the presentation of a routine motion for which written notice had not been given, a Minister may request under the heading "Motions" during Routine Proceedings that the Speaker put the motion forthwith, without debate or amendment. Mr. Speaker Milliken delivered a number of rulings on motions moved pursuant to Standing Order 56.1

because Members charged that it was being used for purposes that were never intended. In his rulings, Mr. Speaker Milliken emphasized that it should apply only to routine motions. He warned Members against the tendency to misuse the Standing Order and declared that it could not be used to circumvent the decision-making process of the House. On other occasions, the Speaker ruled on points of order regarding motions for concurrence in committee reports.

A Member wishing to submit a written question must give 48 hours' notice before it is placed on the *Order Paper*. Any Member may have a maximum of four such questions on the *Order Paper* at any time. Written questions are intended to elicit information relating to public affairs for which a Minister's department is responsible. When the Speaker calls "Questions on the *Order Paper*" during Routine Proceedings, a Minister, or more usually the Parliamentary Secretary to the Government House Leader, rises to announce which questions the Government intends to answer that day. It is at this time that Members raise any concerns they have about their questions and request information about the status of the reply. Some of Mr. Speaker Milliken's decisions in this chapter relate to the procedural admissibility of written questions, specifically with regard to their length and content or to the amount of information required to answer them. During his tenure, Mr. Speaker Milliken also ruled on a new procedure introduced in 2001, in which the matter of the Government's failure to respond to a question within the prescribed period is referred automatically to the appropriate standing committee.

The Daily Program

Daily Proceedings

Statements by Members: singing

October 3, 2005 *Debates*, p. 8331

Context: On October 3, 2005, Brian Pallister (Portage–Lisgar), recognized to make a statement pursuant to Standing Order 31, began his statement by singing. The Speaker interrupted him and invited him to limit his intervention to the spoken word.[1] Later during the sitting, the Speaker made a statement regarding the incident and urged all Members to refrain from singing during Statements by Members. He added that, while the reciting of poetry had become acceptable over time, singing had not.

Statement of the Chair

The Speaker: During Standing Order 31 statements the hon. Member for Portage–Lisgar chose to begin his statement melodically. While I am sure all hon. Members appreciated his voice and obvious talent in this regard, I would point out that under Standing Order 31 it is stated:

> A Member may be recognized, under the provisions of Standing Order 30(5), to make a statement for not more than one minute. The Speaker may order a Member to resume his or her seat if, in the opinion of the Speaker, improper use is made of this Standing Order.

I would also point out that on page 365 of *Marleau and Montpetit* it states:

> The Speaker retains discretion over the acceptability of each statement and has the authority to order a Member to resume his or her seat if improper use is being made of this Standing Order.

I do not claim to have a precedent where Members broke into song in the midst of their presentation under Standing Order 31 but in this case I felt that perhaps singing was unnecessary. I would urge hon. Members to restrain themselves in singing during Standing Order 31 statements and perhaps do

that on the national anthem day on Wednesday, and use the usual verbal things, the spoken word.

I note that we often get poems during Standing Order 31 statements made by Members who clearly have poetic talents. We will leave the matter of poetry, which seems to have been acceptable over a period of time, but singing perhaps is rising to new heights that we need not ascend. I would invite the hon. Member for Portage–Lisgar to stick with the spoken word.

Mr. Brian Pallister (Portage–Lisgar, CPC): Mr. Speaker, I must say that I totally accept your ruling, although in this dour and dismal place I think it would be a true sad thing for us not to have the presence of music on a regular basis. In fact, it might increase the degree of affinity among the Members of this House and the joy that we should experience in representing the people of Canada if we sang more and yelled less.

The Speaker: I do not disagree with the hon. Member's suggestion. Perhaps he could go to the Procedure and House Affairs Committee and make a presentation and perhaps arrange a singsong in the Committee meeting, which the Chairman I am sure would find in order given his affinity for excellent singing.

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1. *Debates*, October 3, 2005, p. 8322.

The Daily Program

Daily Proceedings

Statements by Members: personal attacks

April 29, 2009 *Debates*, p. 2871

Context: On April 29, 2009, the Speaker interrupted a statement being made by John Duncan (Vancouver Island North) during Statements by Members judging that it constituted a personal attack against Dennis Bevington (Western Arctic) and John Rafferty (Thunder Bay–Rainy River).[1] Later in the sitting, Mr. Duncan rose on a point of order arguing that he had been making statements of fact rather than personal attacks.[2]

Resolution: The Speaker delivered his ruling immediately. He stated that, while attacks on the position of a political party are in order, attacks on individual Members are not as there is no opportunity for reply. He referred to his ruling of March 12, 2009, and noted that statements made pursuant to Standing Order 31 are not intended as debate.

Decision of the Chair

The Speaker: The issue with the statement by the hon. Member for Vancouver Island North was he dealt with specific Members in the House in his statement. In my view, the earlier statements he referred to, there were some quotations from Members, but that is it. Then the attacks appeared to go against an entire party for being inconsistent, or whatever other words Members may have used. I did not memorize them all and I would not.

There is a difference between an attack on a party's position or a party's apparent decision from an attack on an individual Member. That is what happened in the course of the hon. Member's statement. He went after two Members for their vote on a particular item and the statements those individuals had made. In my view it constituted an attack.

There was one very similar one earlier in the week, quoting, I believe, the same hon. Members. I did not get up at that time, but I did speak to the

hon. Member who made the statement and indicated my displeasure and unwillingness to countenance this again. The Member received a warning from me. It was not done in public; it was done in private.

In this case, being the second time this week I have heard the same statement, or a very similar statement, I moved to end it.

In the circumstances, I would urge hon. Members to look at what they are going to say. Attacks on party positions are entirely permitted. I have not ruled those out of order. I have simply said that attacks on individual Members are out of order because, as the hon. Member for Vancouver East said in her statement, there is no opportunity for a general reply. We have lots of those during Question Period, but there are opportunities for supplementary questions or responses to questions during that period.

Standing Order 31's are not intended as debate. They are statements by Members. I quoted that in my original ruling on this subject and indicated very clearly that they should not be used for attacks on individual Members. It was the individual part of it that I objected to in the hon. Member's statement and it was on this basis that I interrupted him. I am sure he will take it to heart in future.

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1. *Debates*, April 29, 2009, p. 2857.
2. *Debates*, April 29, 2009, pp. 2870-1.

The Daily Program

Daily Proceedings

Statements by Members: personal attacks

December 14, 2010 *Debates*, pp. 7251-2

Context: On November 30, 2010, Derek Lee (Scarborough–Rouge River) rose on a point of order with respect to a statement made by Phil McColeman (Brant) during Statements by Members earlier that day.[1] Mr. Lee claimed that Mr. McColeman had delivered a "negative attack" on Mark Holland (Ajax–Pickering) in connection with his absence from a committee meeting. He called on Mr. McColeman to withdraw his negative comments. After hearing from another Member, the Speaker took the matter under advisement.[2]

Resolution: On December 14, 2010, the Speaker delivered his ruling. He affirmed that the statement in question had related directly to committee proceedings and, as stated in a ruling on June 14, 2010, it was incumbent upon committees themselves to deal with issues arising from their proceedings. With regard to the content of the statement itself, he cited *House of Commons Procedure and Practice*, 2009, with regard to the prohibition on offensive, provocative or threatening language, as well as a past ruling in which he had cautioned Members against abuse of their freedom of speech. He emphasized that personal attacks in Statements by Members are of concern in that the Members targeted are left without an opportunity to respond to the accusations made. For all these reasons, he ruled that the statement by Mr. McColeman constituted a personal attack and an inappropriate use of a statement made pursuant to Standing Order 31. He therefore called upon Mr. McColeman to withdraw his comments.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on November 30, 2010 by the Member for Scarborough–Rouge River concerning a statement pursuant to Standing Order 31 made by the Member for Brant with regard to the Member for Ajax–Pickering.

I would like to thank the hon. Member for Scarborough–Rouge River for bringing this matter to the attention of the House, as well as the hon. Parliamentary Secretary to the Government House Leader for his intervention.

The Member for Scarborough–Rouge River claimed that the Member for Brant had delivered what could only be regarded as a "negative attack" on the Member for Ajax–Pickering, and argued that it was in disregard of previous rulings and the rules of the House.

In reviewing this matter it was immediately apparent to the Chair that the statement complained of related directly to committee proceedings. In a very similar case in which the conduct of a Member in committee was called into question, I reminded the House in a ruling on June 14, 2010 that it is incumbent upon committees themselves to deal with issues that arise from their proceedings.

With regard to the content of the statement itself, I would like to draw the attention of the House to page 618 of *House of Commons Procedure and Practice*, Second Edition, where we are clearly reminded that:

> The proceedings of the House are based on a long-standing tradition of respect for the integrity of all Members. Thus, the use of offensive, provocative or threatening language in the House is strictly forbidden. Personal attacks, insults and obscenities are not in order.

House of Commons Procedure and Practice, Second Edition, at page 614, goes even further in stating that:

> Remarks directed specifically at another Member which question that Member's integrity, honesty or character are not in order. A Member will be requested to withdraw offensive remarks, allegations, or accusations of impropriety directed towards another Member.

This is why in my ruling from June 14, 2010, at page 3779 of the *Debates*, I stressed that:

> When speaking in the House, Members must remain ever cognizant of these fundamental rules. They exist to safeguard the reputation and dignity not only of the House itself but also that of all its Members.

Furthermore, on page 3778, I noted, as have other Speakers:

> … that the privilege of freedom of speech that Members enjoy confers responsibilities on those who are protected by it, and Members must use great care in exercising their right to speak freely in the House.

At that time I also expressed the Chair's concern with the "continuing and unsettling trend toward using Members' statements as a vehicle to criticize other Members".

As the Chair has indicated in the past, personal attacks in Statements by Members pursuant to Standing Order 31 are of particular concern in that the Members targeted are left without an opportunity to respond to or deal directly with the accusations that are made.

For all of these reasons, after careful review of the statement of the Member for Brant, the Chair finds that it constituted a personal attack on the Member for Ajax–Pickering and that it was an inappropriate use of a statement made pursuant to Standing Order 31. Therefore, I call upon the Member for Brant to withdraw his comments.

Editor's Note: Immediately following the Speaker's ruling, Mr. McColeman withdrew his remarks.[3]

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1. *Debates*, November 30, 2010, pp. 6629-30.
2. *Debates*, November 30, 2010, pp. 6638-9.
3. *Debates*, November 30, 2010, p. 7252.

The Daily Program

Daily Proceedings

Oral Questions: administrative responsibility of the Government; question ruled out of order

March 27, 2001 — *Debates*, pp. 2311-2

Context: On March 27, 2001, Svend Robinson (Burnaby–Douglas) rose on a point of order with respect to his oral question to John Manley (Minister of Foreign Affairs) being ruled out of order. Mr. Robinson had asked the Minister whether he felt that it was appropriate for Members to accept travel to Sudan paid for by a corporation. The Speaker had ruled the question out of order since it did not concern matters within the administrative responsibility of the Government.[1] Mr. Robinson cited *House of Commons Procedure and Practice*, 2000, to the effect that Members should be given the greatest possible freedom in the putting of questions and asked that the Speaker allow his question when he asked it next.

Resolution: The Speaker ruled immediately. He stated that, since Mr. Robinson had asked the Minister for an opinion on the actions of other Members, his question had violated two of the principles associated with Oral Questions in that it did not concern matters within the administrative responsibility of the Government and it sought an opinion.

Decision of the Chair

The Speaker: The Chair is quite prepared to rule on this issue immediately. I refer the hon. Member for Burnaby–Douglas to *Marleau and Montpetit*, as he has done, at page 426:

> —In summary, when recognized in Question Period, a Member should—ask a question that is within the administrative responsibility of the government or the individual Minister addressed.
>
> Furthermore, a question should not—seek an opinion, either legal or otherwise—

The hon. Member asked the Minister for his opinion on what some other hon. Member had done. It had nothing to do with Government expenditure. It had nothing to do with the Department of Foreign Affairs.

Apparently there was a choice by these Members, on the face of the hon. Member's question, to take a trip from someone else. That is not the business of the Minister and in my opinion it is clearly not part of the administrative responsibility of the Government. The Member was seeking an opinion. He violated the principles on two counts. The question was out of order. I have no doubt on the issue.

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1. *Debates*, March 27, 2001, p. 2309.

The Daily Program

Daily Proceedings

Oral Questions: administrative responsibility of the Government; internal matters of a political party

April 12, 2005 *Debates*, p. 4954

Context: On April 12, 2005, Diane Ablonczy (Calgary–Nose Hill) rose on a point of order seeking clarification from the Speaker as to why her questions during Oral Questions had been ruled out of order. The Speaker had indicated that the questions did not deal with matters within the administrative responsibility of the Government but rather internal matters of the Liberal Party.[1] Mrs. Ablonczy argued that her questions regarding an audit of the Liberal Party involved the expenditure of public funds.[2]

Resolution: The Speaker ruled immediately. He stated that he had ruled the questions out of order because they had dealt with internal matters of a political party, and that, normally, party finances are not the administrative responsibility of the Government, even if Government monies had been paid to the party for some reason. He added that he would review the matter and that, if he felt that his ruling needed to be modified, he would return to the House.

Decision of the Chair

The Speaker: I thank the hon. Member for Calgary–Nose Hill for her intervention.

Yes, I ruled the questions out of order and I did so on the basis that they dealt with internal party matters. If the audit had been one that was paid for by the Government at the request of the Government because of problems and had been ordered by the Ministry specifically, I might have had more sympathy, but that does not appear to be the case.

I do not know all the facts. I will review the situation, but it looked to me as though this was a standard review that had been done by someone and the report was made. Whether it was at the request of the commission or

some other person, I do not know, but normally party finances are not the administrative responsibility of the Government even where there is a case of Government moneys having been paid to the party for some reason or another. That is why I disallowed the question.

We have had a lot of questions on whether Government funds were properly expended, but that was not the question the hon. Member asked. It was about the internal affairs of the party and for that reason I ruled the question out of order. She was not the only one who had that misfortune today.

I will review the matter and get to the back to the House should I feel that my ruling was incorrect. I will let her know accordingly.

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1. *Debates*, April 12, 2005, p. 4946.
2. *Debates*, April 12, 2005, p. 4954.

The Daily Program

Daily Proceedings

Oral Questions: Minister tabling a document

May 4, 2005 *Debates*, pp. 5657-8

Context: On April 13, 2005, Ken Epp (Edmonton–Sherwood Park) rose on a point of order with respect to the tabling of a document during Oral Questions by Stéphane Dion (Minister of the Environment).[1] Mr. Epp argued that it was out of order to table a document during Oral Questions. He noted that time in Question Period had been taken up by the tabling of a document and added that the document should have been tabled during Routine Proceedings because it was not one that was required to be tabled. Mauril Bélanger **(**Deputy Leader of the Government in the House of Commons, Minister responsible for Official Languages, Minister responsible for Democratic Reform and Associate Minister of National Defence) replied that no objections had been made at the time. The Speaker took the matter under advisement.[2]

Resolution: On May 4, 2005, the Speaker delivered his ruling. After reviewing the evolution of the practice of tabling of documents and the relevant Standing Orders, he concluded that there is no requirement for Ministers to table these types of documents only during Routine Proceedings. In view of the precedents cited, he declared that the Chair would continue to permit the tabling of documents by Ministers during Oral Questions or at any time. Finally, the Speaker suggested that Mr. Epp might wish to ask the Standing Committee on Procedure and House Affairs to review and clarify the rules governing the tabling of these types of documents.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on Wednesday, April 13, 2005 by the hon. Member for Edmonton–Sherwood Park concerning the tabling of a document during Question Period by the hon. Minister of the Environment.

I would like to thank the hon. Member for Edmonton–Sherwood Park for bringing this matter to the attention of the House, as well as the hon. Deputy Leader of the Government in the House of Commons for his intervention.

In raising this matter, the hon. Member expressed concern that time in Question Period had been taken up with the tabling of a document and that the document should have been tabled during Routine Proceedings because it was not one that was required to be tabled. The Deputy Leader of the Government in the House responded that there had been no objections to the tabling at the time and since it had been received by a Table Officer, it had been properly tabled.

I wish first to reassure the hon. Member for Edmonton–Sherwood Park that the Chair very carefully monitors the use of time during Question Period. I can assure the House that this ongoing vigilance is very effective in protecting the time available to Members of all parties and that is despite the excessive noise that sometimes occurs in the Chamber.

As for the timing of the tabling of documents, my initial reaction to the point of order was that our practices permit a Minister to table a document at anytime during a sitting, including during Question Period, without the consent of the House. I undertook, however, to look into the matter and get back to the House.

In considering this matter, I reviewed the Standing Orders pertaining to the tabling of documents. First, Standing Order 30(3) sets down the time for and the items to be considered during Routine Proceedings, including tabling of documents. Second, Standing Order 32(1) provides for returns, reports and other papers required by statute, resolution or Standing Order to be deposited with the Clerk of the House. This is known as "back door" tabling. Third, Standing Order 32(2) states:

> A Minister of the Crown, or a Parliamentary Secretary acting on behalf of a Minister, may, in his or her place in the House, state that he or she proposes to lay upon the Table of the House, any report or other paper dealing with a matter coming within the administrative responsibilities of the government, and, thereupon, the same shall be deemed for all purposes to have been laid before the House.

This Standing Order requires that these documents not be tabled back door but in the House. This normally takes place during Routine Proceedings, under "Tabling of Documents". In addition, our practices provide that if a Minister quotes from a document in debate, the document must be tabled forthwith if so requested. If a Minister cites a document in response to a question during Oral Questions, the tabling normally occurs immediately following Question Period.

At this point, it may be useful to Members if I were to summarize the evolution of the rubric "Tabling of Documents" and the practice for tabling documents. From Confederation up to the 1950s, no documents could be presented to the House unless sent down by message from the Governor General, or in answer to an Order or Address of the House, or pursuant to statute. So long as the paper to be tabled fell into one of these categories, a Minister had only to rise, usually during Routine Proceedings, and formally present the document to the House. If the Government wished to table papers that had not been ordered, a motion had to be adopted allowing their presentation.

In 1955, the Standing Orders were amended to allow those documents required to be tabled by statute or by Order to be deposited privately with the Clerk on any sitting day.

A few years later, in 1968, in response to an increased number of reports and papers being tabled by leave rather than by statutory requirements, orders or addresses, the Standing Orders were amended to remove the requirement that leave be obtained before the documents in question could be laid before the House. This new Standing Order provided for formal tabling as long as the documents in question came under the administrative responsibilities of the Government, a very broad category of documents. They were normally tabled at the beginning of Routine Proceedings. In 1975, the heading "Tabling of Documents" was added to Routine Proceedings to codify the practice being followed.

I have examined our practices for "Tabling of Documents" since the inclusion of this rubric under Routine Proceedings to determine if the Standing Orders have been strictly followed. While these types of documents are normally tabled during Routine Proceedings, immediately following Question Period if cited in a response, or immediately if cited in debate, I have

discovered that, although rare, there have been occasions when a Minister has tabled a document during Question Period. I refer Members to examples found in the *Debates* of March 8, 1976, at page 11574; September 15, 1992, at page 13143; February 14, 1997, at page 8135; March 26, 2001, at page 2226; and February 23, 2005, at page 3873. More recently, on April 22, the Deputy Speaker stated that a Minister may table a document at any time. I refer hon. Members to the *Debates* at page 5465.

Accordingly, I must conclude that our practices have evolved to a point where there is no requirement that Ministers must table these types of documents only during Routine Proceedings. Perhaps this may be because the House feels that the tabling of documents is meant to facilitate the work of the House and that of its Members. It may well be, based on the examples referred to earlier, that the tabling of documents in this manner has achieved this result.

That being said, most of the examples are relatively recent and certainly point to a new trend. The hon. Member for Edmonton–Sherwood Park may therefore wish to seek to convince the Standing Committee on Procedure and House Affairs to review and clarify the rules governing the tabling of these kinds of documents. Certainly that would be the kind of matter that falls within the Committee's mandate.

In the meantime, in view of the precedents just described, the Chair will continue to accept that documents may be tabled by Ministers of the Crown during Question Period or indeed at any time.

I thank the hon. Member for Edmonton–Sherwood Park for having brought this matter to the attention of the Chair.

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1. *Debates*, April 13, 2005, p. 5029.
2. *Debates*, April 13, 2005, pp. 5036-7.

The Daily Program

Daily Proceedings

Oral Questions: questions concerning matters before committees; used by Members of the opposition to comment on committee business

May 19, 2005 *Debates*, p. 6238

Context: On May 19, 2005, during Oral Questions, Joe Preston (Elgin–Middlesex–London) addressed a question to Leon Benoit (Vegreville–Wainwright), Chair of the Standing Committee on Government Operations and Estimates. He asked, with regard to the Committee's agenda, whether Mr. Benoit would explain the refusal of Scott Brison (Minister of Public Works and Government Service) to appear before the Committee. Mr. Benoit replied.[1] After Oral Questions, Peter Adams (Parliamentary Secretary to the Minister of Human Resources and Skills Development) rose on a point of order. Making reference to the question asked by Mr. Preston and to another question asked by Stephen Harper (Leader of the Opposition) to John Williams (Edmonton–St. Albert), the Chair of the Standing Committee on Public Accounts, the week before,[2] he argued that the Chair of a standing committee can reply only with respect to questions regarding the organization of the committee and its agenda. He asked that the Speaker rule on whether an abuse of the Standing Orders had occurred. Other Members also spoke to the matter.[3]

Resolution: The Speaker delivered his ruling immediately. He stated that the question asked by Mr. Preston had narrowly met the exigencies of House practice because it had dealt with the business of the Committee and that the specifications of the relevant Standing Order concerned the content of questions and not that of answers. He added that the Speaker does not enforce restrictions on answers and that the Chair of a committee, once asked an appropriate question, could talk about things other than the specifics of the question. He indicated that he would review the question asked by the Leader of the Opposition the week before and concluded that he would continue to ensure that questions of this type are clearly in order and conform to the rules.

Decision of the Chair

The Speaker: I thank all hon. Members for their interventions on this point. The Chair very much appreciates support for the Standing Orders which the Chair is bound to enforce in the House.

Yesterday there was a question, which the Chair ruled out of order, addressed to the Member for Vegreville–Wainwright by the hon. Member for Elgin–Middlesex–London. Today, I thought there was an improvement on yesterday's question in terms of it dealing with the business of the Committee, which, as the hon. Member for Peterborough correctly pointed out, is what the questions should be concerned about. The difficulty was that in his submission he suggested that the answers had to do the same thing.

Our Standing Orders state that the question has to concern the business of the Committee, but the Chair of the Committee, having been asked the question as Ministers tend to do, could talk about things other than the specifics of the question. I can see that the hon. Member was upset at the fact that the Committee Chair seemed to go on about subjects perhaps totally different from the one specifically raised in the question. He may have gone beyond that, but I do not think it is for the Chair to enforce that kind of restriction on answers. If I were to do so, I might cut Members' answers short, which I know the House Leader for the Official Opposition would be appalled at.

I will refrain from that, but I will certainly continue to look at questions to ensure that they are concerning the business of the Committee. I had made that representation after the point of order was raised yesterday. I did not make a ruling because I spoke to both hon. Members who raised it and indicated my dissatisfaction with the question.

It was corrected today. It was a borderline question, but I thought it met the exigencies of our practice, which is to require that the question deal with the business of the Committee and not a question about what went on in the Committee. It is to deal with its agenda and business. I thought the question, by a narrow margin, met the exigencies of the Standing Order today. I will review the other one the Member raised with me, but I did rule yesterday's out of order.

I appreciate the support the hon. Member for Peterborough has offered and the support of the hon. Members for Windsor–Tecumseh, Edmonton–St. Albert and Kootenay–Columbia, who all support the Chair in their efforts to ensure that the questions asked are proper in the House.

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1. *Debates*, May 19, 2005, p. 6235.
2. *Debates*, May 11, 2005, pp. 5926-7.
3. *Debates*, May 19, 2005, pp. 6237-8.

The Daily Program

Daily Proceedings

Oral Questions: Members' power to discuss matters currently under investigation by Ethics Commissioner

June 7, 2005 *Debates*, pp. 6737-8

Context: On June 6, 2005, the Speaker informed the House that he had received a letter from the Ethics Commissioner, Bernard Shapiro, with respect to an inquiry into alleged breaches of conduct in exchanges between Ujjal Dosanjh (Minister of Health) and Gurmant Grewal (Newton–North Delta), in which he reminded Members that, pursuant to section 27(5) of the *Conflict of Interest Code for Members of the House of Commons*, once a request for an inquiry has been made, they should not comment on a matter currently under consideration by the Ethics Commissioner. The Speaker indicated that he would be enforcing this policy with respect to both questions and answers.[1]

This statement elicited a number of responses. Randy White (Abbotsford) asked whether this prohibition extended to comments and discussion outside the House, to which the Speaker replied that his role was to deal with issues that came before the House. Ken Epp (Edmonton–Sherwood Park) suggested that it was inappropriate for the Ethics Commissioner, who was named in the exchanges at issue, to be involved in conducting the enquiry, to which the Speaker replied that the Member could raise these concerns with the Standing Committee on Procedure and House Affairs. Bill Blaikie (Elmwood–Transcona) invoked section 72.05(5) of the *Parliament of Canada Act*, arguing it was in conflict with the Code by stating: "this section shall not be interpreted as limiting in any way the powers, privileges, rights and immunities of the House of Commons or its Members". He asked for clarification and guidelines from the Speaker as to his expectations of Members in such matters. In response to why certain questions on the matter had been allowed, the Speaker indicated that he had permitted only those questions narrowly focused on the actions of the Prime Minister's chief of staff, since that individual was outside of the authority of the Ethics Commissioner. The Speaker informed Members that he would return to the House with a more detailed ruling.[2]

Resolution: On June 7, 2005, the Speaker delivered his ruling. He explained that the power of the Chair with regard to the Ethics Commissioner's work is very limited. When informed that an inquiry has begun, he would communicate this information to the House and endeavour to enforce a moratorium on comments about the issues under inquiry but that his power does not extend outside of the House. The Speaker also declared that the adoption of relevant amendments to the *Parliament of Canada Act* and the *Conflict of Interest Code for Members of the House of Commons* should be construed as a decision by the House to be governed by the Ethics Commissioner in certain matters and that the restraint incumbent upon Members in this regard was akin to that associated with the *sub judice* convention. He added that he had no power to address the issue of a potential conflict of interest on the part of the Ethics Commissioner himself.

Decision of the Chair

The Speaker: After Question Period yesterday several hon. Members rose on points of order related to the statement I had made before Question Period relating to the inquiry now undertaken by the Ethics Commissioner concerning the hon. Member for Newton–North Delta and the hon. Minister of Health.

I would like to respond to these points of order with one single statement, which I will make as promptly as possible, given its immediate repercussions on the way hon. Members will handle these matters in the days to come.

The power of the Chair with regard to the Ethics Commissioner's work is very limited. Informed by the Commissioner that an inquiry has begun under his terms of reference, I will then formally communicate that information to hon. Members so that they may govern themselves accordingly.

As I said yesterday, I will then do my best within the purview of my authority to enforce the moratorium on comments about the issues under inquiry, as requested by the Commissioner and as stipulated in our Standing Orders. That purview does not go beyond the proceedings here in the Chamber and perhaps those in committee when they are reported back to the House by committee.

I can offer no solace to the hon. Member for Abbotsford or the hon. Member for Delta–Richmond East with regard to what might go on beyond this

Chamber, nor does the Speaker have any mechanism to address the worry voiced by the hon. Member for Edmonton–Sherwood Park about a possible conflict of interest faced by the Ethics Commissioner himself.

The hon. Member for Elmwood–Transcona cited section 72.05(5) of the *Parliament of Canada Act*, which provides an express protection against the work of the Commissioner "limiting in any way the powers, privileges, rights and immunities of the House of Commons or its Members".

I agree entirely with the hon. Member. However, as I see it, in adopting those amendments to the *Parliament of Canada Act* along with the *Conflict of Interest Code* that is now included in our Standing Orders, the House decided to be governed by the Ethics Commissioner in certain matters.

Part of that discipline, it appears to me, is akin to the House abiding by the *sub judice* convention: when a matter is before a court, the House will await the determination of the court before discussing that matter publicly in the course of its proceedings.

Similarly, when issues are the subject of an inquiry under the mandate of the Ethics Commissioner, Members are enjoined from discussing those issues, so that the inquiry can proceed untrammelled by public comment from Members.

The Speaker has no control over what goes on outside the House, in the media here in the capital, or in Members' own ridings. That is left to each Member to manage as a matter of conscience. The rules have been drawn to the attention of the House. I would hope that hon. Members will be mindful of them in their conduct outside the Chamber.

I know that these are difficult issues for all hon. Members and they do not admit of simple solutions. The system may not be a perfect one, but it is the system the House has adopted as part of its Standing Orders and upholding those Standing Orders is the responsibility of your Speaker.

I would ask for the cooperation of all hon. Members to ensure that our work can be carried out with the seriousness and fairness that Canadians expect of us.

I thank the House for its attention and hope this clarifies the matters raised by hon. Members yesterday.

Postscript: The Grewal-Dosanjh Inquiry was released in January 2006. As this was after the dissolution of the Thirty-Eighth Parliament, it was officially tabled in the House soon after the opening of the Thirty-Ninth Parliament.[3]

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1. *Debates*, June 6, 2005, p. 6657.
2. *Debates*, June 6, 2005, pp. 6666-8.
3. *Journals,* April 4, 2006, p. 15.

The Daily Program

Daily Proceedings

Oral Questions: administrative responsibility of the Government; Speaker's statement regarding questions about the transfer of election campaign funds

October 7, 2005 *Debates*, p. 8562

Context: On October 7, 2005, the Speaker made a brief statement with respect to questions posed during that day's Oral Questions on the subject of the transfer of funds from election campaigns to other places.[1] He stated that the questions should have been ruled out of order as they concerned matters which were not within the administrative responsibility of the Government.

Statement of the Chair

The Speaker: Before we proceed, I want to indicate one reservation the Chair had about proceedings in Question Period today. There were questions concerning what appear to be transfers of funds from campaigns to other places. I know that the Deputy Government House Leader jumped up to answer these questions. In my view, questions concerning election expenses and election moneys are not within the administrative purview of the Government.

I am sorry that I did not jump on the question when it was asked. I did not and I realized as I sat here thinking of it afterward that I had failed to do so. I want to make sure Members know that such questions are out of order. Questions in Question Period must deal with the administrative responsibilities of the Government, and the administration of the election law is not part of the administrative responsibility of the Government. Accordingly, questions on that score are out of order.

1. *Debates*, October 7, 2005, pp. 8557-8.

The Daily Program

Daily Proceedings

Oral Questions: Member's conflict of interest

October 20, 2005 *Debates*, pp. 8804-5

Context: On October 20, 2005, Jay Hill (Prince George–Peace River) rose on a point of order with respect to the Speaker ruling out of order a question asked by Pierre Poilievre (Nepean–Carleton) during Oral Questions on October 19, 2005. The question concerned alleged irregularities in the activities of the firm run by the family of David Smith (Pontiac). In his ruling, the Speaker had referred to Section 27(5) of the *Conflict of Interest Code for Members of the House of Commons*.[1] Mr. Hill argued that, as it was the Member himself who had solicited an opinion from the Ethics Commissioner, such inquiries are covered under Section 26 of the Code. Accordingly, there was no investigation under way and there were no restrictions governing the asking of questions in the House with respect to the alleged conflict of interest.

Resolution: The Speaker ruled immediately. He stated that it was indeed Section 26 of the *Conflict of Interest Code for Members of the House of Commons* which applied to the action of Mr. Smith in seeking an opinion from the Ethics Commissioner and therefore there was no specific rule proscribing Members from raising the matter in the House. Having said this, he urged all Members to be judicious in their language with regard to such matters. He reminded them that questions should deal with Government business, and not the responsibilities of another Member under the Code. Finally, the Speaker made reference to Standing Order 18 which prohibits the use of offensive words against the House or any Member.

Decision of the Chair

The Speaker: I thank the hon. House Leader for the Opposition and the Parliamentary Secretary to the Leader of the Government for their interventions on this matter. I was going to say something on the issue anyway before the issue was raised. I will say it now.

Yesterday during Question Period, this matter was alluded to in a question by the hon. Member for Toronto–Danforth. The Government House Leader replied, as indicated in the comments earlier, that the hon. Member had asked the Ethics Commissioner "to look into this matter" and asked for Members to refrain from referring to the case until the work had been completed.

Later in Question Period, the Chair reminded Members of section 27(5) of the Ethics Code in Appendix 1 of the Standing Orders that enjoins Members from referring to an inquiry being conducted under that section.

I now understand that a request made by an hon. Member to the Ethics Commissioner to clarify his obligations under the Code is mandated under section 26 of the Code, which governs opinions sought from the Commissioner.

Accordingly, I wish to clarify that there is no specific rule proscribing Members from raising this matter in the House. However, I urge them to be judicious in their language and the phrasing of any such reference.

I remind them that the questions that are asked about this must deal with Government business and Government responsibilities, and not the responsibilities of the hon. Member under the Code. He cannot be questioned on this matter in the House during Question Period because questions must be directed to Ministers and must deal with matters of ministerial Government responsibility.

I know that all hon. Members would want to avoid a situation where, in the heat of the moment, they would find themselves contravening Standing Order 18 which specifically prohibits the use of offensive words and I quote:

> —against either House, or against any Member thereof.

I think that will deal with the matter. We could now move on to Orders of the Day.

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1. *Debates*, October 19, 2005, p. 8726.

The Daily Program

Daily Proceedings

Oral Questions: requirement to table a document from which a Minister has quoted

June 8, 2006 *Debates*, p. 2154

Context: On May 17, 2006, Mauril Bélanger (Ottawa–Vanier) rose on a point of order with respect to a document from which Stephen Harper (Prime Minister) had allegedly quoted in response to a question during that day's Oral Questions. Mr. Bélanger argued that according to *House of Commons Procedure and Practice*, 2000, the document should be tabled because it was a Cabinet document, not simply a briefing note, from which the Prime Minister had quoted. Rob Nicholson (Leader of the Government in the House of Commons and Minister for Democratic Reform) rose and stated that he would return to the House on the matter. Jean Lapierre (Outremont) also intervened on the matter.[1] Mr. Bélanger rose again on the same point of order on May 19, 2006 requesting that the matter be addressed.[2] Later that day, the Government House Leader responded that the document should not be tabled as it was a briefing document and the Prime Minister did not quote, cite or refer to any document. He added that the document could not be tabled as it would be contrary to the public interest on the ground that it was a confidence of Cabinet dealing directly with national security measures. The Speaker took the matter under advisement.[3]

Resolution: On June 8, 2006, the Speaker delivered his ruling. Having concluded that the Prime Minister had in fact read from a document, he stated that, while procedural authorities do require Ministers to table documents from which they have quoted during debate or while answering questions, an exception can be made in cases where the public release of information could adversely affect national security. Referring to a similar case where this practice was upheld in 1983, he ruled that, in this instance, the Prime Minister was under no obligation to table the document in question.

Decision of the Chair

The Speaker: Order. I am now prepared to rule on the point of order raised on May 17, 2006, and again on May 19, 2006, by the hon. Member for Ottawa–Vanier concerning the tabling of the document referred to by the Prime Minister during Question Period.

I would like to thank the hon. Member for Ottawa–Vanier for bringing this matter to the attention of the House. I also wish to thank the hon. Member for Outremont for his intervention and the hon. Leader of the Government in the House of Commons for his response.

In raising this matter, the hon. Member for Ottawa–Vanier stated that, in response to a question posed during Question Period on May 17, the Prime Minister had quoted from what appeared to be a Cabinet document and that, according to the rules of the House, the Prime Minister was obliged to table the document.

On Friday, May 19, 2006, the hon. Leader of the Government in the House of Commons responded to the point of order. He indicated that the Prime Minister had not specifically quoted from any document. He clarified that the document in question was being used as a briefing note and that the rules do not require the tabling of briefing notes. The hon. Government House Leader further argued that the document was a Cabinet document that could not be tabled because it dealt directly with national security measures that could jeopardize the safety of Canadian soldiers.

I have reviewed the *Debates* for May 17, 2006, as well as the tape of that day's Question Period. The video clearly showed that in responding to a question put by the hon. Member for Laval–Les Îles, the Rt. Hon. Prime Minister did read from a document as the hon. Members for Ottawa–Vanier and Outremont have argued.

There is a longstanding practice that any document quoted by a Minister in debate or in response to a question during Question Period must be tabled forthwith if so requested. This practice is described on page 518 of *House*

of Commons Procedure and Practice and I believe it would be helpful to all hon. Members if I were to cite this passage:

> Any document quoted by a Minister in debate or in response to a question during Question Period must be tabled. Indeed, a Minister is not at liberty to read or quote from a despatch (an official written message on government affairs) or other state paper without being prepared to table it if it can be done without injury to the public interest.

In addition to *Marleau and Montpetit*, this practice has been described in other procedural authorities, including various editions of *Beauchesne* and *Erskine May*. Indeed, the hon. Government House Leader quoted citation 495(2) of Beauchesne's 6th edition when he responded that the document could not be tabled because its contents concerned national security matters.

Moreover, this practice was upheld in 1983 when the Deputy Speaker ruled that he was satisfied, after hearing arguments, that the Minister of State (International Trade) could not table a document because it would involve some risk of security to the Canadian Diplomatic Communications Service. This precedent can be found at pages 28627 to 28631 of the *Debates* for November 2, 1983.

In light of this precedent and the statement put forth by the hon. Government House Leader that the security of Canadian soldiers could be jeopardized, I must rule that the Prime Minister is under no obligation to table the document in question.

I thank the hon. Member for Ottawa–Vanier for having brought this matter to the attention of the Chair.

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1. *Debates*, May 17, 2006, pp. 1494-5.
2. *Debates*, May 19, 2006, p. 1607.
3. *Debates*, May 19, 2006, pp. 1616-7.

The Daily Program

Daily Proceedings

Oral Questions: administrative responsibility of the Government; election expenditures of a political party

October 22, 2007 *Debates*, p. 209

Context: On October 22, 2007, Wayne Easter (Malpeque) rose on a point of order to request clarification from the Speaker as to why a question he had asked during Oral Questions had been ruled out of order.[1]

Resolution: The Speaker ruled immediately. He stated that Mr. Easter's question had dealt with the election expenditures of a party rather than with matters within the administrative responsibility of the Government.

Decision of the Chair

The Speaker: I am more than happy to review the question that was asked, but from what the hon. Member just said, it sounded to me very questionable whether the question was in order if it dealt with the election expenditures of a party. It has to deal with the administrative responsibility of the Government. The Government is not responsible for administering the rules relating to election expenses; Elections Canada is. It is an independent agency that does not report to the House through the Government. It reports to the House through the Speaker.

It is difficult for the hon. Member to ask questions about Elections Canada to the Government, unless it is Government policy as coming up in a change in the law respecting Elections Canada. His question appeared to have nothing to do with it.

As I said, I could not hear the first part of the question because of the tumult in the House. Maybe there was something in there that rendered it in order, but the part I heard in my view was out of order.

I will review the hon. Member's question again. If I find it in order I will advise him accordingly and he will be able to ask it another day.

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1. *Debates*, October 22, 2007, p. 205.

The Daily Program

Daily Proceedings

Oral Questions: question concerning matters before committees; answered by Government House Leader

February 8, 2008 *Debates*, pp. 2836-7

Context: On February 8, 2008, Ralph Goodale (Wascana) rose on a point of order with respect to questions being directed to committee Chairs during Oral Questions. He noted that during the previous day's Question Period, a question had been directed to a committee Chair but had been answered by Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform).[1] Mr. Goodale argued that, since a question directed to a committee Chair must concern the agenda of the committee, only the committee Chair or Vice-Chair has the knowledge and capacity to answer the question. The Government House Leader responded that the committee Chair had, in fact, not been present in the House when the question was asked and, therefore, could not respond.[2]

Resolution: The Speaker ruled immediately. He stated that he had recognized the Government House Leader as he was the only Member who had risen to respond to the question. He mentioned that he had not seen the Chair of the committee and that it was the role of the Speaker to look for Members who are standing to answer a question and to choose the appropriate Member to ensure that a response is given. He added that it was reasonable to expect an answer to a question and that he had assumed the Member would prefer an answer from the House Leader to no answer at all. He indicated that he would take recommendations from the Standing Committee on Procedure and House Affairs, the House Leaders or the Whips, as to how the Speaker should deal with such questions in the future.

Decision of the Chair

The Speaker: I would now like to come back to the question of privilege raised by the hon. Member for Wascana.

Yesterday, when this happened, no one rose except the Government House Leader to answer the question concerning the business of this

Committee, so I recognized the Government House Leader. I did not see the Chair of the Committee. I do not know whether he left the House or not. In any event, he did not rise to answer the question, and I do not believe he was in his seat. I do not know who the Deputy Chair of the Committee is off the top of my head, but no other Member rose to answer, so I recognized the Government House Leader.

I do not think the question is whether anyone else is allowed to answer or not. The question for the Speaker of the House is to take a look at those who are standing to answer and choose who is going to answer.

The Chair, as I say, did not rise. The House Leader did. No one else did so I recognized the House Leader to answer the question. I assumed the Member would prefer to get an answer from the House Leader than none whatsoever, and on we went.

If the Committee on Procedure and House Affairs wishes to make recommendations on how the Speaker should deal with those questions in future, I am more than happy to receive recommendations from it. Of course the House Leaders and Whips can have a little meeting and tell me what they think. I am happy to hear on this, but in my view, when no one else rises, it is reasonable to expect an answer to a question, even if it comes from on high. Yesterday that is exactly what we got.

Therefore, I do not think it was an error in that sense if the Chair was not here and the Deputy Chair did not rise.

Hon. Ralph Goodale: Mr. Speaker, on this point, would you reflect on one particular matter.

If a Member of the Government, that is a Minister or a Parliamentary Secretary, is permitted to answer questions on behalf of committee Chairs and those questions to committee Chairs can only deal with the agenda of the committee, is it not the implication of this situation, then, that the Government, and not the committee, controls the agenda of the committee?

I think this is a very important distinction that should be reflected upon.

The Speaker: I do not think it is for the Speaker to involve himself or herself in the affairs of committees to the extent that he says who sets the agenda in the committees. That is for the committee to decide. There may be consultations between the Chair of the committees and even the Government House Leader, if that is imaginable, or possibly with an Opposition House Leader if the Chair of the committee comes from the opposition, or even if they are on opposite sides they can consult and get information.

It may be that some consultations had taken place which resulted in the Government House Leader rising. I have no idea. However, this is something, as I say, that can be explored by the Standing Committee on Procedure and House Affairs at its leisure. If it feels a report or a restriction on who is allowed to answer in the case of questions being asked is applicable or responsible, it can suggest that to the House. If the House adopts it, of course I will not recognize anybody else. However, in the circumstances no one else rose. The Member who posed the question clearly wanted an answer and got one, or at least got a response.

I will bear what the hon. Member has said in mind.

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1. *Debates*, February 7, 2008, p. 2743.
2. *Debates*, February 8, 2008, pp. 2835-6.

The Daily Program

Daily Proceedings

Oral Questions: question concerning matters before committees; regarding committee proceedings and not agenda

February 12, 2008 *Debates*, pp. 2968-9

Context: On February 12, 2008, Bruce Stanton (Simcoe North) rose on a point of order with respect to a question directed by Maria Minna (Beaches–East York) to the Chair of the Standing Committee on the Status of Women, Yasmin Ratansi (Don Valley East), during Oral Questions on February 8, 2008.[1] Mr. Stanton argued that the question was out of order because it concerned the proceedings of the Committee and not its agenda or schedule.

Resolution: The Speaker delivered his ruling immediately. He stated that the question was in order because it dealt with the schedule and agenda of the Committee even though the answer may not have been. He concluded by reminding the House that the Speaker cannot rule on the quality or content of replies to questions, unless they contain unparliamentary language.

Decision of the Chair

The Speaker: The Chair certainly appreciates the diligence of the hon. Member for Simcoe North in this matter. Having anticipated that this might be his point of order, I have the text of the question before me.

The hon. Member for Beaches–East York in her question asked this:

> Does the chairperson plan an early meeting of the Committee to consider how the Minister of Canadian Heritage, Status of Women and Official Languages misled the Committee this week during her appearance regarding equality?

In other words, the question did, in my view, deal with the schedule and agenda of the Committee, which is a question that is permitted. The question did ask, is there going to be an early meeting of the Committee? It did go on

to ask about the business of the Committee, but the agenda is properly part of the question. The question was, is there going to be an early meeting of the Committee to consider this item on the agenda? In my view, that kind of question is in order.

The answer did not have much to do with the question, but Speakers are stuck on answers, as the hon. Member knows. I am sure he is very sympathetic to the position of the Chair, because frequently we have questions that are asked and a response is given that does not answer the question and in fact has nothing to do with the question. But it is not for the Speaker to decide whether those answers are in order or not in the circumstances.

The provisions in *Marleau and Montpetit* deal with questions. The hon. Member will notice that they do not tend to deal with answers. Some have suggested that Question Period in the House is called Question Period, not answer period, because the response does not necessarily answer the question that is asked.

In this case I agree that the response from the Chairperson of the Committee was not an answer, using the usual expression of answer, to the question that was asked. It was a response, but it had relatively little to do with the question.

I believe the question met the exigencies of our procedure in that it did deal with the schedule. It asked when the Committee might meet and about the agenda for that meeting. In my view, therefore, it was in order. It may have had other undertones in it that Speakers would prefer not to have in there, but the fact is, in my view, that it did deal with those two items and therefore I allowed the question.

I can only sympathize with the hon. Member when we deal with answers. As I have said, Speakers have very little to say over what constitutes the response to a question. If the response is not an answer to the question, I cannot rule the response out of order unless unparliamentary language is used in the response, which would of course be out of order and which he has not suggested occurred in this case. I sympathize, but there we will leave that one.

I appreciate the Member's diligence in checking this out and raising the matter.

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1. *Debates*, February 8, 2008, p. 2834.

The Daily Program

Daily Proceedings

Oral Questions: questions concerning matters before committees; response by Vice-Chair argued to be inappropriate

April 3, 2008 *Debates*, pp. 4405-6

Context: On March 7, 2008, Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform) rose on a point of order with respect to a response given by the Vice-Chair of the Standing Committee on Procedure and House Affairs, Marcel Proulx (Hull–Aylmer), to a question from Tina Keeper (Churchill) during that day's Oral Questions.[1] The Government House Leader argued that the response of the Vice-Chair had been inappropriate in that it was substantive, partisan and did not pertain to the proceedings or schedule of the Committee. After hearing from another Member, the Deputy Speaker (Bill Blaikie) took the matter under advisement.[2]

Resolution: On April 3, 2008, the Deputy Speaker delivered his ruling. He referred to a ruling given by the Speaker on February 12, 2008, on a similar matter which emphasized the limited power of the Chair in determining what constitutes an appropriate response to a question. The Deputy Speaker stated that, although it was well established that questions to committee Chairs should be strictly limited to matters concerning the committee's administration rather than the substance of their proceedings, the Speaker had no power to judge the nature or quality of the response, unless unparliamentary language was employed. He added that even though the response given by the Member may have contained superfluous remarks, those could not be construed as unparliamentary and so there were no grounds for ruling them out of order. He concluded by advising the House that he intended thereafter to demand strict adherence to the practice of limiting questions directed to committee Chairs to the scheduling and agenda of committee meetings.

Decision of the Chair

The Deputy Speaker: Before proceeding to the Orders of the Day, I am now prepared to rule on the point of order raised on Friday, March 7, 2008, by the hon. Government House Leader alleging the inappropriateness of the response

provided by the Vice-Chair of the Standing Committee on Procedure and House Affairs, the hon. Member for Hull–Aylmer, to an oral question raised by the hon. Member for Churchill during Oral Questions that day.

I would like to thank the Government House Leader for raising this matter and the hon. Member for Wascana for his intervention.

The Government House Leader contended that in response to a question posed by the Member for Churchill regarding the agenda of the Standing Committee on Procedure and House Affairs, the answer provided by the Member for Hull–Aylmer was inappropriate because it was substantive and partisan and, therefore, did not follow the usual practice for this kind of response. He also added that this constituted a breach of the rules of the House that was deliberate and calculated.

The Opposition House Leader argued that the response given by the Committee Vice-Chair was within the rules of the House since it referred explicitly to the agenda of the Committee.

Let me begin by putting this point of order in context. It is well established that questions to committee Chairs, with the emphasis on questions, should be strictly restricted to requests for information concerning matters of simple committee administration rather than the substance of their proceedings.

In a ruling on May 20, 1970, on page 7126 of the *Debates*, Mr. Speaker Lamoureux clearly defined the limits of this line of questioning when he stated:

> … the only questions which are acceptable when directed to the Chairman of a committee are questions which relate to procedural matters—whether a meeting is to be held, whether a committee will be convened, at what time a committee will be held, and so on;… I think there has to be a very strict limit on questions that may be asked chairmen of committees.

Furthermore, *House of Commons Procedure and Practice* at page 429 states:

> Questions seeking information about the schedule and agenda of committees may be directed to chairs of committees. Questions to the Ministry or a committee chair concerning the proceedings or work of a committee may not be raised.

Our practice in this regard seems quite clear.

In fact, as recently as February 12, the Speaker had occasion to address the issue of questions to committee Chairs and hon. Members will recall that he reminded the House of the narrow parameters of questions that are acceptable.

He also took the opportunity to underline the Chair's very limited powers in determining what constitutes an appropriate response to such a question. Specifically, he acknowledged that the Speaker was not the judge of the nature or quality of the response and that the Chair was, in the matter of responses to questions, limited to the language used. Thus, he stated in part:

> If the response is not an answer to the question, I cannot rule the response out of order unless unparliamentary language is used in the response….

Accordingly, in the case complained of, while it appears that the response includes remarks that were unnecessary simply to provide information about the Committee's schedule, in the view of the Chair, those remarks—superfluous to requirements as they may be—nonetheless cannot be construed as unparliamentary and so there are no grounds for ruling them out of order.

I confess that I am somewhat surprised to find the Chair being asked to examine the procedural acceptability of a response during Question Period. Whatever certain commentators may claim with regard to the prerogatives of the Speaker, the House of Commons has never, to my knowledge, required the Chair to be the arbiter of the appropriateness, completeness or even relevance of responses given to questions during Question Period. Hence, the old saw that this 45-minute period each day is called Question Period and not answer period.

However, I must say that I have some sympathy with the concerns that continue to be expressed by Members about this category of question. Questions to committee Chairs, once rare and exceptional, have lately been used more frequently. This trend and the repeated procedural squabbling it has occasioned prompts me to inform the House that in future when considering the procedural acceptability of such questions, the Chair intends to demand strict adherence to the intended practice, namely, the scheduling and agenda of committee meetings. I am counting on the cooperation of all hon. Members in this regard.

At the same time, I strongly encourage committee Chairs or Vice-Chairs, who are the only Members in a position to answer these kinds of questions, to do so in a spirit of fair play and in keeping with the very specific information-seeking strictures that apply to Members asking these questions.

I thank the House for its attention.

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1. *Debates*, March 7, 2008, p. 3803.
2. *Debates*, March 7, 2008, p. 3806.

The Daily Program

Daily Proceedings

Oral Questions: standing ovations depriving opposition parties of questions

May 27, 2009 *Debates*, p. 3787

Context: On May 27, 2009, Michel Guimond (Montmorency–Charlevoix–Haute-Côte-Nord) rose on a point of order claiming that numerous standing ovations during Oral Questions were depriving certain opposition parties of the opportunity to ask additional questions. He argued, in particular, that standing ovations from Conservative and Liberal Members during the previous two days' Oral Questions had consumed time that would otherwise have been allotted to the Bloc Québécois and the NDP to ask questions. He appealed to the Speaker to exercise his responsibility to maintain order and decorum by cutting the number of questions allotted to offending parties.[1]

Resolution: The Speaker ruled immediately. He reminded the House that the order of questions and the time taken for each were determined through an agreement of the parties, not by the Speaker and, as such, recommended that those Members who believed that changes are needed should appeal to the House Leaders or Whips. He also encouraged Members to maintain order in the House during Question Period so that more questions could be posed.

Decision of the Chair

The Speaker: The Chair has heard enough. I must point out that there is virtually nothing in the rules about the content of Question Period. For example, there is nothing requiring each question and each answer to take only 35 seconds. It merely states that 45 minutes are allocated for the entire Question Period, nothing more.

The order of questions is not set out in the rules. That is something that is worked out by the House Leaders. The list is submitted to the Chair after an agreement among the parties in this House.

The order of this list was changed at the beginning of this Parliament to reflect the makeup of the House, the size of the parties in the House and so on. I was not party to those discussions. Those were settled by the parties themselves. It has been that way since before I was elected Speaker for the first time, in 2001.

This is not a new procedure as far as I am concerned. When I was a student there was no order prescribed. The Speaker chose who got to ask the questions from whichever party and he enforced whatever time limit he felt was reasonable. That was taken away by agreement among the parties in the House. It was not by changes in the rules, but by agreement. We have that agreement today.

If the hon. Bloc Québécois Whip does not like the order that has been agreed to, he needs to negotiate it with his colleagues. It is not up to me to set the order.

The rules have been set by the House Leaders themselves. They agreed on this list, and I am only following the list that is there. I agree that if time gets taken up we can lose questions at the end, but sometimes we get extra and I am not told to cut it off when we get to a certain point. I am told to continue until the 45 minutes are gone.

Yesterday, we lost four questions on what I would call the normal list. Today, we lost four questions on what I would call the normal list. There was one from each of the four parties in those four questions.

I am not here to decide who has lost questions and who has not. I have the list here before me. I followed the list given to me by the parties in the House. It is not my choice. I did not decide who would ask questions and who would not.

I know that time gets wasted with applause. I would be all in favour of eliminating applause, whether it is standing or not. However, it is not my choice. Members do it, unfortunately. I usually use the time to announce the name of the next person who is going to speak, but sometimes it takes longer than that.

I encourage hon. Members to maintain order in the House during Question Period. We would get through more questions, if that is what Members want. We would get through more questions if the questions were shorter and the answers were shorter. However, it seems that most Members prefer to use most of the 35 seconds that are allotted for the purpose.

I am not being critical of this. I am simply stating what I think is obvious. I would suggest that if hon. Members feel that some change is needed in this list, they have a chat at the House Leaders' or Whips' meeting, which I am sure will happen again next Tuesday. If they make a change to the list, as your humble servant I will of course follow the changes dictated to me by the House Leaders in that respect.

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1. *Debates*, May 27, 2009, pp. 3785-7.

The Daily Program

Routine Proceedings

Tabling of Documents: Minister attempting to make a statement

March 20, 2001 *Debates*, p. 1961

Context: On March 20, 2001, Brian Tobin (Minister of Industry) rose during "Tabling of Documents", tabled a document and then proceeded to make a statement with regard to the document, a letter from the legal representatives of the Grand-Mère Golf Club.

Resolution: The Speaker immediately called the Minister to order. He stated that, while it was always in order for a Minister to table a document, it was not in order for the Minister to make a statement at that time. He reiterated this when Chuck Strahl (Fraser Valley) intervened. The Speaker reminded Members that the Government does not require consent to table a document in the House.

Decision of the Chair

The Speaker: Order, please. This is not a "Statement by Ministers". We are ready to move to Private Members' Business and while it is always in order for a Minister to table a document, I must say in this case the Minister seems to have stretched the sense of tabling by making a bit of a statement. Clearly it is creating difficulty in the House.

"Tabling of Documents" is one thing and Ministers making statements that cannot be replied to is another and we are getting into the statement category here. I really think it is not appropriate to carry on with this at this time.

Mr. Chuck Strahl: Mr. Speaker, I rise on a point of order. Not only is it inappropriate that the Minister is trying to table the document now, but furthermore I think inquiring minds want to know why the Ethics Commissioner did not have the information in his hand, but it was withheld from him as a contempt—

Some hon. Members: Oh, oh.

The Speaker: Order, please. I remind hon. Members that Question Period happens at two o'clock. It does not happen at 6.30 p.m. I suggest we draw this to a conclusion.

There are two things to remember. The Government does not require consent to table a document in the House. A Minister may do that at any time. What does require consent are statements by Ministers. We are not getting into that now and that is why I have tried to draw this to a conclusion.

Rt. Hon. Joe Clark: Mr. Speaker, I rise on a point of order. I think that the Minister of Industry and the Prime Minister would find unanimous consent if they would agree to lay upon the Table the document of an option for purchase between Mr. Jonas Prince and Akimbo Developments and—

Some hon. Members: Oh, oh.

The Speaker: Order, please. As I pointed out, this is not Question Period. It is time to move to Private Members' Hour and I respectfully suggest we do that now.

The Daily Program

Routine Proceedings

Tabling of Documents: Reports and Returns deposited with the Clerk of the House of Commons

December 4, 2009 *Debates*, pp. 7627-8

Context: On December 2, 2009, Jack Layton (Toronto–Danforth) rose on a point of order maintaining that it was inappropriate for the Government to release the Fourth Report on Canada's Economic Action Plan to the media before formally tabling it in the House. He contended that, although Jim Flaherty (Minister of Finance) had deposited the document with the Clerk of the House on December 1, 2009, Members did not have access to the document. Jay Hill (Leader of the Government in the House of Commons) noted that the *Journals* of the House of December 1, 2009,[1] indicated the Report had been deposited with the Clerk and not released to the media until the following morning. The Speaker took the matter under advisement.[2]

Resolution: On December 4, 2009, the Speaker delivered his ruling. He stated that there had been no breach of procedure and cited *House of Commons Procedure and Practice,* 2009 to the effect that it was an accepted practice to table papers required by statute, by Order of the House, or by Standing Order, by depositing them with the Clerk of the House.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on Wednesday, December 2, 2009, by the hon. Member for Toronto–Danforth regarding the tabling of a document by the Minister of Finance. The hon. Member argued that the document should have been tabled in the House. He acknowledged, however, that the document in question had been filed with the Clerk on Tuesday, December 1, 2009.

Indeed, in responding to the point of order, the Government House Leader read the excerpt of the *Journals* of that day where the tabling is noted at page 1115.

The Second Edition of *House of Commons Procedure and Practice* states on page 432:

> As an alternative, the Standing Orders provide that papers required by statute, by Order of the House, or by Standing Order may be deposited by a Minister with the Clerk of the House. This is known as "back door" tabling. It is entirely at the discretion of the Minister involved as to which method to use for those documents that are required to be tabled;

As noted in the *Journals*, the document in question was tabled pursuant to an Order of the House made February 3, 2009. I am informed that it was filed at 5:20 p.m.

However novel the lock up on the Prime Minister's aircraft may seem, I must conclude that there has been no breach of our procedures since the actual tabling of the document here at the House of Commons was entirely in keeping with our practice.

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1. *Journals*, December 1, 2009, p. 1115.
2. *Debates*, December 2, 2009, p. 7499.

The Daily Program

Routine Proceedings

Statements by Ministers: Member accused of disclosing content of a ministerial statement under embargo

February 27, 2003 *Debates*, p. 4106

Context: On February 21, 2003, Gerald Keddy (South Shore) rose on a point of order with regard to an allegation made by Don Boudria (Minister of State and Leader of the Government in the House of Commons) during Oral Questions that he disclosed the content of a statement to be made in the House later that day by Martin Cauchon (Minister of Justice and Attorney General of Canada) on the Firearms Registry while the statement was under embargo. Mr. Keddy maintained that, in fact, he had been quoting from media reports.[1] At that time, the Deputy Speaker (Bob Kilger) dismissed the matter as a difference of opinion and not a point of order.[2] On February 27, 2003, Loyola Hearn (St. John's West) rose on a point of order with respect to the same matter, arguing that, if there had been a violation of the embargo, it was not the fault of Mr. Keddy but rather that of a bureaucrat who had discussed the contents of the statement with Members of the press. He then asked that the Government House Leader withdraw his remarks and apologize.[3] The Government House Leader and another Member also contributed to the discussion.[4]

Resolution: The Acting Speaker (Réginald Bélair) ruled immediately. He stated that no rule of the House had been broken because embargoes were part of the practice and tradition of the House. He added that the onus was on the House Leaders to renew their prior agreement to prevent any repetition of such incidents.

Decision of the Chair

The Acting Speaker: I have listened very carefully to the arguments that have been presented. First, no rule of the House has been broken because, as Members know, embargoes are part of the practice and tradition of the House.

I thank you for your representations but in the end it will be up to the House Leaders themselves to sort this problem out and renew an agreement that has been reached before in order for these things not to happen again.

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1. *Debates*, February 21, 2003, pp. 3863-4.
2. *Debates*, February 21, 2003, p. 3867.
3. *Debates*, February 27, 2003, pp. 4104-5.
4. *Debates*, February 27, 2003, pp. 4105-6.

The Daily Program

Routine Proceedings

Motions: Standing Order 56.1; bypassing usual decision-making process of the House

September 18, 2001 *Debates*, pp. 5256-8

Context: On June 12, 2001, Peter MacKay (Pictou–Antigonish–Guysborough) rose on a point of order with respect to a motion presented earlier that day by Don Boudria (Leader of the Government in the House of Commons), which had been adopted pursuant to the provisions of Standing Order 56.1.[1] Mr. MacKay argued that an abuse of process had occurred which was tantamount to a breach of the rules and of the intention and interpretation thereof. The motion in question concerned the disposition of business for the final two sitting days prior to the summer adjournment, including the voting method for the last supply day. Mr. MacKay referred to the last paragraph of the motion which predetermined the results of all votes on the estimates following the first recorded division. He argued that the expenditure of public money was a substantive matter on which the House ought itself to make a decision, and that the motion denied the House's right to vote on it. He added that the use of Standing Order 56.1 was limited to a category of matters defined as "any routine motion" and asked the Speaker to rule the motion out of order. After hearing from other Members, the Speaker stated that, since the motion had been adopted in the morning without 25 Members rising in their places to object, (the Standing Orders provide that if 25 Members or more rise, the motion is deemed withdrawn) and without objection at that time as to its procedural acceptability, it would therefore apply. He added that the Chair was prepared to review the terms and interpretation of the Standing Order involved and that he would take the submissions made under consideration and return to the House with a ruling in due course.[2]

Resolution: On September 18, 2001, the Speaker delivered his ruling. He reminded the House that, on June 12, 2001, he had allowed the motion in question to stand as it had been adopted without any objection at the time it had been moved, and some eight hours had passed before Mr. MacKay had raised his point of order. He observed that Standing Order 56.1, when it was adopted, was intended to be used for routine motions only, as defined by Standing Order 56.1(1)(*b*). He then cited

examples of what he characterized as "a disturbing trend" in which the Standing Order was used for the adoption of motions less readily defined as routine. Further to a close examination of precedents and the recent use of the Standing Order as a tool to bypass the decision-making functions of the House, the Speaker stated that, had objections been raised in a timely fashion to the motion adopted on June 12, 2001, he would have been inclined to rule it out of order as it went well beyond the original intent of the Standing Order, which had also never been used as a substitute for decisions which the House should make on substantive matters. He added that, therefore, it should not be regarded as a precedent, and suggested that the Standing Committee on Procedure and House Affairs might wish to examine the appropriate use of Standing Order 56.1.

Decision of the Chair

The Speaker: Order, please. I would now like to deal with the point of order raised on June 12, 2001, by the hon. Member for Pictou–Antigonish–Guysborough relating to the use of the provisions of Standing Order 56.1. The hon. Member stated in his argument that an abuse of process had occurred which was "tantamount to a breach of the rules and the intention and interpretation thereof" when, earlier that day, the Government used Standing Order 56.1 to move a motion to which unanimous consent had been previously denied. The motion in question concerned the disposition of business for the final two sitting days prior to the summer adjournment, including the voting method to be followed on the last supply day of the period ending June 23, 2001.

I would like to thank the hon. Leader of the Government in the House of Commons, the hon. Member for Yorkton–Melville, the hon. Member for Winnipeg–Transcona and the Parliamentary Secretary to the Leader of the Government in the House of Commons for their contributions on this matter.

At that time I ruled that the terms of the motion would stand, having been adopted by the House some eight hours before the hon. Member raised his point of order. However, I also indicated my intention to return to the House in the fall with a statement on the use of Standing Order 56.1 and I am now ready to address the House on this matter.

House of Commons Procedure and Practice, at page 571, describes Standing Order 56.1 as follows:

> If, at any time during a sitting of the House, unanimous consent is denied for the presentation of a "routine motion", a Minister may request during Routine Proceedings that the Speaker put the motion. For that purpose, a "routine motion" refers to motions which may be required for the observance of the proprieties of the House, the maintenance of its authority, the management of its business, the arrangement of its proceedings, the establishment of the powers of its committees, the correctness of its records or the fixing of its sitting days or the times of its meeting or adjournment. The motion, which is neither debatable nor amendable, is immediately put to the House by the Speaker. If 25 Members or more oppose the motion, it is deemed withdrawn; otherwise, it is adopted.

Standing Order 56.1 was adopted by the House in April 1991. At the time of its adoption concerns were raised about the implications of a rule that provides a mechanism for overriding the very unanimity of the unanimous consent mechanism that the House often uses to expedite its business. Speaker Fraser ruled on April 9, 1991, at page 19236 of the *Debates*:

> However, this "over-ride" provision can operate, as the Chair understands it, only with respect to a certain very limited range of motions offered at a specific time in our daily agenda by a Minister of the Crown… Based on the fact that we have similar procedures existing with respect to other types of motions and given the very limited application of the new proposal, the Chair cannot accede to the request… that paragraph 20 of the motion respecting the Standing Order amendments be ruled out of order.

It should be emphasized that at the time of its adoption it was envisioned that the Standing Order would be used for only so-called routine motions as defined in Standing Order 56.1(1)(*b*).

Now let us examine how the rule has been used since its adoption 10 years ago. The Government sought to use Standing Order 56.1 in 17 cases and failed in two instances.

Between 1991 and 1995 it was used six times to authorize committee travel. This falls squarely within the terms of the Standing Order. From 1995 to 1997 it was used on the following four occasions to arrange the sittings of the House: in March 1995 and April 1997, to suspend the sitting of the House for the sole purpose of a Royal Assent ceremony; in March 1995, to enable the House to sit over the weekend to consider Government Orders Bill C-77, *An Act to provide for the maintenance of railway operations and subsidiary services*, a bill already under time allocation; and in June 1995, to extend the sitting to consider Government business beyond the extension already provided for under Standing Order 27(1).

Here again, these four examples illustrate the intended use of Standing Order 56.1 for routine purposes, that is, to enable the House to fix the times of its meetings or adjournments and to arrange its proceedings.

From 1997 there are signs of a disturbing trend in which Standing Order 56.1 was used, or attempted to be used, for the adoption of motions less readily identified or defined as routine. Let us review specific examples of this trend.

On December 1, 1997 the Standing Order was used for the first time to dispose of back to work legislation at all stages, Bill C-24, *An Act to provide for the resumption and continuation of postal services*. In March 1999 the Government attempted to use Standing Order 56.1 for back to work legislation on Bill C-76, *An Act to provide for the resumption and continuation of government services*. This attempt failed, as did a second attempt three days later. Eventually the legislation was dealt with under a Special Order after the Government moved the same motion which it had placed on the *Order Paper* under Government Orders.

In June 1998, the Government attempted to use Standing Order 56.1 to rescind a decision previously taken by the House concerning Standing Orders 57 and 78(3). The undertaking failed and Members raised objections to this attempted use of the Standing Order. They argued that rescinding a unanimous decision of the House was not a routine motion and, as such, should not be permitted under this Standing Order. The Speaker allowed it, although he expressed misgivings, and he urged the Standing Committee

on Procedure and House Affairs to examine the appropriate use of Standing Order 56.1.

Far less problematic are the two occasions where Standing Order 56.1 was used to enable the House to schedule take-note debates, in both cases providing for the House to sit beyond its normal hours: in February 1998 to debate Canada's participation in a possible military action in the Middle East, the Gulf War; and in April 1999 to consider the situation in Kosovo. So long as we continue to respect the distinction between emergency debates under Standing Order 52 and take-note debates, using Standing Order 56.1 for scheduling purposes does not appear to violate the spirit of the Standing Orders.

The Government again used Standing Order 56.1 in June 2001 to dispose of all stages of Bill C-28, *An Act to amend the Parliament of Canada Act, the Members of Parliament Retiring Allowances Act and the Salaries Act*.

Finally, on June 12, 2001, the Government, under Standing Order 56.1, moved a motion to dispose of business over the following two sitting days. In this instance the motion provided for the disposition of third reading of Bill C-11, *An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger*, and Bill C-24, *An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts*, and to dispose of Government Business No. 7, the summer adjournment motion.

In addition the motion provided that once a recorded division had been taken on the main estimates, all subsequent motions to concur in any vote or votes on the main estimates shall be deemed moved and seconded and the question deemed put and agreed to on division. The effect of this was that there was a single recorded division on the first of 190 opposed items standing on the *Order Paper* and the remainder were deemed agreed to on division.

At this point I would like to draw to Members' attention the following reference at pages 571-2 of *House of Commons Procedure and Practice*:

> On April 9, 1991, Speaker Fraser, while pointing out that the range of motions to which the proposed procedure would apply was very limited, also suggested that the new Standing Order was to be understood as

> another procedurally acceptable mechanism for limiting debate: "There are certain similarities also between the proposal and existing Standing Order 78 respecting time allocation in that both use a ladder-like type of approach depending upon the extent of agreement forthcoming to securing the right to propose the motion."

I would advise hon. Members to be very cautious in their reading of this passage. In his ruling, Speaker Fraser drew a parallel between Standing Order 56.1, which requires a prior attempt to gain unanimous consent, and Standing Order 78, the time allocation rule, which requires notice or prior consultation. It seems doubtful to me, having read the ruling in its entirety, that Speaker Fraser really meant to suggest that Standing Order 56.1 was to be understood as another procedurally acceptable mechanism for limiting debate.

The expanded use of Standing Order 56.1 since 1997 causes the Chair serious concern. The Government is provided with a range of options under Standing Orders 57 and 78 for the purpose of limiting debate. Standing Order 56.1 should be used for motions of a routine nature, such as arranging the business of the House. It was not intended to be used for the disposition of a bill at various stages, certainly not for bills that fall outside the range of those already contemplated in the Standing Order when "urgent or extraordinary occasions" arise. Standing Order 71 provides in such cases that a bill may be dealt with at more than one stage in a single day.

Likewise, a motion seeking to reverse a unanimous decision of the House is a serious undertaking and should in no way be viewed as a routine motion. It was never envisaged that Standing Order 56.1 would be used to override decisions that the House had taken by unanimous consent.

In the most recent use of Standing Order 56.1, a motion was adopted which provided for a recorded division on the first opposed item in the main estimates. However, all subsequent opposed items were then deemed moved and carried. The effect of the motion adopted pursuant to Standing Order 56.1 was to predetermine the results of all the votes following the first recorded division. It is clear to the Chair that this application of the Standing Order goes well beyond the original intent, that is, for the presentation of routine motions as defined in Standing Order 56.1(1)(*b*).

The Standing Order has never been used as a substitute for decisions which the House ought itself to make on substantive matters. In addition, if the House from time to time should agree by way of proceeding by unanimous consent as, for example, on the application of votes, one cannot assume that such agreements would automatically fall into the category of routine matters as defined in Standing Order 56.1.

As I previously indicated, I allowed the motion adopted on June 12, 2001, to go ahead because there were no objections raised at the time it was moved. By the time hon. Members expressed concern to the Chair some eight hours later, the Chair saw no alternative but to proceed with the terms of the motion. However, to speak frankly, had the objection been raised in good time, I would have been inclined to rule the motion out of order. This situation serves again to remind Members of the importance of raising matters of a procedural nature in a timely fashion.

In the three years since my predecessor urged the Standing Committee on Procedure and House Affairs to examine the appropriate use of Standing Order 56.1, we have seen further evidence of a trend away from the original intent of this rule. This would seem all the more reason for the Committee to consider the Standing Order at the earliest opportunity.

In the meantime, based on close examination of past precedents and the most recent use of Standing Order 56.1 as a tool to bypass the decision making functions of the House, I must advise the House that the motion adopted on June 12, 2001, will not be regarded as a precedent. I would urge all hon. Members to be vigilant about the use of this mechanism for the Chair certainly intends to be watchful.

I want to thank all hon. Members who intervened to raise this point before the House at this time.

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1. *Journals*, June 12, 2001, pp. 535-6.
2. *Debates*, June 12, 2001, pp. 5027-31.

The Daily Program

Routine Proceedings

Motions: Standing Order 56.1; concurrence in a striking committee report

October 24, 2002 *Debates*, pp. 828-9

Context: On October 22, 2002, John Reynolds (West Vancouver–Sunshine Coast) rose on a point of order arising from an attempt earlier in the sitting by Don Boudria (Minister of State and Leader of the Government in the House of Commons) to use Standing Order 56.1 to move concurrence in the First Report of the Standing Committee on Procedure and House Affairs setting out the membership of the various standing committees for the session.[1] Mr. Reynolds argued that the Government House Leader should have moved his motion under the rubric "Motions" and not during "Tabling of Documents". Second, he maintained that unanimous consent to concur in the Report should have been requested earlier that same day before the motion was moved pursuant to Standing Order 56.1. Finally, Mr. Reynolds argued that using Standing Order 56.1 to seek concurrence in the Committee Report was a misuse of the Standing Order in that the motion was substantive and not routine. After hearing from the Government House Leader, the Speaker took the matter under advisement.[2]

Resolution: On October 24, 2002, the Speaker delivered his ruling. He began by stating that, although Standing Order 56.1 requires only that the motion be proposed during Routine Proceedings, such motions should be moved under the rubric "Motions" unless there is unanimous consent to do otherwise. He ruled further that the Standing Order requires only that the motion must have been refused unanimous consent previously, and not that this must occur on the same day. Lastly, the Speaker stated that, while motions to concur in reports establishing committee membership have not been subject to debate or amendment in modern practice, it was going too far to extrapolate that these motions can therefore be considered routine and not substantive. Accordingly, he concluded that Standing Order 56.1 could not be used as recourse if unanimous consent was denied to concur in striking committee reports.

Decision of the Chair

The Speaker: I would now like to deal with the point of order raised on October 22, 2002, by the hon. Member for West Vancouver–Sunshine Coast relating to the use of the provisions of Standing Order 56.1. The hon. Member argued that an abuse of process had occurred when, earlier that day, the Government used Standing Order 56.1 to move a motion to which unanimous consent had been previously denied. The motion in question concerned the Report of the Standing Committee on Procedure and House Affairs establishing the committee membership lists for this Session.

I would like to thank the hon. Member for West Vancouver–Sunshine Coast for raising this question and of course the hon. Leader of the Government in the House of Commons for his contribution on the matter.

The hon. Member for West Vancouver–Sunshine Coast raised three objections in this case: namely, first, that the motion pursuant to Standing Order 56.1 was moved under the rubric "Tabling of Documents" of the daily routine of business and not under the category of "Motions"; second, that the Government moved this motion on a day different from the day on which unanimous consent had been denied; and finally, third, that the motion to concur in the Striking Committee Report was substantive, not routine, and therefore ought not to be subject to the provisions of Standing Order 56.1.

House of Commons Procedure and Practice, at page 571, describes Standing Order 56. 1 as follows:

> If, at any time during a sitting of the House, unanimous consent is denied for the presentation of a "routine motion", a Minister may request during Routine Proceedings that the Speaker put the motion. For that purpose, a "routine motion" refers to motions which may be required for the observance of the proprieties of the House, the maintenance of its authority, the management of its business, the arrangement of its proceedings, the establishment of the powers of its committees, the correctness of its records or the fixing of its sitting days or the times of its meeting or adjournment. The motion, which is neither debatable nor amendable, is immediately put to the House by the Speaker.

> If 25 Members or more oppose the motion, it is deemed withdrawn; otherwise, it is adopted.

The points raised by the hon. Member for West Vancouver–Sunshine Coast are germane to any understanding of Standing Order 56.1, whose invocation has sometimes raised concerns.

Proceedings in this House are governed by written rules, chiefly the Standing Orders, and also by the unwritten practices which hon. Members have seen fit to follow over the years. It is clear that, in setting down an explicit rule, the House may adopt new procedures. However, where the House has not made such a deliberate choice, our usual practice is to continue using the way of proceeding that has so far met the needs of the House. When our practice offers no guidance in a particular case, Members may raise points of order to seek guidance from the Chair. It then falls to the Speaker to arbitrate between honest differences of interpretation that arise from time to time. I believe that such is the case before us today. Let us therefore consider in turn each of the elements of the objection raised.

The hon. Member for West Vancouver–Sunshine Coast contended that the proper place to move a motion during Routine Proceedings is under the rubric "Motions". It is true, as the Government House Leader pointed out, that the text of Standing Order 56.1 requires only that the motion be proposed during Routine Proceedings. However, our practice has always been that during Routine Proceedings motions, or "routine motions" to cite the actual text of the Standing Order, be moved under the heading reserved for them. An examination of previous uses of Standing Order 56.1 does not reveal any case where we proceeded differently.

The day before yesterday, the House, and I dare say the Chair, may have been taken somewhat by surprise when such a motion was moved at the beginning of Routine Proceedings under the heading "Tabling of Documents". Since the motion was ultimately deemed withdrawn, I believe that this occurrence might be seen as an exception that will not recur. Our practice is clear. Motions pursuant to Standing Order 56.1 should be moved under the rubric "Motions", unless there is unanimous consent to do otherwise.

The second point raised by the hon. Member for West Vancouver–Sunshine Coast concerned the appropriateness of using Standing Order 56.1 on a day different from the day on which unanimous consent had been requested and refused.

An examination of the records of the House will show that this is an acceptable way of proceeding.

A number of examples may be cited. Unanimous consent was sought on September 28, 1994 and again on October 6, 1994 for permission for a subcommittee to travel. Consent being denied, a motion pursuant to Standing Order 56.1 was moved on October 8, 1994, two days after the request for unanimous consent.

I refer the hon. Member to the *Debates* of September 28, 1994, at page 6263 or October 6, at page 6642, and the *Journals* of October 7, at page 270. A similar travel permission motion was denied unanimous consent on June 7, 1995 and Standing Order 56.1 was used the following day. I refer the hon. Member to the *Debates* for June 7, 1995, at page 13375, and the *Journals* for June 8, at page 1594. In a third example on April 21, 1997 unanimous consent was refused to a motion arranging the sitting time of the House with respect to a Royal Assent ceremony. That motion was proposed under Standing Order 56.1 on April 24. See the *Debates* for April 21, 1997, at pages 10012-13, and the *Journals* for April 24, at page 1524.

It is clear from these cases that Standing Order 56.1 requires only that the motion in question has been previously refused unanimous consent whether that day or on some previous day.

The last point raised by the hon. Member for West Vancouver–Sunshine Coast concerns whether the use of Standing Order 56.1 to propose adoption of a report of the Striking Committee is procedurally acceptable.

On this last point he maintained that to allow speedy adoption of this Report would interfere with consideration of certain proposals now before the Standing Committee on Procedure and House Affairs. The Chair is not persuaded by this view. The Speaker and the House must of course be guided by any changes that may be brought from time to time in our Standing Orders.

However, it would be imprudent if not irresponsible for the Chair to impede the House in its normal transaction of business simply because changes are under consideration by a committee.

The crux of this point of order is, in my view, whether or not a motion for concurrence in a report establishing committee membership at the beginning of a session can be reasonably characterized as "routine" and therefore subject to the terms of Standing Order 56.1.

As I stated on September 18, 2001, in my previous ruling on this Standing Order, *Debates*, September 18, 2001, p. 5258:

> The Standing Order [56.1] has never been used as a substitute for decisions which the House ought itself to make on substantive matters.

Responding to concerns raised at the time of the introduction in 1991 of the then new provisions of Standing Order 56.1, Mr. Speaker Fraser said this:

> —this "over-ride" provision can operate, as the Chair understands it, only with respect to a certain very limited range of motions offered at a specific time in our daily agenda by a Minister of the Crown—

Mr. Speaker Fraser then went on to speak of what he called, "the very limited application of the new proposal". I have found his cautionary words very helpful in reaching this decision.

All Members will agree that the House does very often see fit to approve the membership of committees, or changes to that membership, by unanimous consent. Indeed, the Chair must acknowledge that a review of our modern practice reveals no instance where motions for concurrence in the report of the striking committee have been debated or amended. However, as I pointed out in an earlier ruling, again at page 5258 of the *Debates*, that:

> —if the House from time to time should agree on a way of proceeding by unanimous consent… one cannot assume that such agreements would automatically fall into the category of routine matters as defined in Standing Order 56.1.

Our research tells us that motions to concur in the reports of striking committees have not in modern practice been the subject of debate or amendment. To extrapolate from that, that these motions are therefore routine, not substantive, is in the view of the Chair to go too far. Accordingly, I have concluded that Standing Order 56.1 cannot be used as recourse in the event that unanimous consent to concur in the report striking the committees of the House is sought and denied.

I can appreciate the viewpoint of the Government House Leader who has indicated that the establishing of committee memberships is of some urgency but I must remind him that S.O. 56.1 was not meant as an alternative mechanism for limiting debate.

If the situation requires it, I know that the Government House Leader will find that he has other procedural means at his disposal to expedite matters.

Once again, I would like [to][3] thank the hon. Member for West Vancouver–Sunshine Coast for raising the matter and for the views put forward by the hon. Government House Leader.

I trust this decision clarifies the issues with regard to Standing Order 56.1 and that it will prove helpful to the House in the future.

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1. *Journals*, October 22, 2002, p. 91.
2. *Debates*, October 22, 2002, pp. 757-9.
3. The published *Debates* read "the" instead of "to".

The Daily Program

Routine Proceedings

Motions: concurrence in committee reports; mover alleged to have a pecuniary interest in the report

June 12, 2003 *Debates*, pp. 7178-9

Context: On May 12, 2003, John Reynolds (West Vancouver–Sunshine Coast) rose on a point of order with respect to a notice of motion on the *Order Paper* in the name of Mauril Bélanger (Ottawa–Vanier). The motion sought concurrence in the Sixth Report of the Standing Committee on Official Languages which proposed the reimbursement of legal costs incurred by the Chair of the Committee (Mr. Bélanger). Mr. Reynolds argued that Mr. Bélanger had a pecuniary interest in the Report, and that to move concurrence in it would place him in a conflict of interest. After hearing from other Members, the Speaker stated that the motion had not yet been moved and that, if Mr. Bélanger chose to move the motion at a later date, the Chair would rule on the point of order at that time.[1] On June 12, 2003, Mr. Bélanger moved the motion, but advised that he would refrain from voting on it in order to avoid any perception of conflict of interest.

Resolution: The Speaker delivered his ruling immediately. He stated that Standing Order 21 specifically prohibits a Member from voting on any question in which he or she has a direct pecuniary interest but that the moving of the motion was in order.

Editor's Note: Standing Order 21 was deleted on October 4, 2004, with the adoption of the *Conflict of Interest Code for Members of the House of Commons*.[2]

Decision of the Chair

The Speaker: Before the hon. Member continues, I wish to make a ruling on a point of order that was previously raised in respect of this matter.

The situation before us is this. The hon. Member for Ottawa–Vanier has risen to move concurrence in the Sixth Report of his Committee and, in doing so, has provoked a point of order as to the acceptability of his moving

concurrence in a report in which he may be perceived to have a pecuniary interest.

The Sixth Report transmits to the House the following resolution of the Standing Committee on Official Languages adopted April 29, 2003, and reported to the House on April 30. It reads as follows:

> It was agreed,—That the Standing Committee on Official Languages express its support for the initiative of Mauril Bélanger, M.P. (Ottawa–Vanier), in the *Quigley v. Canada (House of Commons)* case, and request the House of Commons suggest to its Board of Internal Economy to make available a maximum budget of $30,000 to cover a portion of the legal fees incurred by Mr. Bélanger for his role as intervener in this case.

However, Standing Order 21 provides as follows:

> No Member is entitled to vote upon any question in which he or she has a direct pecuniary interest, and the vote of any Member so interested will be disallowed.

The House will recall that a point of order was raised on Thursday, May 1, 2003, by the hon. Member for West Vancouver–Sunshine Coast concerning the Sixth Report of the Standing Committee on Official Languages and arguing that the Chair signing the Report, which directly concerned his interest, was not in order.

In that case, the Chair explained that the reimbursement referred to concerned legal costs incurred by the hon. Member as a third party intervener and not, strictly speaking, a grant of money to the Member personally, and noted that there had been no suggestion that the hon. Member for Ottawa–Vanier stood to receive any direct monetary gain.

I then went on to review the very strict interpretation that has always been given to Standing Order 21 relating to conflict of interest. *House of Commons Procedure and Practice* at page 194 states:

> —the Standing Orders of the House provide that Members may not vote on questions in which they have direct pecuniary interests; any such

> vote will be disallowed. The pecuniary interest must be immediate and personal, and belong specifically to the person whose vote is contested.

Then again, on May 12, the hon. Member for West Vancouver–Sunshine Coast rose to contest that the hon. Member for Ottawa–Vanier had filed a notice of motion for concurrence in the Sixth Report. The Chair noted the objections and said he would return to this matter in the event the motion was moved, and today that has happened.

I have reviewed the arguments presented in this case, both on May 12 and today, and I can find no grounds for ruling the motion out of order. Standing Order 21 is quite explicit that the prohibition relates to voting. The hon. Member for Ottawa–Vanier has explained already that he will not be voting on the motion he has proposed and the Chair is, accordingly, satisfied that it is in order for him to move the concurrence motion and debate may proceed accordingly.

Editor's Note: See also a related ruling on May 8, 2003.[3]

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1. *Debates*, May 12, 2003, pp. 6095-6.
2. *Journals*, April 29, 2004, pp. 348-9.
3. *Debates*, May 8, 2003, pp. 5990-1.

The Daily Program

Routine Proceedings

Motions: Standing Order 56.1; disposition of Government bills

May 13, 2005 *Debates*, pp. 5973-4

Context: On May 13, 2005, Jay Hill (Prince George–Peace River) rose on a point of order with respect to a motion for which Tony Valeri (Leader of the Government in the House of Commons) had unsuccessfully sought unanimous consent earlier in the day, and which he then moved again pursuant to Standing Order 56.1. The motion provided that all questions necessary for the disposal of the second reading stage of Bill C-43, *Budget Implementation Act, 2005,* and of Bill C-48, *An Act to authorize the Minister of Finance to make certain payments*, should be put to the House and decided forthwith and successively, without further debate, amendment or deferral at the expiry of the time for consideration of Government Orders on Thursday, May 19, 2005. Mr. Hill argued that Standing Order 56.1 was unconstitutional as it allowed the adoption of a motion with fewer than 25 Members objecting, rather than with a majority of voices as provided for in section 49 of the *Constitution Act, 1867.* He also argued that the motion was ineligible to be moved pursuant to Standing Order 56.1, referring to a previous ruling by the Speaker in which he had expressed concern about the expanded use of the Standing Order to arrive at decisions on substantive motions. Mauril Bélanger (Deputy Leader of the Government in the House of Commons, Minister responsible for Official Languages, Minister responsible for Democratic Reform and Associate Minister of National Defence) also spoke to the point of order.[1]

Resolution: The Speaker ruled immediately. He stated that in his ruling from September 18, 2001, he had expressed reservations about the use of Standing Order 56.1 as a means to limit time for debate and invited a committee to respond to that concern. Since no response had been forthcoming, the Speaker felt unable to rule this motion out of order, particularly since the time allocated to dispose of the Bills in question was more generous than that provided under closure or time allocation. In relation to the argument on the constitutionality of the Standing Order, the Speaker stated that the House is master of its own proceedings and that it can decide matters of internal procedure on its own initiative, as it had done

when a majority in the House had decided to delegate powers for certain purposes to groups of 25 or more Members. Accordingly, he ruled the motion in order.

Decision of the Chair

The Speaker: I have considered the point of order raised by the hon. Member for Prince George–Peace River in relation to the motion under Standing Order 56.1 put forward by the Government House Leader.

I refer hon. Members to Standing Order 56.1 which reads as follows:

> In relation to any routine motion for the presentation of which unanimous consent is required and has been denied, a Minister of the Crown may request during Routine Proceedings that the Speaker propose the said question to the House.
>
> For the purposes of this Standing Order, "routine motion" shall be understood to mean any motion, made upon Routine Proceedings, which may be required for the observance of the proprieties of the House, the maintenance of its authority, the management of its business, the arrangement of its proceedings, the establishing of the powers of its committees, the correctness of its records or the fixing of its sitting days or the times of its meeting or adjournment.

Given those quite general words, I note the motion put forward by the Government House Leader provides for an end to debate on two bills to be next Thursday.

As the hon. Member for Prince George–Peace River points out, I had previously given a ruling that expressed some concern about the use of this Standing Order as a means to avoid using time allocation or closure or some other limit on time for debate, and I invited committee response. None has been forthcoming since the ruling which he referred to in 2001.

Therefore, in the circumstances, having expressed reservations and having got no feedback from the committee to the House on this point, which then the House might have dealt with it if the House shared my concern, I do not feel it is for me to rule out of order a motion that appears to be in compliance with

the Standing Order, as had happened before and I made no ruling saying that it was out of order. I expressed concerns, but allowed the motion to proceed at that time. I believe having had nothing back, I can only allow this one to proceed at this time, particularly so when the time allocated here is much more generous than would be the case under closure or under time allocation because of the minimum times that are permitted. Accordingly the motion appears to be in order.

I have to deal of course with this other argument about section 49 of the Constitution. I note that this Standing Order has been in force for some time. It has been used in the House for a number of years. I point out that the Constitution, while I am not here to interpret that, says that questions arising in the House of Commons should be decided by a majority of voices other than that of the Speaker, *et cetera*.

I believe those are questions of substance. It is quite clear that the use of Standing Order 56.1, while allowing the House then to determine things in relation to its affairs that are not substantive matters, that is passing laws, may be done by using this technique. The passage of bills in the House, the passage of motions in relation to bills are clearly questions that require a majority of the House. There is nothing in the provision here or in our Standing Orders that would allow a bill to go through the House that had not received the support of a majority of voices in the House, as defined in section 49 of the *Constitution Act*.

While there may be arguments to be made in other places, I believe the House is master of its own proceedings. It has chosen to adopt this Standing Order as a basis for proceeding in respect of House business and has specified in the words of the Standing Order the things that can be done under it. I find the motion fits under it. While the wording of the Constitution would appear to fly in the face of this, in my view it would apply to questions of substance that are decided by the House, not matters of internal procedure, which the House can decide on its own initiative and which it clearly did when it set up this Standing Order by virtue of its adoption in the House with a majority of the Members voting for it, because that is how the Standing Order got into place.

If a majority chose to delegate powers for certain purposes to a group of 25 or more Members, I believe it was within the power of the House to make that kind of delegation. Accordingly I intend to put the motion to the House.

Postscript: The Speaker then put the question on the motion. More than 25 Members having risen to object, the motion, pursuant to Standing Order 56.1(3), was deemed withdrawn.[2]

1. *Debates*, May 13, 2005, pp. 5972-3.
2. *Journals*, May 13, 2005, pp. 749-50.

The Daily Program

Routine Proceedings

Motions: Standing Order 56.1; extension of sitting to continue debate on second reading of a Government bill

October 3, 2006 *Debates*, p. 3571

Context: On October 3, 2006, Libby Davies (Vancouver East) rose on a point of order with respect to a motion moved by Rob Nicholson (Leader of the Government in the House of Commons and Minister for Democratic Reform) pursuant to Standing Order 56.1 and adopted by the House earlier in the day. The Government House Leader had moved that the motion for second reading of Bill C-24, *Softwood Lumber Products Export Charge Act, 2006*, not be subject to any further amendments or subamendments; and that, on any day on which the Bill was under consideration at second reading, the House sit beyond the ordinary hour of adjournment and not adjourn before the proceedings had been completed.[1] Citing a 2001 ruling in which the Speaker had expressed concern about the use of Standing Order 56.1 as a means of limiting debate,[2] Ms. Davies argued that the Government was making inappropriate use of Standing Order 56.1 to this end. After hearing from another Member, the Deputy Speaker (Bill Blaikie) took the matter under advisement.[3]

Resolution: The Speaker delivered his ruling later in the sitting. He declared that the motion could not be considered a motion for time allocation or closure as it sought simply to provide for an open-ended extension of the sitting for purposes of continuing debate on a particular matter. This, he suggested, was an instance of the House managing its business and arranging its proceedings. Accordingly, he ruled that the motion was in order.

Decision of the Chair

The Speaker: Before I call for questions and comments on the hon. Member's speech, I would like to deal with a point of order raised this morning by the hon. Member for Vancouver East, relating to the motion adopted by the House under the provisions of Standing Order 56.1. The hon. Member contended that the motion was inadmissible and that it was not being used as a routine business motion aimed at fixing the sitting or adjournment times of the House,

or arranging its proceedings, but that it was tantamount to a motion for time allocation or closure. I believe the words she used were that the motion was designed to "cut off the debate". In her argument, she quoted from a ruling I delivered in 2001, in which I expressed concern that Standing Order 56.1 was being used for purposes that had not been envisaged when the Standing Order was adopted.

House of Commons Procedure and Practice, at page 571, describes Standing Order 56.1 as follows:

> If, at any time during a sitting of the House, unanimous consent is denied for the presentation of a "routine motion", a Minister may request during Routine Proceedings that the Speaker put the motion. For that purpose, a "routine motion" refers to motions which may be required for the observance of the proprieties of the House, the maintenance of its authority, the management of its business, the arrangement of its proceedings, the establishment of the powers of its committees, the correctness of its records or the fixing of its sitting days or the times of its meeting or adjournment. The motion, which is neither debatable nor amendable, is immediately put to the House by the Speaker. If 25 Members or more oppose the motion, it is deemed withdrawn; otherwise, it is adopted.

In the case before the House, a motion has been adopted that the House "shall not be adjourned before such proceedings have been completed". This is meant to apply to a motion for second reading of a bill, a motion, I might add, to which an amendment and a subamendment have been moved. As was seen earlier today, debate has ended on the subamendment and a vote is scheduled tomorrow at the conclusion of Government Orders. So the House is left with an amendment and the main motion. In fact, the effect of the motion is not unlike the effect of adopting a motion under Standing Order 26, which provides for the continuation of debate on a matter before the House, which is to say that it provides for an open-ended extension of the sitting for purposes of continuing debate on a particular matter. This, it can be argued, can be seen as the House managing its business and arranging its proceedings.

As I read the motion moved by the hon. the Government House Leader and adopted by the House, every Member wishing to speak to the amendment

and the main motion, who has not already done so, will be able to participate. The motion does not set a deadline for completion of the proceedings, as would be the case under time allocation or closure. Instead it simply extends the sitting on the motion then before the House. That is a significant difference. The precedents available to me, including my own previous rulings, are therefore insufficient in my view for me to rule the motion out of order on this occasion.

This does not, however, take away from the concerns raised by the Member for Vancouver East about the nature of the motions moved pursuant to Standing Order 56.1. My predecessor and I have both encouraged the Standing Committee on Procedure and House Affairs to examine the appropriate use of the Standing Order. To date I am not aware of any report by that Committee on this question.

I thank the hon. Member for Vancouver East for bringing this matter to the attention of the House, but I believe the motion, as adopted, is in order.

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1. *Journals*, October 3, 2006, pp. 487-8.
2. *Debates*, September 18, 2001, pp. 5256-8.
3. *Debates*, October 3, 2006, p. 3536.

The Daily Program

Routine Proceedings

Motions: Standing Order 56.1; directing the business of committees

June 5, 2007 *Debates*, p. 10124

Context: On May 31, 2007, Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform) moved, pursuant to Standing Order 56.1, a motion to the effect that the consideration of Bill C-44, *An Act to amend the Canadian Human Rights Act*, by the Standing Committee on Aboriginal Affairs and Northern Development, should not be adjourned or suspended until it had completed committee stage. Fewer than 25 Members having risen to object, the motion was agreed to.[1] Later in the sitting, Ralph Goodale (Wascana) rose on a point of order to object to the use of Standing Order 56.1 to dispose of the committee stage of the Bill. He cited a Speaker's ruling of September 18, 2001, in support of his argument. Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons and Minister for Democratic Reform), responded that the Speaker had ruled a similar motion in order on October 3, 2006, with the only difference being that this time, the motion concerned a bill that was before a committee. He also argued that, as was the case with the motion moved on October 3, 2006, the motion in question did not set any deadline for completion of the proceedings and that it was an instance of the House managing its business and arranging its proceedings. After hearing from other Members, the Deputy Speaker (Bill Blaikie) ruled immediately. He declared that the use of Standing Order 56.1 to direct the business of a committee was a new development and out of order, and that the reasons for his decision would be provided by the Chair at a later date.[2]

Resolution: On June 5, 2007, the Deputy Speaker returned to the House to elaborate on his preliminary ruling. He noted that instructions to committees are usually given by way of a substantive motion and referred to the Speaker's ruling of September 18, 2001, in which the Speaker stated that the Government also had available to it Standing Orders 57 and 78 for the purpose of limiting debate in committees. After reviewing previous uses of the Standing Order, the Deputy Speaker concluded that it was not meant to be used to direct the conduct of the business of standing committees, but rather in a routine manner, to provide committees with powers they did not already possess, such as the power to

travel. Finally, the Deputy Speaker reminded the House that the use of Standing Order 56.1 had caused serious concerns in the past, causing Mr. Speaker Milliken and Mr. Speaker Parent before him to ask the Standing Committee on Procedure and House Affairs to look into the matter.

Decision of the Chair

The Deputy Speaker: Before going to Orders of the Day I would like to give the ruling on the point of order raised by the hon. Member for Wascana regarding the use of Standing Order 56.1 to timetable the proceedings on a bill in the Standing Committee on Aboriginal Affairs and Northern Development.

On May 31, 2007 during Routine Proceedings the Government House Leader sought, but did not obtain, unanimous consent of the House to move the following motion:

> That, notwithstanding any Standing Order or usual practices of the House, when the Standing Committee on Aboriginal Affairs and Northern Development convenes a meeting, it shall not be adjourned or suspended until it completes the committee stage of Bill C-44 except pursuant to a motion by a Parliamentary Secretary and, provided the Bill is adopted by the Committee, agrees to report the Bill to the House within two sitting days following the completion of the committee stage.

He then moved the motion again pursuant to Standing Order 56.1 and the motion was adopted when fewer than 25 Members rose to object. A short time later, the hon. Member for Wascana raised a point of order regarding the use of Standing Order 56.1. He was supported by interventions from the hon. Member for Joliette and the hon. Member for Hamilton Centre, while the Parliamentary Secretary to the Leader of the Government in the House of Commons argued that the motion adopted earlier had been appropriately presented under Standing Order 56.1.

Given that a meeting of the Standing Committee on Aboriginal Affairs and Northern Development was imminent, I delivered an immediate ruling promising that the Chair would return to the House later with reasons. I am now prepared to do so.

First, the Chair would like to thank all hon. Members who intervened on the point of order for their contributions on this question and is particularly grateful that Members have taken note of certain key rulings, specifically those the Speaker delivered on September 18, 2001 and October 3, 2006.

A key element in my ruling today is the fundamental precept that standing committees are masters of their own procedure. Indeed, so entrenched is that precept that only in a select few Standing Orders does the House make provision for intervening directly into the conduct of standing committee affairs. In addition to the power the House has to give instructions to committees by way of a substantive motion that is subject to debate, there are, of course, Standing Orders 57 and 78, which can be used by the House to allocate time or for closure proceedings on a bill in committee. It is toward the use of these very instruments that the Speaker directed the House in his ruling of September 18, 2001, on *Debates* page 5257, where, as the hon. Member for Wascana pointed out, the Speaker stated:

> The expanded use of Standing Order 56.1 since 1997 causes the Chair serious concern. The government is provided with a range of options under Standing Orders 57 and 78 for the purpose of limiting debate.

Let us now turn to the Speaker's ruling of October 3, 2006 allowing the use of Standing Order 56.1 to extend, in an open-ended fashion, the debate on Bill C-24, the *Softwood Lumber* Bill.

It should be noted at the outset that when Standing Order 56.1 was used in reference to Bill C-24, the Bill was then before the House at second reading, not before a standing committee. In allowing the use of Standing Order 56.1 in that case the Speaker did so with some concern and on the basis that:

> The precedents available to me, including my own previous rulings, are [therefore] insufficient for me to rule the motion out of order on this occasion.

This is part of the Speaker's ruling quoted by the Parliamentary Secretary to the Leader of the Government in the House of Commons. At the time the Speaker had more to say. He also encouraged, as had Mr. Speaker Parent before him, the Standing Committee on Procedure and House Affairs to examine

the appropriate use of this Standing Order, a pretty clear indication of the difficulties with which the House has had to deal when Standing Order 56.1 has been invoked in questionable circumstances.

In the present case, the Chair has looked carefully at the wording of Standing Order 56.1, which states in reference to the House itself that the Standing Order can be used to move motions in relation to "the management of its business" and "the arrangement of its proceedings". Interestingly, the only reference to committees in the Standing Order is one allowing motions for "the establishing of the powers of its committees", suggesting that the rule was meant to be used not to reach into the conduct of standing committee affairs to direct them, but rather in a routine manner, to provide them powers they do not already possess. A review of the previous uses of Standing Order 56.1 appears to support this. The only examples dealing with standing committees or standing committee activity the Chair has been able to find have to do with granting standing committees the power to travel. The power to travel is, as all hon. Members know, a power standing committees do not possess and so the use of Standing Order 56.1 in that regard falls squarely within the parameters of the rule.

Accordingly, to repeat the words I used when this matter was first raised, the use of Standing Order 56.1 to direct the business of the Committee, of any committee, is a new development in the House and one that I find out of order.

I thank all hon. Members who intervened for bringing this matter to the attention of the House.

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1. *Journals*, May 31, 2007, pp. 1452-3.
2. *Debates*, May 31, 2007, pp. 9962-4.

The Daily Program

Routine Proceedings

Motions: concurrence in committee reports; number of motions per sitting

March 12, 2009 *Debates*, p. 1634

Context: On March 12, 2009, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons), rose on a point of order in response to a motion to concur in a committee report moved by Wayne Marston (Hamilton East–Stoney Creek). Mr. Lukiwski argued that Standing Order 66(3) limits the number of motions for concurrence in committee reports to one per sitting day. Since Paul Szabo (Mississauga South) had, earlier that day, sought and received unanimous consent to concur in a committee report,[1] Mr. Lukiwski argued that it was not possible to debate the motion before the House. Other Members, including Mr. Szabo, also spoke to the matter.

Resolution: The Speaker ruled immediately. He stated that the first report had been adopted by unanimous consent, by which the House meant that it was adopted notwithstanding any Standing Order. He ruled that the motion before the House was therefore in order and could proceed.

Decision of the Chair

The Speaker: The Parliamentary Secretary does raise a point but the first motion for concurrence was passed by unanimous consent, so there was not a second one moved in that sense. We had unanimous consent to allow the motion to go through.

Hon. Jay Hill: It was still moved, Mr. Speaker.

The Speaker: It was still moved but it was done with the unanimous consent of the House. This point has never been raised before, in my experience, as a reason for not allowing these other motions to proceed. The rule, as I understood it, was to prevent two motions for concurrence, so that one could not move one and then have a three-hour debate, if I am not mistaken, and then move a second one. That is the hitch.

In that sense, I think the Parliamentary Secretary is correct but when one is done by unanimous consent and without debate, I am not sure the Standing Order was intended to deal with that situation.

Mr. Tom Lukiwski: Mr. Speaker, while I respect your interpretation of the Standing Orders, the Standing Orders merely state that not more than one concurrence motion can be moved on any sitting day. It does not talk about unanimous consent nor does not talk about any other factors. It merely states, quite literally, that not more than one concurrence motion can be moved on any sitting day.

I would suggest, quite respectfully, that the concurrence motion of the hon. Member who was just speaking is out of order with the intent of the Standing Orders by which we all must abide in this House.

The Speaker: I can sympathize with the hon. Member's argument but it is a new one. It has never been advanced before, to my knowledge, under this Standing Order. It would mean that if we had five concurrence motions in one day for consent, the Chair would need to refuse to allow them to be moved. That is the effect of the hon. Member's argument.

I do not believe that is the case. I think if the House does something by unanimous consent, it does not count. When the House gives its unanimous consent, I think it means that, notwithstanding any Standing Order, we are doing this. For that reason, I think the motion before us is likely in order, despite the very able argument of the hon. Parliamentary Secretary.

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1. *Debates*, March 12, 2009, p. 1633.

The Daily Program

Routine Proceedings

Questions on the *Order Paper*; questions from a previous Parliament; authority of the Speaker

March 21 and 22, 2001 — *Debates*, pp. 2130-1

Context: On March 21 and 22, 2001, Greg Thompson (New Brunswick Southwest) raised points of order with respect to questions he had placed on the *Order Paper* during the Second Session of the Thirty-Sixth Parliament and which remained unanswered at the time of dissolution. At the start of the Thirty-Seventh Parliament, Mr. Thompson, who had resubmitted his questions but had yet to receive replies from the Government, complained that his inability to put more than four questions on the *Order Paper* at one time constituted a contempt of Parliament, since Members who already have their roster filled with procedurally acceptable questions are restricted in their abilities as they cannot put any further questions on the *Order Paper*. He went on to argue that this practice silences Members. After hearing from other Members, the Acting Speaker (Réginald Bélair) confirmed that questions asked in one Parliament cannot be carried over to another. He concluded that, since the questions had been resubmitted, they were subject to a timetable and that he assumed that the Government would make every effort to respond to those questions in a timely fashion.[1] Later, on March 22, 2001, Mr. Thompson rose again, this time on a question of privilege to restate his grievance, referring to a case in 1992, when Don Boudria (Glengarry–Prescott–Russell) had argued that his privileges as a Member had been breached as he could not submit new questions to the Government since his four slots were already taken.[2]

Resolution: The Speaker ruled immediately. He suggested that Mr. Thompson approach the Standing Committee on Procedure and House Affairs to seek changes to the existing rules to allow Members to put more questions on the *Order Paper* or to add provisions for a penalty for the failure to provide timely answers to written questions. The Speaker declared that he had no authority to order responses to be given and concluded that it was inappropriate to treat the matter as a question of privilege.

Decision of the Chair

The Speaker: I am quite familiar with the argument the hon. Member is making. I recall making a similar one myself at one time or another. I am very sympathetic to the plight he describes, but might I suggest that he go to the Procedure and House Affairs Committee at the earliest opportunity, or the new committee that has been struck to deal with changing the rules of the House, and seek changes to allow him to put even more questions on the *Order Paper* or seek changes that might have some penalty for non-answer to the questions.

It is not for the Chair on questions of privilege to deal with the fact that answers are not being given. What power does the Chair have to enforce this rule now? None.

We can say that these questions should be answered. I can stand here and say it until I am blue in the face, but if they are not answered, they are not answered. I know the problem. It is an old problem.

Mr. Greg Thompson: That is why we are here, to be heard.

The Speaker: That is why I am suggesting the hon. Member go to the Committee and raise it there because the Committee is charged with this responsibility.

I am not in a position to do something to solve the problem. The Parliamentary Secretary may be able to help by giving further solace to the hon. Member in respect of the answers, and perhaps that is what he will do now.

Editor's Note: At this point, Derek Lee (Parliamentary Secretary to the Leader of the Government in the House of Commons) rose to state that he had shared a draft of the response with Mr. Thompson and that he is at liberty to ask that the matter be transferred for debate. Bill Blaikie (Winnipeg–Transcona) then rose to note that the rules governing written questions were amended in the early 1980s in order to prevent the inundation of the *Order Paper* with questions. In turn, the Government would provide answers to written questions within 45 days.

The Speaker: I sympathize with the hon. Member. I remember making the same arguments. However, the rules are the rules and the Speaker, as a servant of the House, must enforce those rules.

Editor's Note: At this point John Duncan (Vancouver Island North) rose to state that there were only 18 questions on the *Order Paper*.

The Speaker: Let me address the issue by citing to the House the decision of Mr. Speaker Fraser on a similar matter, not the one referred to by the hon. Member for New Brunswick Southwest in his argument. The decision was delivered by Mr. Speaker Fraser on May 18, 1989, and appears on page 1890 of *Debates* for that day. The Speaker said:

> As far as I am concerned, I do not think that it is appropriate that the time of this House has to be taken up by Members having to get up and ask why somebody has not given them the answer.
>
> The hon. Member for Churchill made it quite clear. If there is a case where something is so complicated that it is impossible for the Government to give the answer within 45 days, I think hon. Members would be patient and understanding if the Parliamentary Secretary or Minister got up and said that that was the dilemma they found themselves in. For the most part, there is no real reason in the world why these answers cannot be given. As I say, I cannot order them to be given because I do not have the power. But I do ask that those who are asked to prepare these answers take a look at this rule and realize that when they do not get the answer back to their Minister in time, they are putting all of us through a lot of difficulty and taking up the time of the House, because undoubtedly there will be more points of order raised on exactly this issue.

Short of the authority to order somebody to do something, I cannot make my own feelings on the matter any more clear than I have just done. I agree with what Mr. Speaker Fraser said. I made arguments on occasion to Mr. Speaker Fraser on this point when I was not in the Chair of the House. I sympathize, but I respectfully suggest to hon. Members that I cannot do anything. I agree with what Mr. Speaker Fraser said. We must consider the matter closed.

When questions come up and the Parliamentary Secretary asks that all questions stand, I have no doubt that we will hear from the hon. Member for New Brunswick Southwest and others on points of order as to why their questions have not been answered in a timely way. As Speaker I am prepared to entertain those points of order, but I do not think it is appropriate to treat this as a question of privilege. As indicated by Mr. Speaker Fraser, there is nothing I can do.

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1. *Debates*, March 22, 2001, pp. 2083-4.
2. *Debates*, March 22, 2001, p. 2130.

The Daily Program

Routine Proceedings

Questions on the *Order Paper*: failure of the Government to respond deemed referred to standing committees pursuant to Standing Order

January 28, 2002 *Debates*, pp. 8335-6

Context: On January 28, 2002, Guy St-Julien (Abitibi–Baie-James–Nunavik) rose on a point of order to express concern that the time limit for obtaining a response to questions Q-81 and Q-82, standing in his name, had expired. He asked, in light of the new Standing Order governing written questions, whether the questions would be answered that day or whether they would be referred to the House or to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources.

Resolution: The Speaker ruled immediately. He informed the House that there was a new Standing Order in effect concerning these matters. He stated that, therefore, pursuant to Standing Order 39(5), the failure of the Government to respond to questions Q-81 and Q-82, as well as Q-85, Q-86, Q-90, Q-91, Q-92, Q-93, Q-94, Q-96, Q-97, Q-98 and Q-99 had been deemed referred to various standing committees of the House.[1]

Decision of the Chair

The Speaker: Before I deal with the hon. Member for Pictou–Antigonish–Guysborough perhaps he will want to hear what the Chair has to say because there is a new Standing Order in effect in relation to these matters. Perhaps after hearing it I will have disposed of the point of order of the hon. Member for Abitibi–Baie-James–Nunavik as well as what I anticipate is one from the hon. Member for Pictou–Antigonish–Guysborough.

Pursuant to Standing Order 39(5), it is my duty to inform the House that the failure of the Government to respond to the following questions on the *Order Paper* is deemed referred to the various standing committees of the House as follows: Questions Nos. 81 and 82, standing in the name of the hon. Member

for Abitibi–Baie-James–Nunavik, are referred to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources.

Question No. 85, standing in the name of the hon. Member for North Vancouver, will be referred to the Standing Committee on Industry, Science and Technology; Question No. 86, standing in the name of the hon. Member for Esquimalt–Juan de Fuca, to the Standing Committee on Foreign Affairs and International Trade; Questions Nos. 90, 91, 92 and 93, standing in the name of the hon. Member for Vancouver East, to the Standing Committee on Transport and Government Operations; Question No. 94, standing in the name of the hon. Member for Edmonton Centre-East, to the Standing Committee on Transport and Government Operations; Question No. 96, standing in the name of the hon. Member for South Shore, to the Standing Committee on Finance; Question No. 97, standing in the name of the hon Member for Sackville–Musquodoboit Valley–Eastern Shore, to the Standing Committee on Environment and Sustainable Development; and Question No. 98, standing in the name of the hon. Member for Yorkton–Melville, to the Standing Committee on Justice and Human Rights.

Finally, Question No. 99, standing in the name of the hon. Member for Saskatoon–Rosetown–Biggar, is referred to the Standing Committee on Transport and Government Operations.

Editor's Note: This was the first time, since amendments were made to the Standing Orders pursuant to the adoption of the Report of the Special Committee on Modernization and the Improvement of the Procedures of the House of Commons in October of 2001 that this new procedure was invoked. The new rules provide for the referral of the matter of the failure of the Government to respond to a written question to an appropriate standing committee once the 45-day period has elapsed.

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1. *Journals*, January 28, 2002, pp. 965-9.

The Daily Program

Routine Proceedings

Questions on the *Order Paper*: admissibility questioned due to the amount of information sought

February 6, 2003 — *Debates*, pp. 3254-6

Context: On January 27, 2003, Don Boudria (Minister of State and Leader of the Government in the House of Commons) rose on a point of order with respect to whether questions Q-59 to Q-71 and Q-77 on the *Order Paper* were either reasonable or in order. He argued that it was impossible to produce and translate answers to the questions within the 45-day time limit due to the fact that the information requested covered many different matters. He noted that under Standing Order 39(6) these questions cannot be transferred to "Motions for the Production of Papers" because they do not seek documents. He then suggested that Standing Order 39(6) be amended to provide the Government with an avenue to request from the Speaker grounds to counter these types of requests for information. He also asked the Speaker to consider if the Clerk of the House, who is responsible for reviewing written questions, has the authority to reject any unreasonable or unanswerable questions. He suggested that questions that are excessively costly and time consuming should be rejected or the Government should be able to transfer them for debate. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: On February 6, 2003, the Speaker delivered his ruling. He noted that since the Government House Leader had first raised his point of order, the Government had tabled responses to all of the questions at issue, although the responses had been presented after the 45-day deadline. He declared that such deadlines would be strictly applied in the future, and that the Chair would not allow points of order to be used to avoid or postpone answering questions. The Speaker also stated that the Chair could not adjudicate on the merits of questions, and that the Clerk and his officials were required to ensure only that questions were acceptable as to form. He noted that it was, however, procedurally acceptable for the Government to respond to a written question by stating that a response could not be given because of the time and the human or financial resources involved.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on January 27 by the hon. Government House Leader concerning written questions and the difficulties experienced by the Government in responding to them within the 45-day deadline established pursuant to Standing Order 39(5)(*a*).

I would like to thank the hon. Government House Leader for having raised this matter as well as the hon. House Leader for the Official Opposition and the hon. Member for St. John's West for their interventions.

In presenting his case, the hon. Government House Leader stated that Questions Nos. 59 to 71 and 77, placed on the *Notice Paper* on November 20 and 21, 2002, requested a significant amount of information related to Government grants, loans, contributions and contracts awarded in certain constituencies over an eight-year period. He went on to argue that the very nature of the questions made it virtually impossible for the Government to respond within the 45-day deadline set for its responses.

The hon. Government House Leader presented several facts in support of that position. He noted that information of this nature is kept on file for a maximum period of six years. He also mentioned that Government departments are not required to keep such records on a constituency basis. Furthermore, he pointed out that all the information collected for such a Government response requires translation pursuant to S.O. 32(4), which stipulates that any document distributed or laid before the House must be in both official languages.

To remedy the dilemma he described, the hon. Government House Leader went on to suggest amending Standing Order 39(6) that currently allows certain questions to be transferred to Motions for the Production of Papers, so that it could provide another avenue for the Government to respond to longer questions.

In concluding his remarks, the hon. Government House Leader also suggested that the Clerk, who is responsible for reviewing and accepting written questions for publication on the *Notice Paper*, should reject any

question that was "unreasonable" or that was so poorly drafted that it requires multiple clarifications.

First, let me clear up one point. The hon. Government House Leader complained that the disputed questions sought information from the Government about non-governmental organizations. However, as I read these questions, information is sought about "quasi non-governmental organizations funded by the Government". These quangos, as they are known in the United Kingdom, are in fact public bodies, defined as bodies having a role in the processes of Government and, though not reporting to a Minister, bodies for which Ministers are ultimately responsible. Thus, it seems to me that the questions do, in fact, seek this information from the appropriate source.

Now let us return to the matter at hand. I should first say that since January 27, when this point of order was raised, the Government has tabled responses to all the questions dealt with in the complaint.

Strictly speaking, the responses were tabled after the deadline provided for in Standing Order 39(5)(*a*) had passed.

Since the Chair took this point of order under advisement on January 27, the designation of these questions and their reference to committee were held in abeyance, pending my ruling. Now, since the responses are in, the Chair will not designate these questions nor will these questions be referred to committee. However, I want to be very clear on this. This is a relatively new procedure and I am prepared to give the Government the benefit of the doubt in this instance. In the future though, the application of deadlines will be strictly applied and a non-response to a question will not [be][2] mitigated by the fact that a point of order has been raised about the question and that the House must await a ruling.

In summary then, there is no longer an immediate problem with regard to this particular set of questions. However, the Chair is nevertheless prepared to share its conclusions on the point of order raised in the hope that it may prove helpful in future situations.

Having reviewed the issues raised by the hon. Government House Leader, I must confess a certain reluctance to intervene in the matter. Let me explain.

I would refer hon. Members to the ruling made by Mr. Speaker Fraser on June 14, 1989, referred to by the hon. Government House Leader in his arguments. Specifically, let me cite what I believe is a succinct statement of the continuing problem regarding written questions, and I quote:

> The dilemma is this: we must find a balance between the urgent requirements of Members who need information in order to function and the equal imperative of a rational and fair use of the limited resources available to provide answers.

The ruling continues:

> There is also a procedurally quite acceptable practice simply to respond by saying that the question cannot be answered because of the time and the human or financial resources involved. The government may continue the practice of simply declining, with an explanation, to answer questions which it finds are too burdensome. It should be understood that there is no obligation on the government to provide a perfect answer, only a fair one.

Mr. Speaker Fraser continues with a very important caveat:

> A Member in framing his or her question would accept part of the responsibility for the quality of the answer.

In short, our procedure permits the Government to respond to a question or questions by stating that the question cannot be answered because of the time and the human or financial resources involved.

Perhaps ironically, this is what the hon. Government House Leader did, even as he presented his point of order. In making his case, he stated that the Government could not respond to Questions Nos. 59 to 71 and 77, because of certain ambiguities in the line of questioning, because of the time involved in compiling the information requested, and because of the human and financial resources involved.

On another front, the hon. Government House Leader posits that one remedy to the current situation he faces is that the Clerk's staff should exercise greater rigour in accepting written questions for the *Notice Paper*.

I cannot agree with this argument for, no matter what degree of rigour is applied to the process, it is not possible for House staff to form any accurate assessment of the resources necessary to prepare a reply. There will always be differences of opinion between the Government and Members of the opposition as to the way questions are formulated as well as to whether adequate information is provided in response.

Staff under the aegis of the Clerk review written questions submitted as to form and whether they conform with our guidelines, but they cannot be charged with assessing the merits of these questions, or whether the Government will or will not be in a position to respond to them.

Marleau and Montpetit at page 441 makes the following point:

> Acting on the Speaker's behalf, the Clerk has full authority to ensure the questions placed on the *Notice Paper* conform with the rules and practices of the House. Given that the purpose of a written question is to seek and receive a precise, detailed answer, it is incumbent on a Member submitting a question for the *Notice Paper* "to ensure that it is formulated carefully enough to elicit the precise information sought".

Similarly, as hon. Members know, there is no provision in our rules for the Speaker to review the content of responses, nor would that be appropriate. In this regard I would simply state that any Member not satisfied with the response provided by the Government may raise supplemental questions either orally or in written form.

I should mention that the current situation may well be rooted in the frustration that Members experience with regard to the constraints imposed on them with regard to written questions. I can remember a time when Members were not limited in the number of questions they could place on the *Order Paper* whereas today Standing Order 39(4) limits Members to four questions at any one time.

It is perhaps not entirely surprising that Members have shown their usual ingenuity in coping with this constraint and have taken to crafting multipart questions of the kind that are the subject of the Minister's complaint.

Where there might have been pointed questions each addressed to a particular department or agency, there is now one question which blankets all departments and agencies and throws in quangos for good measure. The Minister is left with a rather thankless task of compiling all this information within the 45-day limit if he is to respect the deadline for responses.

As I stated at the outset, I have concluded after reviewing this situation that the Chair cannot adjudicate on the merits of written questions asked of the Government any more than it can judge the merits of the responses the Government provides.

The Clerk and his officials are entrusted the task of ensuring that written questions are permissible as to form only; it falls to the Government to determine whether it can offer a response, given the nature and scope of the question.

Since responses to the specific questions that gave rise to this point of order have now been tabled in the House, the Chair considers this particular case to be closed and trusts that this decision will help to clarify the situation in the future.

If hon. Members remain concerned about the current rules relating to written questions, I would suggest that the matter be taken up by the Standing Committee on Procedure and House Affairs or by the Special Committee on Modernization and Improvement of the Procedures of the House of Commons which is also currently tasked with reviewing our procedures.

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1. *Debates*, January 27, 2003, pp. 2721-3.
2. The word "be" is missing from the published *Debates*.

The Daily Program

Routine Proceedings

Questions on the *Order Paper*: splitting by the Speaker

October 18, 2006 — *Debates*, pp. 3933-4

Context: On September 20, 2006, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons and Minister for Democratic Reform) rose on a point of order with respect to a written question on the *Notice Paper* in the name of Dawn Black (New Westminster–Coquitlam). Mr. Lukiwski stated that Ms. Black had given notice of not one written question but 47 distinct questions. He argued that Standing Order 39(4) limits Members to a maximum of four written questions at any one time and added that the conventions of the House did not permit a Member to submit a series of questions under a general topic as a single question. He also stated that some of the questions were beyond the administrative accountability of the Government. He asked that the Speaker rule the question out of order. The Speaker took the matter under advisement.[1] A few days later, other Members commented on the matter.[2]

Resolution: On October 18, 2006, the Speaker delivered his ruling. He reviewed the requirements that a written question must meet as to form and content, noting especially that the subject matter of the question must pertain to matters within the administrative responsibility of the Government and that Standing Order 39(2) gave the Clerk of the House the authority to reject outright or to split into separate and distinct questions those that contain unrelated subquestions. The Speaker referred to a ruling by Mr. Speaker Parent stating that, in order for a question with multiple subquestions to be found admissible, there must be a common element connecting the various parts. He also explained that the understanding of the term "concise" in Standing Order 39(2) had evolved so that it was no longer interpreted to mean short or brief but rather comprehensible. He ruled that in the case of Question No. 90, the need for greater coherence made it inadmissible in its current form and instructed the Clerk to divide it into three separate questions. Additionally, he found that two subquestions concerned matters outside of the Government's administrative responsibility and asked that they be deleted. In view of the fact that the information sought remained essentially unchanged, he ruled that the 45-day

period for the Government response would be retroactive to the day when notice was first given.

Decision of the Chair

The Speaker: I am now ready to rule on the point of order raised on September 20, 2006, by the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons and Minister for Democratic Reform with respect to Question No. 90 on the *Order Paper*.

I wish to thank the hon. Parliamentary Secretary for raising the matter. I also want to acknowledge the contributions made by the hon. Member for Windsor–Tecumseh and by the hon. Government House Leader on September 22.

Let me first summarize the essence of Question No. 90. On September 19, 2006, the hon. Member for New Westminster–Coquitlam submitted to the Journals Branch a question containing 47 subsections. In general terms, the question has to do with the presence of Canadian Forces in Afghanistan and each subsection poses a separate question on the Government's defence and foreign policies with respect to the Afghanistan mission.

After consideration by the Journals Branch staff in the usual manner, the question was placed on the *Notice Paper*. After the usual two-day notice period, Question No. 90 was transferred to the *Order Paper*, where it now stands as the only written question in the name of the hon. Member for New Westminster–Coquitlam.

In his intervention, the hon. Parliamentary Secretary expressed concern about the length of Question No. 90. In addition, he contended that some of the subsections to the question were not within the administrative responsibility of the Government. He concluded by asking the Chair to rule Question No. 90 out of order.

In response to this point of order, the hon. Member for Windsor–Tecumseh asserted that current practice permitted the placing of lengthy questions on

the *Order Paper*. In support of this argument, he referred to Questions Nos. 5 and 7 from the previous Parliament, which he claimed were lengthier than Question No. 90 but which were nonetheless answered by the Government. The hon. Government House Leader countered that the length of Question No. 90 was unreasonable and that it violated the spirit of Standing Order 39 by asking 47 questions under the guise of one question.

As all hon. Members are aware, the purpose of placing questions on the *Order Paper* is to allow Members to seek detailed or technical information on matters of public affairs from one or more Government departments or agencies so as to enable Members to carry out their parliamentary functions.

In order for a written question to be placed on the *Order Paper*, it must first meet certain requirements as to form and content. Standing Order 39(1) requires that no argumentative material or unnecessary fact or opinion be included in a question. In addition, the subject matter of the question must pertain to public affairs, which is another way of saying matters within the administrative responsibility of the Government. A written question is also judged acceptable if it satisfies the general guidelines for oral questions. *House of Commons Procedure and Practice* on page 441 states:

> Given that the purpose of a written question is to seek and receive a precise, detailed answer, it is incumbent on a Member submitting a question for the *Notice Paper* "to ensure that it is formulated carefully enough to elicit the precise information sought".

The modern rules respecting questions on the *Order Paper* can be traced back to the 1985 Third Report of the Special Committee on Reform of the House of Commons, commonly known as the McGrath Committee. The Committee recommended that Members be limited to having four questions on the *Order Paper* at any one time as a means of resolving the decades long problem of hundreds, at times thousands, of written questions remaining unanswered on the *Order Paper*.

At the same time, the Committee anticipated that Members might try to circumvent the limit of four written questions by submitting questions containing numerous subquestions. The McGrath Committee proposed that

the Clerk should have authority to reject outright or to split into separate and distinct questions those questions that contain unrelated subquestions. What is today known as Standing Order 39(2) was subsequently adopted. It states:

> The Clerk of the House, acting for the Speaker, shall have full authority to ensure that coherent and concise questions are placed on the *Notice Paper* in accordance with the practices of the House, and may, on behalf of the Speaker, order certain questions to be posed separately.

Honourable Members who were here during the Thirty-Sixth Parliament may recall a ruling delivered by Mr. Speaker Parent on the division of a written question on February 8, 1999. The ruling was in response to a point of order raised by the hon. Member for Delta–South Richmond, now the hon. Member for Delta–Richmond East, and it can be found on pages 11531 to 11533 of the *Debates* for the First Session of the Thirty-Sixth Parliament.

The hon. Member raised a number of issues in his point of order, including the matter of the division of his question by the Clerk's staff. The hon. Member claimed that the question had been divided by the Clerk's staff because of its length. Mr. Speaker Parent found that the Clerk's staff had followed the proper procedures and had made the decision to divide the question in accordance with Standing Order 39(2) not because the question was lengthy, but because the subquestions were not related. The Speaker stated, and I quote:

> The issue was not the length of the question but rather the fact that it contained unrelated subquestions. The subquestions may be linked from the Member's point of view but are in reality separate and distinct questions.

This ruling underscored that in order for a question with multiple subquestions to be found admissible, there must be a common element connecting the various parts.

As the hon. Member for Windsor–Tecumseh correctly pointed out in his intervention, there have been numerous lengthy questions containing multiple subquestions and even some with subsections within subquestions, placed on the *Order Paper* in the past. These would include, for example, in

the Thirty-Sixth Parliament, Questions Nos. 28, 56, 91, 103, 132, 138 and 190, which were judged acceptable and placed on the *Order Paper*.

Similarly, in the Thirty-Seventh Parliament, Questions Nos. 17, 60, 225 and 240 were also found to be acceptable. In the last Parliament, Questions Nos. 5, 7 and 151 were placed on the *Order Paper* and, finally, in the current Parliament, Questions Nos. 13 and 33 were placed on the *Order Paper*.

I do not recall that any objections were raised at the time these questions were placed on the *Order Paper* and, indeed, the Government provided answers to all these questions, albeit perhaps not always within the 45-day time frame set down in Standing Order 39(5)(*a*).

It is apparent to me from the examples cited above that the interpretation of the term concise in Standing Order 39(2) has evolved since this rule was first adopted. It is no longer interpreted to mean short or brief but rather comprehensible. Undoubtedly, this practice has evolved as a means of getting around the limit of four questions per Member.

Leaving aside the issue of length, I want to turn now to the substance of the questions, specifically to the Standing Order requirement that questions must be "coherent and concise". As hon. Members will know, the Clerk and her staff routinely edit written questions as to form and, from time to time, have divided questions to make them conform to the requirements of the Standing Order. In questionable cases, their practice has been to give the Member submitting the question the benefit of the doubt and to allow the question to be placed on the *Order Paper*. The Speaker has only become involved in rare cases such as this one where objections have been raised.

With this in mind, I reviewed all 47 parts of Question No. 90 carefully. Keeping in mind the need for coherence in the question, I must admit that I found that, as currently constructed, some parts of the question are rather tenuously knitted together. Accordingly, I have determined that the need for greater coherence necessitates that the question be divided. For this reason I must rule that Question No. 90, as currently formulated, is inadmissible.

To remedy the situation without unduly penalizing the hon. Member for New Westminster–Coquitlam, I have instructed the Clerk to divide Question No. 90 into three separate questions. The first question concerns the Government's objectives, strategy, vision, results and capabilities with respect to the Afghanistan mission and includes 33 subquestions. The second deals specifically with Canadian Forces casualties in Afghanistan. It contains five subsections. Seven subquestions related to financial matters are grouped together in a third question.

In reviewing the question, I have also examined it to determine whether it respects the Standing Order requirement by seeking information that pertains to matters within the administrative responsibility of the Government. In this case I have found that two of the original subquestions dealing with allied forces and non-governmental organizations are outside the administrative responsibility of the Government. Accordingly, I have asked that they be deleted. Another subquestion was amended to remove references to agencies and multilateral organizations for the same reason.

Copies of the three questions are available at the Table and will also be found on tomorrow's *Order Paper* listed as Questions Nos. 106, 107 and 108.

Finally, in view of the fact that the information sought remains essentially unchanged, the 45-day period for the Government to respond to the Questions will be retroactive to the original date when notice was first given of Question No. 90, that is September 19, 2006. I believe these steps taken together provide a remedy to the objections raised with respect to Question No. 90 while respecting the rights of the hon. Member for New Westminster–Coquitlam in seeking information by way of written questions that meet the requirements of our Standing Orders.

I wish to thank hon. Members for allowing me the opportunity to clarify our practices with respect to written questions and if hon. Members are still concerned about the rules and practices, they are of course free to take the matter up with the Standing Committee on Procedure and House Affairs. Since 20 years have passed since the current Standing Order went into effect,

it may be opportune to examine whether the rule has worked out in the way in which it was intended.

In the meantime, I am confident that, to avoid difficulties, Members may be well-served should they seek guidance from the Clerk and her staff when drafting questions for the *Order Paper*. I apologize that this ruling was not more concise as is required in respect of the questions.

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1. *Debates*, September 20, 2006, p. 3028.
2. *Debates*, September 22, 2006, pp. 3134-6.

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Chapter 4 — The Decision-making Process

Introduction

Although the House of Commons is usually thought of as a deliberative assembly, it is fundamentally a decision-making body. Its rules and practices are ultimately designed to allow its Members to adopt or reject the proposals before it.

The will of the House is ascertained by means of a vote, which is the final step in the decision-making process. Once debate on a motion has concluded, the Speaker puts the question and the House pronounces itself on the motion. The seven decisions presented in this chapter relate to voting, and more particularly to recorded divisions, which occur if five or more Members rise to signal a demand for a recorded vote. In these votes, the House is "divided" into "all those in favour" and "all those opposed."

The rules and conventions governing debate and the decision-making process ensure that the House can adopt or reject proposals under consideration in an orderly and expeditious fashion. The Speaker and the Chair Occupants are, of course, responsible for maintaining order and decorum during the entire decision-making process, and for deciding all questions of order. A number of the decisions included in this chapter pertain to decorum during recorded divisions. In some of his decisions, Mr. Speaker Milliken reminded Members that, for their votes to be recorded, they must take their seats and remain seated until the results of the vote are announced.

Mr. Speaker Milliken used his casting vote in five instances—more than any previous Speaker of the House of Commons. The Speaker must be impartial at all times and cannot participate in debate or vote in the House but, in the rare instances of an equality of voices, must break the tie using the casting vote. When this occurs, the Speaker normally votes to maintain the *status quo* and may briefly explain why the vote was cast in the way it was. Two of the decisions which follow describe two other instances of recorded divisions following which the Speaker and the Deputy Speaker used the casting vote. In both cases, however, it was discovered that mistakes had been made during the vote and a Member had been counted as having voted when he had in fact remained seated. Thus, in both instances, the casting vote proved unnecessary.

The Decision-making Process

Recorded divisions: unanimous consent required for Members seeking to record their votes after the voting took place

October 18, 2001 *Debates*, pp. 6293-4

Context: On October 18, 2001, Bill Blaikie (Winnipeg–Transcona) rose on a point of order with respect to the taking of a recorded division on the motion for second reading of Bill C-217, *Blood Samples Act*, on Tuesday, October 16, 2001.[1] Mr. Blaikie reported that, during the vote, some Members from the Government side did not rise to vote when their row was called and then, when the vote was over, rose to request to record their votes. He argued that those votes should not have been counted and urged the Speaker to make a ruling or statement in this regard.

Resolution: The Speaker ruled immediately. He stated that the Chair had taken due notice of what had happened and added that, sometimes in voting in the House, Members do forget to stand at the appropriate moment and might miss the vote. The Speaker declared that, in the future, for votes on Private Members' Business, unanimous consent would be required when Members wished to record their votes outside the usual sequence, that is, if their row had already been called. He also mentioned in closing that, in this particular case, if the votes in question had been omitted, the result would have remained the same.

Decision of the Chair

The Speaker: The Chair had the advantage of having a brief opportunity to consider this matter because the hon. Member did give me notice of his intention to raise this point of order before the House. I appreciate his references to lost sheep and so on.

The Chair has taken due notice of what has happened here. Sometimes in voting in the House, Members do forget to stand at the appropriate moment and miss the vote. We had for example the hon. Deputy Prime Minister the other day stand up and indicate his intention to have voted for a Government motion and the House gave its unanimous consent to allow his vote to be recorded. It was sought and obtained and the hon. Member says it should be sought. Yes, in most instances I think it is, but not always.

The Chair, in anticipation of this question, last night made arrangements for words to be added to the instructions that were read out to the House before the vote was taken on Private Members' Business last evening and I should perhaps read them for the hon. Member for Winnipeg–Transcona and for the benefit of all hon. Members. These words were added:

> May I remind all hon. Members that if they intend to vote, they must stand when their row is called.

I added again:

> All Members must stand when their row is called if they intend to vote.

Those words were added to those pious statements used by the Chair before a vote is called on Private Members' Business. These are read out as instructions for all hon. Members and I am sure they will be well heeded in future. If we run into this problem and the hon. Member for Winnipeg–Transcona has to raise this kind of issue again, I feel confident that he will be able to make his point more quickly and perhaps ensure that if Members are allowed to vote after their row has been called that the consent of the House is obtained first to permit that.

I notice that in this case, even if all the persons who stood and asked that their votes be recorded after the vote had been taken had been taken out, the result in terms of yeas or nays would have remained the same. In one sense I think the point of order is somewhat academic.

I know the hon. Member is keen to stamp out this kind of wickedness. I know that effort is appreciated by all hon. Members.

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1. *Debates*, October 16, 2001, pp. 6220-2, *Journals*, pp. 714-5.

The Decision-making Process

Recorded divisions: Members rising to request a deferred recorded division not in their assigned seats

January 30, 2003 *Debates*, p. 2926

Context: On January 29, 2003, Louis Plamondon (Bas-Richelieu–Nicolet–Bécancour) rose on a point of order to protest that the Members who had risen to request a deferred recorded division on a motion had not been in their assigned places. He argued therefore that the motion before the House should not be subject to a recorded division as it had been disposed of.[1] The Acting Speaker (Réginald Bélair) responded by informing Mr. Plamondon that five Members had risen "halfway" and were accordingly recognized as having requested a deferred recorded division on the motion. After hearing from another Member, the Acting Speaker took the matter under advisement.[2]

Resolution: On January 30, 2003, the Acting Speaker delivered his ruling. Citing the Standing Orders and *House of Commons Procedure and Practice*, 2000, he affirmed that Members did not have to be in their assigned places when rising to request a recorded division and that there had therefore been no procedural irregularity.

Decision of the Chair

The Acting Speaker (Mr. Bélair): Before we begin Orders of the Day I have a statement arising out of the business of yesterday.

When the House last considered the report stage of Bill C-13, *An Act respecting assisted human reproduction*, the Chair was in the midst of putting the question on the motions in Group No. 4. In response to points of order raised at that time, the Chair undertook to review the blues and to report back to the House when the bill was next considered. I am now in a position to do so.

I want to first deal with the point of order raised by the hon. Member for Bas-Richelieu–Nicolet–Bécancour arguing that Members must be in their seats if they are to be counted when rising to demand a recorded division on a

question. I refer hon. Members first to the text of Standing Order 45(1) which reads as follows:

> Upon a division, the yeas and nays shall not be entered in the *Journals* unless demanded by five members.

Elaborating on this rule, *Marleau and Montpetit* states at page 483, footnote 241:

> When a question arose as to whether or not Members rising to request a recorded division were required to do so from their assigned places in the House, the Deputy Speaker stated that the rule does not impose such a requirement. (*Debates*, June 23, 1992, p. 12686)

Thus, there is no irregularity in Members not having been in their place when they rose to demand a recorded division on any motion.

Now, to the results of the review of the blues. As the tape and the transcript clearly indicate, the question was duly put on the amendment to Motion No. 52, Motion No. 53 and Motion No. 55.

Then, an error occurred: the question was not put on Motion No. 61. Instead, the Chair went on to put the question on Motions Nos. 64 and 71. Members will recall that there seemed to be widespread confusion as to what motion was being voted upon. This confusion may have been caused by the error made when the Chair inadvertently skipped Motion No. 61.

Accordingly, in fairness to all hon. Members and in an abundance of caution when we resume consideration of Bill C-13, we will recommence the voting at Motion No. 61 and then follow sequentially through the other motions in Group No. 4, namely Motions Nos. 64, 71, 72, 74, 75 and 77.

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1. *Debates*, January 29, 2003, pp. 2865-6.
2. *Debates*, January 29, 2003, p. 2866.

The Decision-making Process

Recorded divisions: casting vote

June 23, 2005 — *Debates*, pp. 7694-5

Context: On June 22, 2005, the deferred recorded division on Motion M-228, in relation to a symbol for the House of Commons, in the name of Derek Lee (Scarborough–Rouge River), resulted in an equality of voices (143 yeas and 143 nays). The Deputy Speaker (Chuck Strahl) was therefore required to decide the question with a casting vote. In keeping with the convention that the Chair votes to preserve the *status quo*, the Deputy Speaker voted against the motion which was accordingly defeated.[1]

Resolution: On June 23, 2005, the Speaker ruled on the vote on Motion M-228. He confirmed that the Deputy Speaker had correctly cast his vote in the negative on the procedural grounds that, since no further discussion on the Motion was possible and the House could not reach a decision, it was not for the Chair to decide that the proposal should go forward. He advised Members that, after the vote, Stéphane Bergeron (Verchères–Les Patriotes) had brought to the attention of the Table that he had been erroneously counted as having voted against the motion, when in fact he had remained seated and had not voted. This meant that in the absence of this error, M-228 would have been agreed to by a vote of 143 in favour and 142 against and that he was therefore informing the House of this corrected result. The Speaker directed the Table to correct the *Journals* of June 22, 2005, to reflect the true decision of the House.

Decision of the Chair

The Speaker: I have an important statement to make to the House about the result of the vote taken yesterday evening on Motion No. 228, which was moved by the hon. Member for Scarborough–Rouge River.

As hon. Members know, the announced result was a tie, with 143 Members recorded as having voted in favour and 143 Members recorded as having voted against.

On hearing that the votes were equally divided on the Motion, the Deputy Speaker correctly gave the casting vote in the negative on the procedural grounds that, since no further discussion on the Motion was possible and the House could not reach a decision, it was not for the Chair to decide that the proposal would go forward.

Some minutes after the Deputy Speaker had cast the deciding vote, and after the House had moved on to other business, it was brought to the attention of the Table that a Member had been erroneously counted as having voted nay. Further verifications were made to confirm that an error had in fact been made and it was discovered that at one point during the vote several Members stood out of sequence and then sat down in quick succession when voting on the motion. In amongst that group of Members was one Member who had remained seated throughout and had not in fact voted, namely the Member for Verchères–Les Patriotes. However, in the confusion, his name had been called and his vote counted with the nays.

Shortly afterward I was informed by the Table Officers that this had occurred. As hon. Members will realize, if this nay vote had not been counted in error, events would have unfolded differently. No tie vote would have occurred, no casting vote would have been required and most significantly Motion No. 228 would have been agreed to by a vote of 143 to 142.

As your Speaker, I always strive to observe the highest ethical standards in the exercise of my duties. Thus, in the present circumstances I have concluded that the decision on Motion No. 228 recorded in yesterday's *Journals* cannot stand, given our knowledge that it rests on a single incorrectly recorded vote.

Accordingly, I am informing the House that Motion No. 228 has been agreed to by a vote of 143 yeas to 142 nays and I have directed the Table to correct the *Journals* of June 22, 2005 so that the true decision of the House may be properly reflected in our official records.

I thank hon. Members for their attention during this rather unusual announcement.

Postscript: Further to the changed result of the vote on Motion M-228, Michel Gauthier (Roberval–Lac-Saint-Jean) rose on a point of order to call for a new vote to be taken. After hearing from a number of Members, the Speaker, acknowledging that there was no agreement on having another vote, suggested that the House Leaders and Whips have a discussion about whether to have another vote. If they had agreed another vote was necessary, it would have taken place later that same day.[2]

Editor's Note: there was no second vote on the motion.

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1. *Debates*, June 22, 2005, pp. 7645-6.
2. *Debates*, June 23, 2005, pp. 7695-6.

The Decision-making Process

Recorded divisions: decorum

December 7, 2006 — *Debates*, p. 5813

Context: On December 7, 2006, Rob Nicholson (Leader of the Government in the House of Commons and Minister for Democratic Reform), rose to speak to a question of privilege raised by Bill Graham (Toronto Centre) with respect to a response given during Oral Questions. While speaking, he expressed disappointment with the conduct of Members of the Official Opposition during a recorded division held earlier that day on a motion standing in his name on marriage. The Government House Leader noted that some Members of the Official Opposition had yelled at Members of the Government as they were getting up to vote in favour of the motion.[1] After hearing from other Members on the question of privilege and taking the matter under advisement, the Speaker, that same day, addressed the comments made by the Government House Leader. He cited Standing Order 16(1), which addresses decorum during votes in the House, and urged Members to remain silent in compliance with this important rule when votes are being conducted. (**Editor's Note:** That part of the Speaker's statement is reproduced below.)

Statement of the Chair

The Speaker: The Government House Leader raised his point about the yelling during the vote and I would point out to all hon. Members that Standing Order 16(1) states:

> When the Speaker is putting a question, no Member shall enter, walk out of or across the House, or make any noise or disturbance.

I know all hon. Members will want to bear that rule in mind the next time we have a vote in the House and maintain absolute silence while the vote is being conducted. There will be no noise or disturbance. There will be no yelling across the House at anyone, I am sure, from now on, because I have reminded hon. Members of this very old and very important rule as part of our Standing Orders.

1. *Debates*, December 7, 2006, p. 5812.

The Decision-making Process

Recorded divisions: Members leaving their seats during the taking of recorded divisions

December 2, 2009 *Debates*, p. 7498

Context: On December 1, 2009, following the taking of a recorded division on an opposition motion standing in the name of Paul Dewar (Ottawa Centre) regarding the transfer of Afghan detainees, Dave MacKenzie (Oxford) rose on a point of order. Mr. MacKenzie noted that Francis Valeriote (Guelph) had left his seat during the vote, and argued that his vote should accordingly be disallowed. Mr. Valeriote explained that, although he had momentarily left his seat, he had not left the Chamber. The Speaker took the matter under advisement.[1]

Resolution: On December 2, 2009, the Speaker delivered his ruling. He confirmed that Members are required to remain in their seats until a vote has been completed. As Mr. Valeriote had admitted that he had left his seat during the vote, the Speaker ordered that his vote be struck from the record and the *Journals* corrected accordingly.

Decision of the Chair

The Speaker: After yesterday's deferred recorded division[2] on the opposition motion, a point of order was raised regarding the vote by the hon. Member for Guelph.

On October 28, 2003, while addressing a similar issue, I stated:

> I would urge hon. Members that if they want to have their vote count, they must remain in their seats from the time the vote begins until the result of the vote is announced.

The Member admitted that he had left his seat during the vote yesterday. Accordingly, the vote cast by the hon. Member for Guelph is struck from the record and I have directed the Table to correct the *Journals* accordingly.

1. *Debates*, December 1, 2009, p. 7475.
2. The published *Debates* repeated the word "yesterday".

The Decision-making Process

Recorded divisions: casting vote

March 4, 2010 *Debates*, p. 21

Context: On December 10, 2009, the deferred recorded division on the motion for the third reading of Bill C-291, *An Act to amend the Immigration and Refugee Protection Act (coming into force of sections 110, 111 and 171)*, resulted in an equality of voices (143 votes in favour and 143 votes against), so the Speaker gave the casting vote. In keeping with the conventions governing the casting vote, he voted to maintain the *status quo*, which in this case meant voting against the motion, and thus the motion was defeated.[1] On March 4, 2010, the Speaker delivered a statement with regard to the result of this vote. He noted that it had been brought to the attention of the Table that an error had occurred in that Joseph Volpe (Eglinton–Lawrence) had been counted as having voted in favour of the motion when in fact he had not voted at all. The Speaker pointed out that the outcome of the vote remained the same: the motion for third reading of Bill C-291 remained defeated, but this time on a vote of 142 yeas to 143 nays. He informed the House that, in keeping with the precedents applicable to the discovery of such errors, a *corrigendum* was published on December 30, 2009 to correct the *Journals* of December 10, 2009,[2] to reflect the true result of the vote.

Statement of the Chair

The Speaker: Before we proceed with Routine Proceedings, I have an important statement I would like to make to the House about the result of a vote taken on December 10, 2009, on the motion for third reading of Bill C-291, *An Act to amend the Immigration and Refugee Protection Act (coming into force of sections 110, 111 and 171).*

As hon. Members will recall, the announced result was a tie, with 143 Members recorded as having voted in favour and 143 Members recorded as having voted against. On hearing that the votes were equally divided on the motion, I gave the casting vote in the negative on the procedural grounds that the existing Act should be maintained in its current form in order to uphold the *status quo*.

Since then, it was brought to the attention of the Table that a Member had been erroneously counted as having voted yea. Further verifications were made to confirm that an error had in fact been made, namely that the hon. Member for Eglinton–Lawrence had remained seated throughout the vote.

As hon. Members will realize, if this yea vote had not been counted in error, events would have unfolded differently. No tie vote would have occurred. No casting vote would have been required. However, and most significantly, the outcome of the vote remains the same. The motion for third reading of Bill C-219 remains defeated, but on a vote of 142 yeas and 143 nays.

Accordingly, in keeping with precedents for when such errors are discovered, I am informing the House that a *corrigendum* was published on December 30 to correct the *Journals* of December 10, 2009, so that the true result of the vote may be properly reflected in our official records.

I thank hon. Members for their attention to this detail. It is an important one from the point of view of the number of casting votes the Chair has to cast in the House.

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1. *Debates*, December 10, 2009, pp. 7936-7.
2. *Journals*, December 10, 2009, pp. 1200-2.

The Decision-making Process

Recorded divisions: Members recorded as having voted twice on the same motion

March 31, 2010 *Debates*, pp. 1218-9

Context: On March 23, 2010, Rodger Cuzner (Cape Breton–Canso) rose on a point of order during the taking of a recorded division to concur in interim supply. Before the Speaker had asked for those opposed, Mr. Cuzner stated that, in their haste, some Members of the Official Opposition had voted in favour of the motion when they had intended to vote against it and he requested that their first votes be struck from the record. The Speaker replied that he would continue with the vote before addressing any irregularities.[1] After the vote, and before the Clerk of the House had announced the results, Yvon Godin (Acadie–Bathurst) rose on a point of order. He asked the Speaker whether the Members who had voted twice would have both their votes counted. After the result of the division had been announced, the Speaker noted that the five Members in question, having voted both for and against the motion, had thus cancelled out their votes. Mr. Godin then argued that only the first vote by the Members of the Official Opposition should be counted, since Members should not be permitted to vote twice on a motion. After hearing from another Member, the Speaker took the matter under advisement.[2]

Resolution: On March 31, 2010, the Speaker delivered his ruling. He reminded Members that points of order should not be allowed during the taking of a recorded division. He cautioned that, in this particular situation, he had done so due to the confusion and noise surrounding the vote but that his action should not be viewed as a precedent. He stated that this was not the first occasion on which Members had voted both yea and nay on the same vote. He noted that a review of past practice was unclear as to how such situations should be handled; changes to the voting record had been made in some cases as the result of Members clarifying their intentions, and in others when the consent of the House had been sought and granted. Since, in this instance, consent had not been granted for the first votes to be struck from the record, the Speaker ruled that the Members who had voted twice would remain on the record as having voted both yea and nay.

Decision of the Chair

The Speaker: I would like to make a statement about the events which occurred with relation to the recorded divisions taken on March 23, 2010. I would like to thank the hon. Whip of the New Democratic Party and the hon. Whip of the Bloc Québécois for their interventions on the matter.

During the taking of recorded division No. 12 last Tuesday, several Members of the Official Opposition rose to vote on the motion when the nays had not yet been called. In response to calls from the floor to clarify what Members were voting on, I interjected in the middle of the vote to state that I had not yet asked for those opposed to the motion to rise.

Immediately thereafter, the Chief Opposition Whip rose on a point of order seeking to have the votes stricken from the record. I proposed that we conclude taking the Yeas, before proceeding to the taking of the votes on the Nays. The hon. Whip of the NDP objected that his party had found itself in a similar situation before, and had been denied consent to change their votes.

Following the taking of the division, further discussion ensued. At that time, the New Democratic Party Whip added that it should be the first vote cast that should count.

Before I address the specific issues raised concerning this vote, I would like to confirm that it is our long-standing practice that points of order are not entertained during the taking of a recorded division. Given the high level of noise and confusion surrounding this vote, I accepted to hear points of order in an effort to clarify the situation, but this should not have happened and my actions on this occasion should not be viewed as a precedent. Points of order related to the taking of divisions should continue to be raised after the results of a division are announced.

With regard to the vote taken last week, Members may be surprised to learn that it is not unheard of for Members to vote twice, that is, both yea and nay.

Members should understand that when they rise to vote, the vote caller is obliged to call their names, even if they have already voted. Furthermore, a review of our past practice has failed to provide guidance on how to address this kind of issue. For instance, in some cases, Members have simply clarified their intentions and the record was corrected.

I would invite Members to consult the *Debates* of May 7, 2008, at page 5571 and the *Debates* of December 12, 2007, at page 2118 for examples of that approach.

At other times, consent has been sought to have the votes cast in error to be corrected and recorded as the Member actually intended. See the April 9, 2008 *Debates* at page 4709 for such an occurrence. If consent is granted by the House, the record is corrected; if it is denied, or if the duplication goes unnoticed, the original count showing Members voting twice is left unchanged. Examples of such duplicate votes can be found recorded in the *Journals* of March 5, 2008, Division No. 57, and September 28, 2005, Division No. 102.

In the case referred to by the Whip of the New Democratic Party and the Whip of the Bloc Québécois—which as far as the Chair can tell took place during a division taken on October 16, 2006—the House was faced with a significantly different circumstance. Contrary to what happened last week, the votes for the NDP had been counted only once, but on the wrong side of the question. Then, when consent was sought to have their votes recorded differently, consent was denied, just as it was denied last week.

In this case, the House has been consistent in its actions. The March 23, 2010 *Journals* show that the names of several Members are recorded as having voted both yea and nay for Division No. 12 and consent was denied to have those duplicates recorded only as nays. Accordingly, the results of Division No. 12 as recorded in the *Journals* will stand.

However, there appears to have been an error in recording Divisions Nos. 13, 14 and 15. I have discussed the matter with the parties and I can

now confirm that it was the intention of the House to apply the results of Division No. 8, not Division No. 12, to votes 13, 14 and 15. I therefore direct that the *Journals* be corrected accordingly.

I thank all hon. Members for their interventions and trust that future votes will proceed smoothly, starting with those this evening.

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1. *Debates*, March 23, 2010, p. 853.
2. *Debates*, March 23, 2010, p. 854, *Journals*, pp. 121-4.

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Chapter 5 — The Legislative Process

Introduction

The examination and enactment of legislation are arguably the primary tasks of Parliament. A bill (a legislative proposal) must pass through a number of very specific stages in the House of Commons and Senate before it becomes law. This is known as the legislative process.

Since Confederation, the rules of both Houses have contained detailed provisions governing the passage of public and private bills. A number of the rules that were in effect at Confederation remain in effect today. Examples, in the case of the House of Commons, are the Standing Orders prohibiting the introduction of bills in blank or imperfect form; stipulating that all bills be read three times on different days; and requiring that they be printed in both official languages and be certified by the Clerk of the House on each reading.

Over the years, the rules governing the legislative process have been amended on many occasions in order to facilitate the consideration of public bills, to expand the roles of committees and to encourage greater participation by Members.

In 2001, near the beginning of Mr. Speaker Milliken's tenure, due to the growing tendency of the *Notice Paper* being inundated by hundreds of motions to amend certain controversial bills at report stage, the House amended the notes accompanying Standing Orders 76(5) and 76.1(5) to guide the Chair in selecting motions in amendment for debate at that stage. Particularly pertinent to this chapter is Mr. Speaker Milliken's statement of March 21, 2001, on the interpretation and application of these notes. Also worth noting is his key decision of March 29, 2001, regarding the selection and grouping of motions in amendment at report stage of Bill C-2 for the purposes of debate, as the Speaker used his discretionary authority to select motions that could have been moved in committee but were not. Shortly after the opening of the Thirty-Eighth Parliament, Mr. Speaker Milliken took the opportunity to explain how the Chair had handled motions at report stage since 2001. His decision of November 21, 2007, dealt with a bill that had been emptied of its contents in committee and defeated motions to restore the deleted clauses at report stage. Mr. Speaker Milliken also delivered several important decisions on points of

order concerning the admissibility of amendments adopted in committee, one of which had previously been ruled out of order by the committee Chair.

Mr. Speaker Milliken also ruled on the admissibility of an amendment to refer a bill at third reading to committee to reconsider a clause and on the admissibility of a motion of instruction giving a committee the power to divide a bill and requiring it to report to the House by a certain date.

On several occasions, Mr. Speaker Milliken ruled on procedural matters related to the introduction in the House of bills originating in the Senate. During the Second Session of the Thirty-Seventh Parliament, he made two decisions in response to a Senate proposal to divide Bill C-10 into two bills.

Again in the Thirty-Seventh Parliament, Mr. Speaker Milliken made two rulings on the reinstatement of bills at the start of the Third Session, when the newly-formed Government moved a motion providing that Government bills from the previous session be reinstated.

Mr. Speaker Milliken's tenure was notable in that he presided over the House during the terms of both majority and minority governments. The minority Government dynamic was clearly reflected in the legislative process. This chapter contains 26 decisions, including those mentioned above, that touch on and are grouped here by the various stages in the legislative process. They show that Mr. Speaker Milliken was able to adapt his decisions to the circumstances of his tenure and to the changes to the Standing Orders governing the legislative process.

The Legislative Process

Stages

Reinstatement of Government bills from previous session

February 6, 2004 *Debates*, pp. 250-1

Context: On February 6, 2004, shortly after the beginning of the Third Session of the Thirty-Seventh Parliament, Jacques Saada (Leader of the Government in the House of Commons and Minister responsible for Democratic Reform) moved that Government bills from the previous session be deemed in the Third Session to have been considered and approved at all stages completed at the time of prorogation.[1] Garry Breitkreuz (Yorkton–Melville) rose on a point of order, making reference to what he characterized as claims by the Prime Minister (Paul Martin) that he had formed a "new Government". He argued that, in view of this, it was out of order for the Government to reinstate bills introduced by a previous Government. Other Members contributed to the discussion.[2]

Resolution: The Speaker ruled immediately. He stated that he could find nothing in the rules or practices of the House to preclude the reinstatement of bills by way of a motion setting out a mechanism for doing so. He pointed out that Members could move amendments to exclude specific bills from the application of the mechanism. He added that this was not a new Parliament, but the Third Session of the same Parliament. Accordingly, he declared the motion to be in order.

Decision of the Chair

The Speaker: The motion before the House, as I read earlier, and I will read it again, states:

> … if the Speaker is satisfied that the said bill is in the same form as the House of Commons had agreed to at prorogation, notwithstanding Standing Order 71, the said bill shall be deemed in the current session to have been considered and approved at all stages completed at the time of prorogation—

So it has to be in the same form that it was in the previous session in order for this Order to apply to the bill. Otherwise, all bills are introduced, read the first time and ordered for debate at the next sitting of the House.

Reinstatement of business from one session to the next is not uncommon in our practice, and indeed in our parliamentary experience there have been a number of occasions where bills and other forms of business, including motions, from one session have been brought forward to another session, either by unanimous consent or by way of a Government motion moved after notice, such as the one we have moved before us today.

The question before us is not whether business can be reinstated from one session to another but whether this motion under Government Business No. 2, which provides a mechanism whereby bills from the Second Session may be reinstated to this session, is procedurally in order.

It seems to me that the ruling rendered on February 19, 1996, is particularly helpful in this instance, so I will borrow freely from that discussion in making the point I want to make.

Mr. Speaker Fraser noted in his ruling of May 29, 1991, that he could find nothing in our rules or practices to preclude the reinstatement of bills by way of motion. He therefore permitted debate to proceed on the Government motion that had been moved, and he was concerned that Members would be afforded an adequate opportunity to express their assent or dissent on each item to be reinstated. He therefore ruled that separate questions should be put on each bill to be reinstated.

But that motion, I think, was a different one. Honourable Members here today have expressed some concern about their inability to vote on each of the bills, particularly the various ones that could be reinstated under this motion.

I must point out something important. First of all, if the bill comes back at the stage it was at before, for example report stage or third reading, it will be voted on at that stage. That is completely normal and that is how it will be done.

If, however, the bill in question was passed during the last session, it will be sent directly to the Senate. There will be no vote on it here in the House.

But hon. Members can move amendments to the Government motion to exclude specific bills that might go straight to the Senate under this rubric and then have a vote on the amendment, thereby in effect having a vote on that particular bill.

So I do feel that there is significant protection for hon. Members in terms of being allowed to vote on various bills. The motion sets up a mechanism for allowing bills to come before the House. In my view, therefore, it is in order and I think the motion should proceed.

(**Editor's Note:** Mr. Breitkreuz rose at this point to reiterate his argument that this was a new Government.)

The Speaker: It is not a new Parliament; this is the hitch. We are in the Third Session of the same Parliament, so even if the hon. Member were Prime Minister it seems to me this kind of motion would be one he could put to the House and cherry pick, as they say, bills from the previous session and slip them in under this rubric.

It is something that has happened before. I do not know whether it has happened with a change of Government, but it certainly is one that has happened in the same Parliament. That is why I did not address the matter.

(**Editor's Note:** Deborah Grey (Edmonton North) rose to argue that a prorogation effectively "kills" legislation and that it could not be brought back.)

The Speaker: I would love to go on at length with the hon. Member for Edmonton North on this subject, but Mr. Speaker Fraser made a ruling then and it became an authority. We do things in the House on the basis of authority.

Even if I were to have argued the other side of the case in those days, the Speaker made a ruling and now we act in compliance with that ruling. It would not be for me to overrule the ruling of someone as distinguished as Mr. Speaker Fraser, who I know the hon. Member for Edmonton North remembers with great affection.

It is time now to proceed, however, to Statements by Members.

1. *Debates*, February 6, 2004, p. 248.
2. *Debates*, February 6, 2004, pp. 248-50.

The Legislative Process

Stages

Reinstatement of Government bills from the previous session: discrepancy in the electronic versions of a bill

February 23, 2004 *Debates*, pp. 932-3

Context: On February 13, 2004, Peter MacKay (Pictou–Antigonish–Guysborough) rose on a point of order with respect to an alleged discrepancy between the English version of section 19(2) of Bill C-4, *An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence,* and the corresponding section of the English version of the same Bill (then numbered C-34) from the previous session. He stated that section 19(2) of Bill C-4 contained the expression "office of the Senate Ethics Officer", whereas section 19(2) of Bill C-34, in the same place, contained the expression "office of the Ethics Commissioner".[1] The Deputy Speaker (Bob Kilger) took the matter under advisement. On February 16, 2004, Loyola Hearn (St. John's West) rose on a point of order with respect to a discrepancy in section 19(2) between the electronic PDF and HTML versions of Bill C-4 on the Web site. Reminding the Speaker that the Bill must be in the same form as at prorogation, he asked him to declare the proceedings on the Bill null and void.[2] The Speaker took the matter under advisement.

Resolution: On February 23, 2004, the Speaker delivered his ruling on both points of order. He declared that the Bill was corrected administratively pursuant to the longstanding practice whereby the Law Clerks of both Houses agree to correct manifest printing or clerical errors. With regard to the discrepancy between the electronic versions of the Bill, he explained that it was due to human error. The Speaker advised Members that he had directed the Law Clerk and Parliamentary Counsel of the House to inform him henceforth by letter of any such corrections to the text of proposed legislation, which letter would then be tabled in the House to keep Members informed. He concluded that the two Bills were in the same form as in the previous session, given that the administrative correction did not affect the form of the Bill and had been correctly incorporated before prorogation.

Decision of the Chair

The Speaker: I am now prepared to rule on two points of order: the first one was raised on Friday, February 13 by the hon. Member for Pictou–Antigonish–Guysborough regarding an alleged discrepancy between Bill C-34 from the Second Session of the Thirty-Seventh Parliament and its reinstated version during the current session, Bill C-4; and the second one was raised by the hon. Member for St. John's West regarding the electronic PDF and HTML versions of the Bill.

The Member claims that Bill C-4 is not in the same form as Bill C-34 at the time of prorogation because the English version of clause 12 of the reinstated Bill contains at page 14, lines 25 and 27, the expression "the office of the Senate Ethics Officer or office of the Ethics Commissioner" whereas Bill C-34 referred to the expression "office of the Ethics Commissioner or office of the Ethics Commissioner". Because Bill C-4 includes the words "Senate Ethics Officer" in replacement of the first occurrence of the words "Ethics Commissioner" in that subsection, it is the contention of the Member that the Bill is not in the same form as Bill C-34 at the time of prorogation.

The Chair has looked into the matter and consulted with the officials of the House responsible for the preparation of bills.

I would ask the House to bear with me as I explain the process whereby the change came to be made and render my decision regarding the validity of the point of order before us.

There is a longstanding practice between the Law Clerks of the two Houses that they will administratively correct errors in bills when they both agree that they are faced with an obvious printing error. This is an authority that they exercise with extreme care, in rare cases, and only after they are satisfied that the error is a manifest error. Let me explain the specific circumstances of this case.

I have been informed that indeed the words "Senate Ethics Officer" were added in replacement of the words "Ethics Commissioner" to the electronic version of Bill C-34 following an agreement between the Law Clerk and Parliamentary Counsel of the Senate and the Law Clerk and Parliamentary

Counsel of the House to the effect that the absence of those words in the subsection rendered the text unintelligible and constituted an error that could be fixed administratively.

On October 30, 2003, when Bill C-34 was in the Senate, the Law Clerk and Parliamentary Counsel of the Senate advised the Law Clerk and Parliamentary Counsel of the House that Bill C-34 contained, at page 14, lines 25 to 27 of the English version, the expression "office of the Ethics Commissioner or office of the Ethics Commissioner". After careful analysis of the surrounding text in both the English and French versions of the Bill, he contended that this redundancy constituted an error that could be fixed administratively if the Law Clerk and Parliamentary Counsel of the House came to the same conclusion. I note here that this error appeared in the first reading version of the Bill as drafted by the Department of Justice and had until that point in time remained undetected.

The Law Clerk and Parliamentary Counsel of the House did indeed reach that same conclusion. His reasoning can be summarized as follows, and there are five reasons.

First, the expression "office of the Ethics Commissioner or office of the Ethics Commissioner" in the English version is a repetition that in itself is nonsensical.

Second, the English version thus refers only to the Office of the Ethics Commissioner for the House of Commons whereas the French version of that same subsection refers to both the Offices of the House Ethics Commissioner and the Senate Ethics Officer, that is the "*bureau du conseiller sénatorial en éthique*" [and the][3] "*commissariat à l'éthique*".

Third, when the English and French versions are looked at as a whole, it becomes evident that the absence of the words "Senate" and "Officer" in the English version of subsection (2) renders the meaning of the English version uncertain, whereas the French version is clear and unequivocal.

Fourth, in subsections (1) and (3) of the section amended, as well as in clauses 9 to 18 of the Bill, one notes the consistent use of the terms "Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer

or office of the Ethics Commissioner". Only in subsection (2), which is the one under review, are the words "Senate" and "Officer" absent.

Fifth, the insertion of the words "Senate" and "Officer" in subsection (2) reconciles the two versions of the Bill, and achieves consistency of meaning within the English version itself.

In summary, then, the Law Clerks applied two very rigorous tests to the situation: first, they were satisfied that the error was a manifest printing error; and second, they agreed that there was only one way to correct that error. Therefore, the Law Clerk and Parliamentary Counsel of the House prepared a new parchment copy of page 14 where the words "Senate Ethics Officer" were inserted in replacement of the first occurrence of the words "Ethics Commissioner" in subsection (2), and forwarded it to the Law Clerk and Parliamentary Counsel of the Senate.

On October 31, 2003, the electronic PDF version of Bill C-34 was also corrected to reflect the change agreed upon. This took place before the prorogation of the House on November 12, 2003. Unfortunately, because of human error, the HTML version remained erroneous.

When Bill C-34 was reinstated during the present session, the PDF electronic version of Bill C-34 served as a source document for the preparation of Bill C-4. This explains why Bill C-4 contains the expression "office of the Senate Ethics Officer", as pointed out by the Member for Pictou–Antigonish–Guysborough.

After a careful review of the facts, the Chair is satisfied that the administrative correction of this clerical error by the Law Clerk and Parliamentary Counsel of the House was consistent with the long-standing practice of the Law Clerks of both Houses relating to the correction of obvious printing or clerical errors.

Although such corrections are relatively rare, I believe that for greater clarity there should be a mechanism for informing Members of these changes. Accordingly, I have directed the Law Clerk and Parliamentary Counsel of the House to inform the Speaker of any such changes by letter that I will then table in the House for the information of all hon. Members.

By so doing, I believe we will ensure that the time of the House or its committees is not wasted on correcting manifest clerical or printing errors, while nonetheless ensuring that Members are aware of any change, however minor, made to the text of proposed legislation before them.

So, to turn to the matter of the point of order, it is the opinion of the Chair that Bill C-4 is indeed in the same form as Bill C-34 in the Second Session. The administrative correction described above did not affect the form of the Bill; it was correctly incorporated as part of the Bill before prorogation of the last session and so is appropriately included in the Bill as reinstated in this session.

I thank the hon. Member for Pictou–Antigonish–Guysborough and the hon. Member for St. John's West for their vigilance. Their raising this important matter has given the Chair an opportunity not only to clarify the situation with regard to Bill C-4 but to set down a protocol for better dealing with such issues in the future.

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1. *Debates*, February 13, 2004, p. 558.
2. *Debates*, February 16, 2004, p. 617.
3. The published *Debates* read "et le" instead of "and the".

The Legislative Process

Stages

Introduction and first reading: admissibility; bill argued to be in violation of parent act

March 6, 2008 *Debates*, pp. 3754-5

Context: On March 3, 2008, Wayne Easter (Malpeque) rose on a point of order with respect to Bill C-46, *An Act to amend the Canadian Wheat Board Act and chapter 17 of the Statutes of Canada, 1998*. He argued that section 47.1 of the *Canadian Wheat Board Act* (the Act) prohibited the introduction of amending legislation unless two conditions were fulfilled: first, the Minister must consult the Canadian Wheat Board's Board of Directors; and, second, the Minister must hold a vote among prairie grain producers with respect to the legislative change. Mr. Easter charged that these two conditions had not been fulfilled and concluded that the Bill violated the terms of the Act and was, therefore, improperly before the House. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: On March 6, 2008, the Speaker delivered his ruling. Citing the terms of section 47.1 of the *Canadian Wheat Board Act,* he declared that, as Bill C-46 did not appear to propose either the exclusion of any wheat or barley product from the provisions of part III or IV of the Act, or the extension of the application of these parts to any other grain, it was not subject to the requirements of that section of the Act. Accordingly, the Speaker concluded that the Bill had been properly introduced and could proceed.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on Monday, March 3 by the hon. Member for Malpeque concerning the admissibility of Bill C-46, *An Act to amend the Canadian Wheat Board Act and chapter 17 of the Statutes of Canada, 1998*, standing on the *Order Paper* in the name of the hon. Minister of Agriculture and Agri-Food and Minister for the Canadian Wheat Board.

I would like to thank the hon. Member for Malpeque for raising this matter, as well as the Leader of the Government in the House of Commons and the Minister of Agriculture and Agri-Food and Minister for the Canadian Wheat Board for their contributions on the issue.

The Member for Malpeque contends that Bill C-46 is inadmissible because it contravenes section 47.1 of the *Canadian Wheat Board Act* which states:

> The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada… unless
>
> (*a*) the Minister has consulted with the board about the exclusion or extension, and
>
> (*b*) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister.

In particular, the Member for Malpeque alleges that the consultations referred to in paragraph (*a*) of section 47.1 of the *Canadian Wheat Board Act* have not taken place.

In arguing that the Bill is in order, the Government House Leader pointed out that the Bill does not propose to amend the mandate of the Canadian Wheat Board. The Minister of Agriculture and Agri-Food added that the intention of Bill C-46 is, in fact, to amend section 47 of the existing Act and, therefore, that the provisions of section 47.1 do not apply in this matter.

The Chair has looked at Bill C-46 bearing in mind the arguments made. In light of the circumstances, it is perhaps helpful to highlight the Bill's main objectives, as contained in its four clauses. Clause 1 amends the Act to confirm that the Government may repeal or amend any regulation it makes under the Act. Clause 2 establishes a dispute resolution regime which does not relate to the point of order of the hon. Member for Malpeque. Clause 4 is the coming into force provision found in most bills, regardless of their subject matter.

It is clause 3 that is at issue in this point of order. Clause 3 repeals a section of a 1998 amending statute; the effect of clause 3 is to cause the repeal of section 47.1, which I just read, and nowhere in the Bill can the Chair find reference to any matter prohibited within section 47.1.

The Chair must conclude that, as Bill C-46 does not appear to propose the exclusion of any wheat or barley product from the provisions of part III or IV of the Act, nor the extension of the application of these parts to any other grain, it is not subject to the requirements of section 47.1 of the Act.

Accordingly, the Chair cannot find that the Bill offends the requirements contained in section 47.1 and I am ruling that the Bill has therefore been properly introduced and may proceed.

Naturally, the Member for Malpeque will have the opportunity to debate the principle of the Bill at the second reading stage and, if the House adopts the Bill at that stage, the committee to which the Bill is referred will no doubt want to examine his arguments during its clause-by-clause consideration.

I thank the Member for Malpeque for bringing this matter to the attention of the House.

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1. *Debates*, March 3, 2008, p. 3546; March 4, 2008, pp. 3625-6.

The Legislative Process

Stages

Consideration in committee: report to the House; inadmissible amendments

February 27, 2007 *Debates*, pp. 7386-7

Context: On February 26, 2007, Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform) rose on a point of order to seek a ruling on the admissibility of three amendments adopted by the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities during its consideration of Bill C-257, *An Act to amend the Canada Labour Code (replacement workers)*, presented to the House as the Ninth Report of the Committee on February 21, 2007.[1] The Government House Leader argued that the amendments were beyond the scope and purpose of the Bill.[2] After hearing from other Members, the Speaker took the matter under advisement.[3]

Resolution: On February 27, 2007, the Speaker delivered his ruling. In doing so, he reminded the House that while the Speaker generally does not intervene in committee matters, this is not the case when a committee has exceeded its authority, particularly in relation to bills. In the case at hand, he found the first disputed amendment admissible because it did not import matters beyond the scope of the Bill. He ruled the remaining two amendments inadmissible as they went beyond the scope of the Bill at second reading, and ordered that they be declared null and void and no longer form part of the Bill as reported to the House. Finally, he ordered a reprint of the Bill to replace the reprint ordered by the Committee.

Decision of the Chair

The Speaker: On February 26, 2007, a point of order was raised by the Leader of the Government in the House to the effect that amendments adopted by the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities in its consideration of C-257, *An Act to amend the Canada Labour Code (replacement workers)* and reported to the House on February 21, 2007, are inadmissible.

The hon. Members for Davenport, Roberval–Lac-Saint-Jean, Scarborough–Rouge River and Windsor–Tecumseh have also now presented their arguments on the matter.

As the House knows, the Speaker does not intervene on matters upon which committees are competent to take decisions. However, in cases where a committee has exceeded its authority, particularly in relation to bills, the Speaker has been called upon to deal with such matters after a report has been presented to the House.

In terms of amendments adopted by committees on bills, if they were judged to be inadmissible by the Speaker, those amendments would be struck from the bill as amended because the committee did not have the authority to adopt such provisions. As the hon. Member for Roberval–Lac-Saint-Jean reminded us, this is succinctly explained in a ruling of Mr. Speaker Fraser on April 28, 1992, at page 9801 of the *Debates*:

> When a bill is referred to a standing or legislative committee of the House, that committee is only empowered to adopt, amend or negative the clauses found in that piece of legislation and to report the bill to the House with or without amendments. The committee is restricted in its examination in a number of ways. It cannot infringe on the financial initiative of the Crown, it cannot go beyond the scope of the bill as passed at second reading, and it cannot reach back to the parent act to make further amendments not contemplated in the bill no matter how tempting that may be.

This is precisely the kind of case that I am being asked to adjudicate today.

Before getting into the substance of that case, I want to comment briefly on a precedent cited earlier today where the admissibility of an amendment adopted in committee was challenged, though on rather different grounds than the case before us now.

The hon. Member for Roberval–Lac-St-Jean referred to the ruling handed down by the Speaker on October 26, 2006 with respect to Bill C-14, *An Act to amend the Citizenship Act (adoption)*. Although the Member for Roberval–Lac St-Jean is right in citing that decision as an example, he gives it his own

interpretation. In that particular case, the Speaker carefully examined, one by one, the amendments adopted by the committee and concluded that, as regards strict compliance with procedural rules, the committee had not exceeded its powers in adopting the amendments challenged by the Government.

The case before us is rather different. Given the very narrow scope of Bill C-257, any amendment to the Bill must stay within the very limited parameters set by the provisions of the *Canada Labour Code* that are amended by the Bill.

I have reviewed with great care the text of Bill C-257 as adopted at second reading, the text of the amendments adopted in committee, the relevant sections of the parent act, the *Canada Labour Code* and, of course, the arguments presented by the hon. Members who intervened on this matter. I am now ready to rule.

In relation to the first amendment, the Government House Leader contends that an amendment proposed in committee by the hon. Member for Davenport to clause 2, subparagraph 2.1, is inadmissible because it attempts to make the Bill "subject to section 87.4" of the *Canada Labour Code*. As the hon. Member for Roberval–Lac-Saint-Jean noted, the first reading version of the Bill already contained this exact phrase within subparagraph 2.1(*c*); the amendment simply repositioned it within the same subparagraph.

Therefore, the Chair is of the view that this amendment can be characterized as a reference to section 87.4, rather than as an amendment to the *Canada Labour Code* dealing with the maintenance of services. As such, this amendment to subparagraph 2.1 does not import matters which are beyond the scope of the Bill and is therefore admissible.

The admissibility of two other amendments to clause 2, both proposed by the hon. Member for Davenport, is also in dispute. The first is to subparagraph 2.3 and introduces the concept of "essential services". After hearing ample discussion in committee on the admissibility of this amendment, the Committee Chair found the amendment to be beyond the scope of the Bill and ruled it inadmissible. That ruling was challenged and overturned, and the amendment was subsequently adopted. The second disputed amendment, this

one to subparagraph 2.4 and also dealing with "essential services" enjoyed the same fate.

The hon. Members for Roberval–Lac-Saint-Jean and Windsor–Tecumseh have maintained in their arguments that these two amendments serve to clarify the intent of the main provisions of Bill C-257. They argue that these amendments are admissible for they only make clearer the Bill's provisions with respect to replacement workers as these relate to the continuation of essential services.

I fully appreciate the arguments that my hon. colleagues are making. However, I fear that their views are precisely what Mr. Speaker Fraser meant in the 1992 ruling cited earlier when he warned Members against being led into the temptation of amendments not contemplated in the original bill.

Honourable Members will know that Bill C-257 is limited in its scope. As the summary of the Bill adopted at second reading explains:

> The purpose of this enactment is to prohibit [employers][4] under the *Canada Labour Code* from hiring replacement workers to perform the duties of employees who are on strike or locked out.

Bill C-257 amends three sections of the *Canada Labour Code*: section 87.6 dealing with the reinstatement of employees after a strike or lockout, section 94 dealing with prohibitions relating to replacement workers, and section 100 dealing with offences and punishment.

Clause 2, where the two remaining disputed amendments lie, addresses section 94 dealing with prohibitions relating to replacement workers. Clause 2 in the original Bill does not touch section 87.4 which is the operative provision of the *Canada Labour Code* dealing with essential services.

Indeed, it is worth noting that the very phrase "essential services", although one with which we are all familiar, is not a phrase found in the *Labour Code*. The *Labour Code* does not use the term, but refers to "maintenance or continuation of activities to prevent an immediate and serious danger to the safety or health of the public".

The first amendment imports the new concept of essential services into a clause originally addressing employers' right to protection of their property. As for the second amendment, while it does not actually directly seek to amend section 87.4, it nevertheless does reach back to the parent act and import into Bill C-257 the terms of reviews of orders made by the Board under subsection 87.4(7), concepts not found within the Bill as adopted at second reading.

Therefore, on strictly procedural grounds, the Chair must conclude that the ruling of the Chair of the Committee was correct: these last two amendments do go beyond the scope of the Bill as adopted at second reading and are therefore inadmissible.

Pursuant to this decision, I must order that the two inadmissible amendments to clause 2, subparagraph 2.3 and 2.4 adopted by the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities be declared null and void, and no longer form part of the Bill as reported to the House.

In addition, I am ordering that a reprint of Bill C-257 be published with all possible haste for use by the House at report stage to replace the reprint ordered by the Committee.

Since report stage on this Bill is to be taken up tomorrow, I have advised the Table Officers to take appropriate action to ensure that any report stage motions of amendments submitted this evening are in proper form. As hon. Members know, they must be submitted by 6 p.m. tonight.

I therefore wish to thank the House for giving me the opportunity of addressing this complicated and somewhat unusual situation.

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1. Ninth Report of the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities, presented to the House on February 21, 2007 (*Journals,* p. 1043).
2. *Debates*, February 26, 2007, pp. 7311-3.
3. *Debates*, February 26, 2007, pp. 7312-3; February 27, 2007, pp. 7343-6.
4. The published *Debates* read "employees" instead of "employers".

The Legislative Process

Stages

Consideration in committee: motions of instruction; empowering a committee to divide a bill and imposing deadline for reporting one of the two new bills back to the House

October 29, 2009 *Debates*, pp. 6357-8

Context: On October 8, 2009, James Bezan (Selkirk–Interlake) presented the Second Report of the Standing Committee on Environment and Sustainable Development, requesting an extension of 30 sitting days to consider Bill C-311, *Climate Change Accountability Act*.[1] Later that day, Libby Davies (Vancouver East) moved a motion of instruction conferring upon the Committee the power to divide the Bill into two Bills, Bill C-311A and Bill C-311B, and the obligation to report Bill C-311A back to the House by a specific date.[2] Later during the same sitting, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons) rose on a point of order to challenge the admissibility of the motion. He argued that the motion should be ruled out of order because it introduced time allocation at the committee stage and was accordingly no longer permissive. Furthermore, the inclusion of the deadline had the effect of overriding existing reporting requirements for private Members' bills already set out in the Standing Orders, and the motion included two separate proposals which, he maintained, required two separate motions.[3] After hearing from other Members,[4] the Speaker took the matter under advisement.

Resolution: On October 29, 2009, the Speaker delivered his ruling. He stated that past practice and procedural authorities recognized a motion to give a committee the power to divide a bill as permissive. Further, he maintained that the deadline and other procedural directions included in the motion would apply only if the Committee chose to divide the Bill, in the full knowledge of the consequences. As to the potential for a conflict with the Standing Orders governing Private Members' Business, the Speaker said that since the House could impose an earlier reporting date than that which is set out in the rules, the House could also adopt a motion of instruction with a reporting deadline. Finally, he stated that he did not find that the motion contained more than one proposal as the portion with the

reporting deadline was contingent on the main proposition, namely the permissive instruction to divide the Bill. Accordingly, he ruled the motion in order.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Parliamentary Secretary to the Government House Leader on October 8, 2009, regarding the admissibility of the motion of instruction moved on the same day by the hon. Member for Vancouver East.

I thank the hon. Parliamentary Secretary, the hon. Member for Vancouver East, and the hon. Member for Skeena–Bulkley Valley for their interventions on this matter.

The Parliamentary Secretary argued that the motion of instruction listed on the *Order Paper* as Government Business No. 6 is out of order because, in his view, it attempts to time allocate a bill and, as such, is no longer permissive.

He added that the inclusion of a deadline in the motion of instruction had the effect of overriding existing reporting requirements for private Members' bills already contained in the Standing Orders.

He also asserted that the motion contains two separate proposals and should, therefore, require two separate motions.

In speaking to the Parliamentary Secretary's point of order, the hon. Member for Vancouver East pointed out that the Committee may decide whether or not to exercise the powers given to it by the House, thus rendering the motion permissive.

For his part, the hon. Member for Skeena–Bulkley Valley pointed out that there was a precedent for such a motion of instruction, referring to a motion that was debated on May 30, 2005.

As stated on page 641 of *House of Commons Procedure and Practice*, and I quote:

> Motions of instruction respecting bills are permissive rather than mandatory. It is left to the committee to decide whether or not to exercise the powers given to it by the House…
>
> Once a bill has been referred to a committee, the House may give the committee an instruction by way of a motion which authorizes it to do what it otherwise could not do, such as, for example, examining a portion of a bill and reporting it separately, examining certain items in particular, dividing a bill into more than one bill, consolidating two or more bills into one bill, or expanding or narrowing the scope or application of a bill.

In the matter raised by the Parliamentary Secretary, the Chair must determine whether the wording of the motion of instruction is permissive or mandatory.

The first and main part of the motion is to give the Committee the power to divide the Bill. This is recognized as permissive by past practice and procedural authorities. I can see nothing in the motion of instruction that orders the Committee to do anything specific with Bill C-311. The deadline and other procedural actions contained in the motion apply only if the Committee takes the step to create Bill C-311A, in the full knowledge of the consequences that would ensue.

As I read the motion, the Committee can still choose to report Bill C-311 in the same way as it would any other private Member's bill.

Members are aware that the Standing Orders stipulate that a private Member's bill must be reported back to the House before the end of 60 sitting days, or, with the approval of the House, following an extension of 30 sitting days. Otherwise, the bill is deemed reported back without amendment.

It has been argued, in this case, that the inclusion of a deadline in the motion of instruction comes into conflict with the provisions of Standing Order 97.1(1), thus rendering the motion out of order.

However, in the view of the Chair, it is not unreasonable to envisage a scenario where the House, for whatever reason, would want a committee to report a bill back prior to the reporting deadline set out in Standing Order 97.1(1).

So, there is nothing, in my understanding of that Standing Order, or in the procedural authorities, that would preclude the House from adopting a motion of instruction that included a reporting deadline.

The example referred to by the hon. Member for Skeena–Bulkley Valley is particularly instructive on this point. That motion of instruction, debated in the House on May 30, 2005 (*Journals*, p. 800) stated in part: "that Bill C-43A be reported back to the House no later than two sitting days after the adoption of this motion". It provided a deadline remarkably similar to that contained in the motion of instruction moved by the Member for Vancouver East.

In the view of the Chair, just as in the 2005 example, the inclusion of a deadline in the motion of instruction for Bill C-311 does not infringe on the Committee's discretion to exercise the power to divide the Bill, nor with its discretion to amend the Bill.

Finally, the Chair is not persuaded by the Parliamentary Secretary's argument that the motion contains more than one proposal and that it should be divided into two separate motions. A close reading of the motion shows that the portion regarding the reporting deadline is contingent on the main proposition; namely, the permissive instruction to divide the Bill.

Accordingly, for all the reasons outlined, the Chair must conclude that the motion is in order.

I thank hon. Members for their interventions on this matter.

1. Second Report of the Standing Committee on Environment and Sustainable Development, presented to the House on October 8, 2009 (*Journals*, p. 891) and concurred in on October 21, 2009 (*Journals*, pp. 930-2).
2. *Journals*, October 8, 2009, p. 892.
3. *Debates*, October 8, 2009, p. 5727.
4. *Debates*, October 8, 2009, pp. 5727-30.

The Legislative Process

Stages

Consideration in committee: report to the House; inadmissible amendments

November 19, 2009 *Debates*, pp. 6939-40

Context: On November 5, 2009, Tom Lukiwski (Parliamentary Secretary to the Government House Leader) rose on a point of order with respect to the admissibility of an amendment adopted by the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities in its consideration of Bill C-280, *An Act to Amend the Employment Insurance Act (qualification for and entitlement to benefits),* presented to the House in the Fifth Report of the Committee.[1] Mr. Lukiwski, in addition to noting an earlier ruling by the Deputy Speaker (Andrew Scheer) stating that the Chair would not put the question on third reading of the Bill in the absence of a royal recommendation,[2] argued that the amendment would increase the weekly benefits payable to a claimant from 55% to 60% of his or her average weekly insurable earnings and that it would thus infringe on the financial initiative of the Crown. He noted that during clause-by-clause consideration of the Bill, the Chair of the Committee, Dean Allison (Niagara West–Glanbrook), had stated on November 3, 2009, that the proposed amendment would require a royal recommendation but had nonetheless allowed a debate and vote on it.[3] Mr. Lukiwski asked that the amendment be struck from the Report and the Bill be deemed to have been reported without amendment. After hearing from other Members,[4] the Deputy Speaker took the matter under advisement.

Resolution: On November 19, 2009, the Speaker delivered his ruling. He affirmed that, although the Speaker does not ordinarily intervene on matters upon which committees are competent to take decisions, in cases in which a committee has exceeded its authority, particularly in relation to bills, the Speaker has sometimes been called upon to deal with such matters after a bill has been reported to the House. He ruled that the amendment proposed a charge on the Public Treasury and infringed upon the financial initiative of the Crown. Accordingly, the Speaker ordered that the amendment be declared null and void and no longer form part of the Bill as reported to the House. In addition, he ordered a reprint of the Bill for use at report stage.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on November 5, 2009, by the hon. Parliamentary Secretary to the Government House Leader. The point of order dealt with the admissibility of an amendment adopted by the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities in its consideration of Bill C-280, *An Act to amend the Employment Insurance Act (qualification for and entitlement to benefits)* and reported to the House on November 5.

I wish to thank the hon. Parliamentary Secretary for having raised this issue as well as the hon. Members for Chambly–Borduas, Acadie–Bathurst and Montmorency–Charlevoix–Haute-Côte-Nord for presenting their arguments on the matter.

The Parliamentary Secretary reminded the House that Bill C-280 was identified by the Chair as requiring a royal recommendation in a ruling delivered on June 3, 2009. He argued that the amendment in question, which seeks to increase the weekly benefits payable to a claimant from 55% to 60% of the average weekly insurable earnings likewise infringes on the financial initiative of the Crown. He completed his presentation by referring to page 655 of *House of Commons Procedure and Practice*, First Edition, which says:

> An amendment must not offend the financial initiative of the Crown. An amendment is therefore inadmissible if it imposes a charge on the Public Treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications as expressed in the Royal Recommendation.

In his intervention, the Member for Chambly–Borduas insisted that the Committee was well aware that certain provisions in the Bill already contained proposals which would result in increased spending and that the amendment was consistent with those proposals. The Member for Acadie–Bathurst added that in situations of private Members' bills requiring a royal recommendation, the Speaker is responsible for deciding the question only once the bill is returned to the House. Finally, the Member for Montmorency–Charlevoix–Haute-Côte-Nord claimed that there had been no discussion of admissibility regarding this amendment at committee.

As the House knows, the Speaker does not intervene on matters upon which committees are competent to take decisions. However, in cases where a committee has exceeded its authority, particularly in relation to bills, the Speaker has been called upon to deal with such matters after the bill in question has been reported to the House. In doing so, the Chair is guided by Speaker Fraser's succinct explanation of April 28, 1992, at page 9801 of the *Debates*.

It reads:

> When a bill is referred to a standing or legislative committee of the House, that committee is only empowered to adopt, amend or negative the clauses found in that piece of legislation and to report the bill to the House with or without amendments. The committee is restricted in its examination in a number of ways. It cannot infringe on the financial initiative of the Crown, it cannot go beyond the scope of the bill as passed at second reading, and it cannot reach back to the parent act to make further amendments not contemplated in the bill no matter how tempting that may be.

Having examined the specific amendment at issue and reviewed the submissions of all hon. Members, the Chair finds that the amendment in question does propose a charge on the public treasury and therefore infringes on the financial initiative of the Crown.

While the Chair can appreciate the difficulties that may arise when a committee must examine a bill which, upon its reference to committee, is flawed with respect to the royal recommendation, a committee must carry out its mandate without exceeding its powers. In my view, by adopting an amendment that infringes on the financial initiative of the Crown, even when it is directed at a clause itself needing a royal recommendation, a committee ventures beyond its mandate.

Consequently, I must order that the amendment to clause 5, adopted by the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities be declared null and void, and no longer form part of the Bill as reported to the House.

In addition, I am ordering that a reprint of Bill C-280 be published with all possible haste for use by the House at report stage to replace the reprint ordered by the Committee.

I thank the House for its attention.

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1. Fifth Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, presented to the House on November 5, 2009 (*Journals*, p. 1016).
2. *Debates*, June 3, 2009, pp. 4149-50.
3. Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Evidence*, Meeting No. 54, November 3, 2009, p. 13.
4. *Debates*, November 5, 2009, pp. 6643-5.

The Legislative Process

Stages

Report stage: power of the Speaker to select amendments; statement on the interpretation of the amended Standing Orders

March 21, 2001 *Debates*, pp. 1991-3

Context: On February 27, 2001, a motion was adopted by the House, adding an additional paragraph to the notes to Standing Orders 76(5) and 76.1(5), concerning the Speaker's discretion in selecting report stage motions in amendment to bills.[1] These changes specified that the Speaker should not select for debate any motion or series of motions deemed to be of a repetitive, frivolous or vexatious nature, or serving only to prolong unnecessarily proceedings at report stage. (**Editor's Note**: These changes were adopted to address the increasingly frequent practice of introducing large numbers of motions in amendment at report stage.)

On March 21, 2001, the Speaker made a statement. First, he declared that past selection practices not affected by the changes would continue to apply. Second, he affirmed that he would refer to the practice of the House of Commons of the United Kingdom solely for guidance in applying the tests of repetition, frivolity, vexatiousness and unnecessary prolongation of report stage proceedings. Third, he strongly urged Members to avail themselves of the opportunity to propose amendments during committee stage as motions in amendment that could have been presented in committee would not be selected at report stage. Finally, the Speaker advised that the Chair would maintain its current practice of not providing justification for the selection, or non-selection, of amendments at report stage except in exceptional circumstances.

Statement of the Chair

The Speaker: Before I call Orders of the Day, I would like to make a statement on a matter that may be of interest during the course of the debate that is to take place later this afternoon.

As all hon. Members are aware, recently the House has given guidance to the Speaker on the selection of report stage motions. This occurred

on February 27, 2001, when the House adopted the following note to Standing Orders 76 and 76.1:

> For greater clarity, the Speaker will not select for debate a motion or series of motions of a repetitive, frivolous or vexatious nature or of a nature that would serve merely to prolong unnecessarily proceedings at the report stage and, in exercising this power of selection, the Speaker shall be guided by the practice followed in the House of Commons of the United Kingdom.

On March 15, in a ruling on a point of order raised by the hon. Member for Richmond–Arthabaska, I undertook to return to the House with a statement on how this note will be interpreted. Today, I would like to take a moment to provide the House with this interpretation.

Before I begin, I want to mention that from time to time when the House adopts new procedures, Speakers have seen fit to address the manner in which they will be implemented. Often this occurs when a certain amount of latitude or discretion is given to the Chair. In enforcing new procedures, the Speaker acts as a servant of the House, not as its master.

Therefore, in order that these new procedures function properly, I see it as my duty to make a statement on their operation now, before the House is seized with a bill at report stage.

In 1968, rules concerning the selection of report stage amendments were established. At that time, the House first undertook a thorough revision of its legislative process which resulted in our modern rules where bills are sent to committee for detailed examination, followed by an opportunity for consideration in the House in what is known as report stage. As *House of Commons Procedure and Practice* explains on page 663:

> In recommending that report stage be revived, the 1968 Special Committee on Procedure considered that stage to be essential in order to provide all Members of the House, and not merely members of the committee, with an opportunity to express their views on the bills under consideration and to propose amendments, where appropriate. However, the intent of the Committee was not for this stage to become

> a repetition of committee stage. Unlike committee stage where the bill is considered clause by clause, there was not to be any debate at report stage unless notices of amendment were given, and then debate would have to be strictly relevant to those proposed amendments.

In order to prevent report stage from becoming merely a repetition of committee stage, the Speaker was given the authority to select and group motions of amendment for debate. Over the past 30 years, a large body of practice has grown on how this important legislative stage is conducted.

Let me briefly review how it works today. When notice of a motion of amendment is given by a Member, the Speaker has a number of issues to address. First of all, the Speaker must judge the procedural admissibility of the motion; if the motion does not meet the time-tested rules of practice, it will not be deemed admissible and therefore will not be accepted for publication on the *Notice Paper*.

Once a motion passes the basic test of admissibility, the Speaker must then determine whether the motion can be selected for debate. For guidance, the House has given the Speaker certain criteria to apply, for example, motions already defeated in committee are not normally selected. Once the Speaker has selected the motions that will be debated, a decision is made on grouping them for debate with other motions that have a similar theme or purpose. Finally, the Speaker determines how the motions should be voted on, for example, whether one vote applies to several motions, or whether the adoption of one motion obviates the need to vote on another motion. When all of these questions—admissibility, selection, grouping, voting pattern—have been addressed, the Speaker provides the House with the report stage ruling.

The first two tests which the Speaker applies to motions, those of admissibility and selection, are the most important in our discussion today. I would refer the House to *Marleau and Montpetit*, pages 649 to 669, for a detailed discussion of our rules and practice in this regard.

With regard to admissibility, the Speaker must strictly apply a number of rules of procedure. Does the motion go beyond the scope of the bill? Is it relevant to the bill? Or is the motion incomplete? Either the motion is

inadmissible and is returned to the Member, or it is admissible and proceeds to the next test, that is, the test of selection.

With regard to selection, the Speaker in 1968 was given a greater amount of flexibility and discretion. In the last 30 years, as practice evolved, successive Speakers were encouraged to exercise more rigour in the selection of motions in amendment.

In 1985, the Third Report of the all party Special Committee on Reform of the House of Commons, the McGrath Committee, recommended that the Speaker use existing powers to select as well as combine amendments at the report stage. The Committee suggested certain principles to guide the Speaker on how this could be done. To quote from the Report:

> An amendment disposed of in committee should not be revived unless it is of exceptional significance. Amendments ruled out of order in committee should not be reconsidered unless there are reasonable grounds for doing so. Amendments proposed to implement government undertakings should be selected automatically. In selecting other amendments, the Speaker should seek guidance through consultation. The Speaker should determine, in consultation with the house leaders, which amendments are regarded as the most important from the party point of view.

The Report proceeded to list several other guidelines. It is evident that this was a very tall order for any Speaker. The Committee recognized the significance of such discretionary powers in the hands of the Speaker and commented that, in their view, successive Speakers had hesitated to use to its fullest the power to select without further direction from the House.

The House sought to provide such direction in 1986 when amendments to the Standing Orders included for the first time the note to the present Standing Order 76. This note took up some, but not all, of the criteria contained in the McGrath Committee Report.

From that point on, our practices have evolved to where they are today and in reviewing those practices, I was struck by the reluctance of my predecessors

to use the powers of selection in any but the most generous manner, giving Members the benefit of the doubt in most instances.

In the last Parliament, the House was faced with several bills (i.e., Nisga'a, clarity, young offenders) where, at report stage, hundreds of motions in amendment were placed on the *Notice Paper*.

The most recent attempt to address the situation occurred last February 27, 2001 when, by adopting Government Motion No. 2, the House again sought to provide the Speaker with more guidance on the manner of selection of report stage amendments.

Here again, as so often in the troubled history of report stage, we see the hope that a more interventionist approach by the Chair will resolve difficulties that are being experienced.

It is not for me as your Speaker to interpret the confluence of events that led up to the unprecedented gridlock the House faced at report stage in the last Parliament.

However, even if one grants that the Chair has, in the past, been too reticent in the exercise of its power of selection, I would argue that this abundance of caution, if such we may call it, is only one of the circumstances that have contributed to the potential crisis that we face at the report stage.

As your Speaker, I am ready to shoulder the report stage responsibilities that the House has spelled out for me. However, I think it would be naive to hope that the frustrations implicit in the putting on notice of hundreds of motions in amendment of a bill will somehow be answered by bringing greater rigour to the Speaker's process of selection.

On that cautionary note, I want now to outline my approach with regard to the selection of report stage amendments for debate in view of this most recent directive from the House.

First, past selection practices not affected by this latest directive will continue to apply. For example, motions and amendments that were presented in committee will not be selected, nor will motions ruled out of order in

committee. Motions defeated in committee will only be selected if the Speaker judges them to be of exceptional significance. I refer hon. Members to pages 667 to 669 of *House of Commons Procedure and Practice* for a fuller discussion of these practices.

Second, regarding the new guidelines, I will apply the tests of repetition, frivolity, vexatiousness and unnecessary prolongation of report stage proceedings insofar as it is possible to do so in the particular circumstances with which the Chair is faced.

It is in regard to these four criteria alone that I will have reference to the practice followed in the House of Commons of the United Kingdom, and not to the wider practice surrounding what is called "consideration stage" of bills at Westminster, which practice is not relevant to our own traditions and not helpful to their clarification.

I intend to apply these four criteria to all amendments at report stage no matter which side of the House they come from. I also intend to apply those criteria in the original note, whose validity has been endorsed by the adoption of Government Motion No. 2. Specifically, motions in amendment that could have been presented in committee will not be selected.

Accordingly, I would strongly urge all Members and all parties to avail themselves fully of the opportunity to propose amendments during committee stage so that the report stage can return to the purpose for which it was created, namely for the House to consider the committee report and the work the committee has done, and to do such further work as it deems necessary to complete detailed consideration of the bill.

That being said, I believe that this approach will result in the Speaker's selection of amendments at report stage being a far more rigorous exercise than it has been to date, no matter how challenging such an exercise may be.

Finally, the Chair intends to maintain its current practice of not providing justification for the selection of amendments, or reasons for the non-selection of amendments at the time of a report stage ruling.

However, in exceptional circumstances, the Chair may expand this usual approach and explain its reasons where this shall be deemed necessary or appropriate.

May I end my remarks by reminding Members that at the conclusion of today's debate, the House will have adopted a motion creating a special committee to make recommendations on the modernization and improvement of its procedures.

Without anticipating what the committee may decide to recommend, it is entirely possible that the House may at some future date be seized with proposals that may have an impact on my statement today.

Naturally, as your servant, I will continue to be guided by whatever rules the House may, in its wisdom, decide upon to conduct its business.

I want to thank all hon. Members for their attention to this ruling which I hope has clarified the situation somewhat for hon. Members. For those who found it more confusing, we will have [to][2] wait and see what happens on the first report stage.

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1. *Journals*, February 27, 2001, pp. 141-3.
2. The published *Debates* read "it" instead of "to".

The Legislative Process

Stages

Report stage: power of the Speaker to select amendments; grouping of motions; Speaker's statement

March 29, 2001 — *Debates*, pp. 2500-1

Context: On March 29, 2001, the Speaker delivered his ruling on the selection and grouping for debate of 10 report stage motions in amendment to Bill C-2, *An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations*, including his reasons for selecting motions which could have been proposed in committee but were not.[1]

Resolution: In making the usual ruling on the motions to be selected and grouped for debate, the Speaker indicated that since the Bill had been considered clause by clause in committee on March 21, 2001, the same day that he had delivered his statement outlining the guidelines for the selection of motions at report stage,[2] he would use his discretion in selecting motions which could have been proposed in committee but were not. He told the Members that this would be the last report stage ruling where the Chair would be taking into account the timing of clause-by-clause study relative to his March 21 statement, and he cautioned that, in the future, any motion in amendment submitted at report stage which could have been presented at committee stage would not be selected. He did allow that Members could argue that a motion in amendment is indispensable to a debate on a bill and the Chair would agree to hear such arguments. In closing, the Speaker stated that he would do his utmost to be fair and impartial in the selection of amendments.

Decision of the Chair

The Speaker: Ten motions in amendment are listed in the *Notice Paper* at the report stage of Bill C-2.

Motions Nos. 1 to 3 and 5 to 7 cannot be proposed to the House because they are not accompanied by a recommendation from Her Excellency the Governor General. Standing Order 76(3) requires that notice of such a

recommendation be given no later than the sitting day before the beginning of report stage consideration of a bill.

Since the Standing Committee on Human Resources and the Status of Persons with Disabilities considered this Bill at clause-by-clause stage on March 21, the same day as my statement outlining the guidelines for the selection of motions at report stage, the Chair will exercise discretion and select motions which could have been proposed in committee but were not.

I would ask all hon. Members to note that this is the last report stage ruling where the Chair will be taking into account the timing of clause-by-clause study in committee, relative to my March 21 statement on the guidelines for the selection of motions at report stage.

Consequently, in connection with the report stage of future bills, I have asked my representatives to examine each motion in amendment submitted at report stage to see whether it could have been presented at committee stage, and if so not to select it.

That said, the Chair must acknowledge that one or two motions in amendment are sometimes indispensable to a debate on a bill, and hon. Members could argue that they deserve to be examined in the House, even if there has already been an examination of them in committee. I will agree to hear such arguments and I encourage hon. Members to examine this type of motion with my representatives as soon as the bill is returned to the House.

As we are all aware, there is often a very tight time frame for the report stage, which may be a hindrance to debate. I am relying on the cooperation of hon. Members to ensure that the Chair is kept fully informed, via its representatives, of their opinions when it examines each preliminary decision at report stage. I will do my utmost to be fair and impartial in the choice of amendments and I am convinced that hon. Members will acknowledge and respect the principles set out in my decision of March 21 in order to assist me in this.

To repeat some of those words:

> I… strongly urge all Members and all parties to avail themselves fully of the opportunity to propose amendments during committee stage so that the report stage can return to the purpose for which it was created, namely for the House to consider the committee report and the work that the committee has done, and to do such further work as it deems necessary to complete detailed consideration of the bill.

Motion No. 4 and Motions Nos. 8 through 10 will be grouped for debate. The voting patterns for the motions within each group are available at the Table. The Chair will remind the House of each pattern at the time of voting.

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1. *Journals*, March 29, 2001, pp. 261-2.
2. *Debates*, March 21, 2001, pp. 1991-3.

The Legislative Process

Stages

Report stage: power of the Speaker to select amendments; accuracy, selection and grouping of motions

January 28, 2003 *Debates*, pp. 2805-6

Context: On January 28, 2003, Paul Szabo (Mississauga South) rose on a point of order with respect to motions in amendment to Bill C-13, *Assisted Human Reproduction Act*. First, he claimed that Motion No. 5 which he had submitted had been inadvertently left out and replaced by another. Second, he argued that the large number of motions in Group No. 2 could not be addressed properly in the 10 minutes of speaking time available to him.[1] After hearing from another Member, the Acting Speaker (Réginald Bélair) took the matter under advisement.

Resolution: The Speaker delivered his ruling later in the sitting. He stated that he had verified that the text of Motion No. 5 was indeed that which had been submitted by Mr. Szabo to the Journals Branch and that there was no irregularity. In response to the second concern, the Speaker indicated that until then he had based his decisions as to the grouping of report stage motions on the note to Standing Order 76.1(5) and guidelines in his March 21, 2001, statement, but that he recognized that there was an element of subjectivity in making these decisions. Having reviewed the motions in Group No. 2, he concluded that they could be split according to content into two groups—those relating to activities that Members sought to prohibit and those respecting activities that Members sought to control.

Decision of the Chair

The Speaker: I am now ready to rule on the points of order raised earlier today by the hon. Member for Mississauga South concerning report stage of Bill C-13, *An Act respecting assisted human reproduction*.

The first point of order concerns Motion No. 5 standing in the name of the hon. Member for Mississauga South. The hon. Member has said that the text of this motion is not the text he intended to submit.

Having checked with my officials, I understand that while this might not be the text the hon. Member intended, it is indeed the text that was submitted to the Journals Branch, duly signed by him. Accordingly, I do not find any irregularity in the matter and will therefore have to put the question to the House.

(**Editor's Note:** The question was then put on Motion No. 5 and five Members having risen, a recorded division on the motion was deferred. The Speaker then proceeded to address the second argument raised by Mr. Szabo.)

The Speaker: The second point of order concerns motions in Group No. 2.

The hon. Member for Mississauga South contends that 10 minutes is insufficient for him to speak to the 19 motions he has in that group.

In this, he is supported by the hon. Member for Oakville who argues that the 27 motions in Group No. 2, relating as they do to "prohibited and controlled activities", go to the very heart of the debate on assisted human reproduction. She contends that 10 minutes per speaker to address the full gamut of motions is insufficient.

The Chair is aware of the limits that Members have to deal with at report stage; until now, I have based my decisions on report stage on the note to Standing Order 76.1(5) and I have tried to abide by the guidelines set out in my statement of March 21, 2001.

However, it cannot be denied that there is always an element of subjectivity in making these decisions.

As *Marleau and Montpetit* specifies, "Motions are grouped according to content if they could form the subject of a single debate."

In reviewing the motions now in Group No. 2, I have concluded that the group can be split into two groups: the first relating to motions respecting activities that Members seek to prohibit; and the second relating to motions respecting activities that Members seek to control.

Accordingly, the debate at report stage of Bill C-13 will proceed with the motions originally placed in Group No. 2, regrouped as follows: in new Group No. 2, motions relating to the prohibition of activities: Motions numbered 13, 14, 16, 17, 18, 20 to 24, 26, 27, 40 and 47; in new Group No. 3, motions relating to controlling activities: Motions numbered 28, 29, 30, 32, 33, 36, 39, 44, 45, 46, 49, 51 and 95.

Subsequent groups are re-numbered accordingly. Thus, the House is now debating, *ipso facto*, Group No. 4, with new Groups Nos. 5 and 6 to come.

A revised voting table will shortly be available with the Clerk.

I thank hon. Members for their representations on this subject.

Mr. Paul Szabo: Mr. Speaker, I want to thank you for your ruling. I believe this will be very helpful to Members of the House.

At the end of your comments though, I think you mentioned being on Group No. 4. It is my understanding that we are still on Group No. 3 report stage motions.

The Speaker: Yes, but the number changed. That is what I explained in the ruling. The number changed because I split the other group so we have another number. That group has been re-numbered and is now Group No. 4. I said *ipso facto*. It is just one of those marvellous things. It is not quite high tech but it is close. It was Group No. 3 but because Group No. 2 was split and now we have a new Group No. 3 all the other numbers were bumped. It is very confusing, especially for your simple Speaker, but he is doing his best. That is why we are now on Group No. 4. Do not panic.

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1. *Debates*, January 28, 2003, p. 2784.

The Legislative Process

Stages

Report stage: power of the Speaker to select amendments; opportunity for amendments to have been presented in committee

November 15, 2004 *Debates*, p. 1299

Context: On November 15, 2004, the House proceeded to the consideration at report stage of Bill C-4, *International Interests in Mobile Equipment (aircraft equipment) Act*. The Speaker, exercising his authority pursuant to Standing Order 76.1, ruled on the admissibility of six motions in amendment standing on the *Notice Paper*.

Resolution: The Speaker ruled that Motions Nos. 1 to 6 would not be selected for debate because they could have been presented in committee. He also took the opportunity to review with Members of the new Parliament how the Chair deals with report stage motions.

Decision of the Chair

The Speaker: Given that this is a new Parliament with many new Members and that this is the first occasion that we are considering report stage motions to amend a bill, I would like to take this opportunity to briefly explain how report stage motions are treated by the Chair.

There are two initial decisions that the Speaker takes on each motion. The first one concerns procedural admissibility. If the motion does not respect the general rules of admissibility it will not be printed on the *Notice Paper* and will be returned to the Member with a short explanation. This means there is no opportunity to debate such motions.

The second decision concerns whether the report stage motions on the *Notice Paper* will be selected for debate.

The Speaker has been rigorously exercising a power of selection since March 21, 2001, following an amendment to the Standing Orders made on that day, as I recall. The purpose of this discretionary power of selection is to

ensure that the main opportunity for amending a bill is in committee stage and not later at report stage in the House.

Report stage exists as an opportunity for the House to examine a committee's work on a bill. If report stage either duplicates or replaces committee stage, then its original purpose is lost and the valuable time of the House is wasted.

The Speaker uses the following criteria for selection: report stage motions will not be selected for debate if they were ruled inadmissible in committee; they could have been presented in committee; they were defeated in committee; they were considered and withdrawn in committee; they are repetitive, frivolous or vexatious; or, they would unnecessarily prolong the proceedings at report stage.

Motions may be selected if they further amend an amendment adopted by the committee, make consequential changes to the bill based on an amendment in committee, or delete a clause.

If Members believe that their report stage motion is of exceptional significance but does not meet the selection criteria, they should send a letter of explanation to the Speaker. From time to time the Chair may be persuaded to override the selection criteria in the interest of fairness, and this letter should be sent when the report stage motion is submitted to the Journals Branch.

Finally, I would like to urge all Chairs of any committee with a bill before it to afford new Members of Parliament every opportunity to participate fully. I recognize that this may take a little extra time but better in committee than in the House.

I would also remind all hon. Members, experienced and new, that the committee staff are ready to answer any questions that you may have.

For Bill C-4 there are six motions in amendment standing on the *Notice Paper* for the report stage.

Motions Nos. 1 to 6 will not be selected by the Chair because they could have been presented in committee. Consequently, the House will proceed to consider the motion to concur in report stage.

The Legislative Process

Stages

Report stage: power of the Speaker to select amendments; admissibility of motions negatived in committee

June 20, 2006 *Debates*, p. 2627

Context: On June 20, 2006, the House proceeded to the consideration at report stage of Bill C-2, *Federal Accountability Act*. The Speaker, exercising his authority pursuant to Standing Order 76.1, ruled on the admissibility of 30 motions in amendment standing on the *Notice Paper*.

Resolution: The Speaker ruled that of the 30 motions, five had not been selected as they could have been presented in committee. He noted that two of the remaining motions selected were identical to proposed amendments negatived in committee by a casting vote of the Chair, having thus been negatived for procedural reasons. He explained that he had decided to select them for consideration at report stage in order to afford the House the opportunity to vote on the substance of these amendments.

Decision of the Chair

The Speaker: There are 30 motions in amendment standing on the *Notice Paper* for the report stage of Bill C-2.

Motions Nos. 5, 15 and 25 to 27 will not be selected by the Chair as they could have been proposed in committee.

All the remaining motions have been examined and the Chair is satisfied that they meet the guidelines expressed in the note to Standing Order 76.1(5) regarding the selection of motions in amendment at the report stage.

Two of the report stage motions received are identical to the proposed amendments negatived in committee by a casting vote of the Chair.

Since the rejection of these motions was essentially a matter of procedure rather than a judgment on their foundation, I have decided to select them at report stage, which will allow the House to vote on the substance of these amendments.

The motions will be grouped for debate as follows:

Group No. 1, concerning conflicts of interest and lobbying, will include Motions Nos. 1 to 4, 6, 7 and 9.

Group No. 2, concerning access to information, Motions Nos. 8, 13, 14 and 17 to 22.

Group No. 3, concerning the Director of Public Prosecutions, will include Motions Nos. 10 to 12, 16, 23 and 24.

Group No. 4, concerning procurements and contracting, Motions Nos. 28 to 30.

The voting patterns for the motions within each group are available from the Clerk. The Chair will provide the details to the House at the time of voting.

I shall now propose Motions Nos. 1 to 4, 6, 7 and 9 in Group No. 1 to the House.

The Legislative Process

Stages

Report stage: power of the Speaker to select amendments; admissibility of motion seeking to correct an error in the committee report

November 21, 2006 *Debates*, p. 5125

Context: On November 21, 2006, the House proceeded to the consideration at report stage of Bill C-24, *Softwood Lumber Products Export Charge Act, 2006*. The Acting Speaker (Andrew Scheer), exercising his authority pursuant to Standing Order 76.1, ruled on the selection and grouping of 95 motions in amendment standing on the *Notice Paper*.

Resolution: The Acting Speaker ruled that, of the 95 motions, 22 were not selected because they could have been presented in committee and 53 were not selected because they had been negatived in committee. He informed the House that one motion proposed to correct an error in the report would not be selected because he had asked that the Bill be reprinted after third reading to correct the error. The 19 other motions remaining were selected and grouped for debate.

Decision of the Chair

The Acting Speaker (Mr. Andrew Scheer): There are 95 motions in amendment standing on the *Notice Paper* for the report stage of Bill C-24. Motions Nos. 1 to 3, 5, 9, 10, 12, 20, 21, 23, 24, 26, 27, 29, 35, 36, 46, 53, 74, 79, 82 and 95 will not be selected by the Chair as they could have been presented in committee.

Motion Nos. 30 to 34, 37 to 45, 47 to 52, 54 to 73, 76, 78, 80, 81 and 85 to 93 will not be selected by the Chair as they were defeated in committee.

Motion No. 11 proposes to amend clause 12. The Chair has been informed that an error was found in the report to the House on Bill C-24. This situation resulted in the tabling of a motion at report stage. The error in question has to do with an amendment to an amendment that was rejected in committee on a recorded division. The report to the House indicates, in error, that the

amendment to the amendment was adopted. Accordingly, the Chair thanks the hon. Member for Gatineau for tabling a motion at report stage in order to correct the report, but this was not necessary. I will ask that the Bill be reprinted after third reading in order to add the following amendment to clause 12:

> That Bill C-24, in clause 12, be amended by replacing, in the English version, line 36, on page 7, with the following:
>
> "incurred in the placement aboard the convey—"

Accordingly, Motion No. 11 will not be selected by the Chair.

All remaining motions have been examined and the Chair is satisfied that they meet the guidelines expressed in the note to Standing Order 76.1(5) regarding the selection of motions in amendment at report stage.

There are a large number of motions which have not been selected for report stage, either because they were identical to motions defeated in committee or because they could have been presented in committee.

The Chair feels that it may be appropriate to take a moment to review the selection criteria for report stage.

On March 21, 2001, the Speaker made a statement on the selection criteria for motions at report stage as follows:

> First, past selection practices… will continue to apply. For example, motions and amendments that were presented in committee will not be selected, nor will motions ruled out of order in committee. Motions defeated in committee will only be selected if the Speaker judges them to be of exceptional significance.
>
> Second, regarding the new guidelines, I will apply the tests of repetition, frivolity, vexatiousness and unnecessary prolongation of report stage proceedings insofar as it is possible to do so in the particular circumstances with which the Chair is faced.… I also intend to apply those criteria in the original note.… Specifically, motions in

> amendment that could have been presented in committee will not be selected.

Consequently, the Chair selects motions which further amend an amendment adopted by a committee, motions which make consequential changes based on an amendment adopted by a committee and motions which delete a clause.

Aside from this, the Chair is loath to select motions unless a Member makes a compelling argument for selection based on the exceptional significance of the amendment.

The Chair cannot predict every possible scenario, but it reminds hon. Members that every bill is carefully examined in order to preserve the delicate balance between protecting the rights of the minority and the ability of the majority to exercise the right to vote.

Therefore, the motions will be grouped for debate as follows: Group No. 1 will include Motions Nos. 4, 25, 77, 83, 84 and 94. Group No. 2 will include Motions Nos. 6 to 8, 13 to 19, 22, 28 and 75.

The voting patterns for the motions within each group are available at the Table. The Chair will remind the House of each pattern at the time of voting.

I shall now propose Motions Nos. 4, 25, 77, 83, 84 and 94 in Group No. 1 to the House.

The Legislative Process

Stages

Report stage: motions in amendment; motion to restore the content of a bill defeated

November 21, 2007 *Debates*, p. 1179

Context: On June 13, 2007, the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities reported back to the House Bill C-284, *An Act to amend the Canada Student Financial Assistance Act (Canada access grants)*. The Bill was devoid of all content, having been stripped by the Committee of its title and all of its clauses.[1] On November 21, 2007, the House voted against motions at report stage that proposed to restore the content of the Bill, thereby leaving it an empty bill.[2] (**Editor's Note:** The Bill was reported back to the House during the previous session but, as it was a private Member's bill, it was deemed to have passed all stages completed in the previous session pursuant to Standing Order 86.1.)

Resolution: On November 21, 2007, following the votes at report stage, the Speaker declined to put the question on the motion to concur in the Bill. Citing Standing Order 94(1)(*a*), which provides the Chair with the authority to ensure the orderly conduct of Private Members' Business, he ruled that the Order for consideration of the Bill at report stage be discharged and that it be dropped from the *Order Paper*.

Decision of the Chair

The Speaker: The vote just taken has left Bill C-284 empty of all content. As far as I know, the House is now in a situation that is unprecedented in the circumstances and it seems to me that a brief review of the events that have led us to this point is appropriate.

On June 13, 2007, the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities reported Bill C-284 back to the House but Bill C-284 had been eviscerated in committee, that is, the Bill had been stripped of its title and all of its clauses.

At report stage, motions were proposed to restore Bill C-284, its original title, that is, *An Act to amend the Canada Student Financial Assistance Act (Canada access grants)* and all its original clauses. By defeating these motions to restore Bill C-284 to its original form, the House has chosen to leave it as an empty or blank bill.

Ordinarily, following the House's decision on report stage amendments, the question is put on the concurrence in the Bill at report stage. In the present case, however, there is no content in which to concur since the House has effectively agreed with the Committee's actions in stripping Bill C-284 to its present blank form.

As nothing remains of Bill C-284 except the bill number, the Chair is obliged to exercise the authority provided by Standing Order 94(1)(*a*) to ensure the orderly conduct of Private Members' Business.

I therefore rule that the Order for consideration at report stage of Bill C-284, *An Act to amend the Canada Student Financial Assistance Act (Canada access grants)*, be discharged and that the Bill be dropped from the *Order Paper*.

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1. Eighteenth Report of the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities, presented to the House on June 13, 2007 (*Journals,* p. 1519).
2. *Journals*, November 21, 2007, pp. 191-2.

The Legislative Process

Stages

Report stage: admissibility of motions in amendment; deletion of clauses argued to infringe on financial initiative of the Crown

May 6, 2008 *Debates*, pp. 5502-3

Context: On May 5, 2008, David Anderson (Parliamentary Secretary to the Minister of Natural Resources and for the Canadian Wheat Board) rose on a point of order with respect to the admissibility of amendments at report stage for Bill C-5, *Nuclear Liability and Compensation Act*. Mr. Anderson argued that motions in amendment moved by Dennis Bevington (Western Arctic) should not be selected for debate since they could have been presented in committee. He also argued that some of the amendments would increase the cost to the Crown and, therefore, were inconsistent with the Bill's Royal Recommendation. The Acting Speaker (Royal Galipeau) took the matter under advisement.[1] Later that day, the Deputy Speaker (Bill Blaikie) delivered a ruling on the selection and grouping for debate of motions in amendment in which he explained that certain motions had not been selected by the Chair because they could have been presented in committee. The Deputy Speaker added that the Speaker would return with a more detailed ruling as soon as possible.[2]

Resolution: On May 6, 2008, the Speaker delivered his ruling. He ruled that Motion No. 10 could have been moved in committee and was not selected for debate as indicated in the ruling delivered on May 5, 2008. He noted the long-standing practice that motions to delete clauses, which cannot be proposed in committee, are normally admissible and selected at report stage. He added that motions submitted at report stage still had to meet the requirements of Standing Order 79(1) with respect to the need for a royal recommendation. He stated that the Chair was not persuaded by the arguments presented regarding an infringement on the conditions and qualifications set out in the Royal Recommendation. He ruled that Motion No. 1 was admissible and accordingly selected it for debate. He recognized a link between Motion No. 1 and Motion No. 5, and stated that the vote on Motion No. 1 would also be applied to Motion No. 5. The Speaker also ruled that Motion No. 7 and Motion No. 9 should remain before the House since any cost increases would be provided for through the main or supplementary

estimates, and that Motion No. 6 was admissible as it did not infringe on the Royal Recommendation attached to the Bill. The voting pattern was revised accordingly.

Decision of the Chair

The Speaker: Order, please. I am now ready to rule on the point of order raised by the hon. Parliamentary Secretary to the Minister of Natural Resources and for the Canadian Wheat Board regarding the report stage motions standing on the *Notice Paper* for Bill C-5.

Bill C-5 would establish a liability regime applicable in the event of a nuclear incident that makes operators of nuclear installations entirely liable for damages up to a maximum of $650 million. Operators are required to maintain financial security equal to the financial liability of $650 million. The security is in the form of insurance from an approved insurer but may also, by agreement with the Minister, be in alternative form. The risk insured by an approved insurer can be reinsured by the federal Government through a special account called the Nuclear Liability Reinsurance Account.

The hon. Parliamentary Secretary argued that Motions Nos. 1, 4, 6, 7, 8, 9 and 10 could have been moved in committee and therefore should not be selected by the Speaker. I am in agreement that Motion No. 10 could have been moved in committee and accordingly, as indicated in the ruling delivered yesterday, I have not selected it for debate.

However, the hon. Parliamentary Secretary went on to argue that these same motions, all of them deletions, infringe upon the Royal Recommendation that accompanies the Bill. It should be noted that this is a highly unusual argument. It is a long-standing practice that motions to delete clauses are normally admissible and selected at report stage.

In this case, however, as the usual report stage ruling was about to be delivered regarding the selection from the 21 motions in amendment, 19 of them deletions, concerns were raised that some deletions provoked concerns relative to the Royal Recommendation. Such requirements are rarely associated with motions to delete clauses so I ask for the House's indulgence as I explain the conclusions I have reached in this matter.

Motion No. 1 is a motion to delete clause 21. Motions of this type cannot be proposed in committee but are normally selected at the report stage.

Motions Nos. 2, 3, 4, 8, 11, 12 and 16 are consequential to Motion No. 1. *House of Commons Procedure and Practice* at page 666 states:

> —a motion in amendment to delete a clause from a bill has always been considered by the Chair to be in order, even if such a motion would alter or go against the principle of the bill as approved at second reading.

However, motions submitted at report stage still need to meet the requirements of Standing Order 79(1) with respect to the need for a royal recommendation.

Motion No. 1 proposes to delete clause 21, which sets the liability limit of $650 million. The hon. Parliamentary Secretary has argued that deleting this clause would cause the potential liability on agents of the Crown, such as Atomic Energy of Canada Limited, to be increased. He goes on to argue that the deletion of clause 21 without the deletion of clause 26 would increase the liability on the Government and would infringe on the financial initiative of the Crown.

The Chair is not persuaded by the arguments presented that there is an infringement on the conditions and qualifications set out in the Royal Recommendation attached to the Bill. That said, however, I take the point that the deletion of clause 21 and of clause 26 are inextricably linked.

The Chair cannot agree that Motion No. 1, which would delete clause 21, is not admissible. Accordingly, I have maintained the original decision to select it to go forward for debate and decision. However, in recognition of the link between Motion No. 1 and Motion No. 5 which would delete clause 26, I have amended the voting pattern so that a vote on Motion No. 1 will be applied to Motion No. 5 which would delete clause 26, as well as the several consequential motions enumerated in the original decision delivered yesterday by the Deputy Speaker.

The hon. Parliamentary Secretary has also argued that Motions Nos. 6, 7 and 9, if adopted, would have the effect of increasing the tribunal's operating

costs. The Chair believes that, with regard to Motions Nos. 7 and 9, such increases, if any, would be provided for through the usual appropriations secured through the main or supplementary estimates. These two motions shall therefore remain before the House.

Motion No. 6 proposes to delete clause 30 which would establish time limits on bringing claims for compensation. Motion No. 21 is consequential to Motion No. 6. The Chair is not of the view that doing away with these time limits infringes on the Royal Recommendation attached to the Bill.

The revised voting pattern is available at the Table. I thank hon. Members for their patience in allowing me to consider the important matters raised by the hon. Parliamentary Secretary.

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1. *Debates*, May 5, 2008, pp. 5431-2.
2. *Debates,* May 5, 2008, p. 5442.

The Legislative Process

Stages

Report stage: power of the Speaker to select amendments; not presented in committee

May 12, 2008 *Debates*, pp. 5697-8

Context: On May 8, 2008, Joe Comartin (Windsor–Tecumseh) rose on a point of order with respect to motions in amendment proposed by Nathan Cullen (Skeena–Bulkley Valley) for the report stage of Bill C-377, *Climate Change Accountability Act*. Mr. Comartin argued that since the Standing Committee on Environment and Sustainable Development had come to an impasse during clause-by-clause study of the Bill, and therefore, had opted not to consider the remaining clauses and other parts of the Bill, Mr. Cullen had thus not been able to propose his amendments in committee.[1] Mr. Comartin noted that the Committee had presented two reports to the House on this matter, the Third[2] and the Sixth.[3] The Speaker took the matter under advisement. On May 9, 2008, Scott Reid (Lanark–Frontenac–Lennox and Addington) rose to argue that it was the Committee that had chosen to end its clause-by-clause examination of the Bill prematurely and, accordingly, the motions in amendment in question should not be selected by the Speaker.[4]

Resolution: On May 12, 2008, the Speaker delivered his ruling. He noted that he had decided that the point of order that had been raised merited a departure from the usual practice of not providing reasons for selecting motions in amendment. He referred to the exceptional circumstances set out in the Third and Sixth Reports of the Committee which had advised the House that, as no further progress seemed possible, it had agreed that the remaining parts of the Bill should be deemed adopted and that the Bill should be reported to the House without further debate or amendment. In view of this, the Speaker declared that he was satisfied that the motions could not have been presented during the Committee's consideration of the Bill. Accordingly, he selected the motions for debate at report stage.

Decision of the Chair

The Speaker: There are four motions in amendment standing on the *Notice Paper* for the report stage of Bill C-377, *An Act to ensure Canada assumes its responsibilities in preventing dangerous climate change*.

The Chair does not ordinarily provide reasons for its selection of report stage motions in amendment. However, in light of the point of order raised on Thursday, May 8, 2008 by the hon. Member for Windsor–Tecumseh and the subsequent intervention of the hon. Deputy Government House Leader, I would like to convey to the House the reasoning involved in considering these motions.

In his submission, the hon. Member for Windsor–Tecumseh described the particular circumstances surrounding the Committee consideration of Bill C-377.

During its consideration of the Bill, the Standing Committee on Environment and Sustainable Development presented three separate reports. In the first of these reports, presented on April 14, 2008, the Committee described procedural difficulties it had encountered in the course of its study of Bill C-377 and recommended some action that the House might wish to take.

On April 29, 2008, in its second report relating to this Bill, the Committee reported Bill C-377 with eight amendments. On the same day, the Committee presented a third report. This report explained that having begun its clause-by-clause study on March 3, 2008, prolonged debate on clause 10 of the Bill resulted in an impasse; and that as no further progress seemed possible, the Committee turned to the consideration of a motion, the effect of which was to deem adopted the remaining parts of the Bill and to agree that the Bill be reported to the House without further debate or amendment. This motion was adopted on division by the Committee.

The hon. Member for Windsor–Tecumseh also referred to previous Speaker's rulings where motions in amendment at report stage were selected on the basis that Members involved did not have the opportunity to present motions during the committee consideration stage. Specifically, he cited a

ruling given on January 28, 2003, regarding Bill C-13, *An Act respecting assisted human reproduction*, and a ruling given on November 6, 2001, regarding Bill C-10, *An Act respecting the national marine conservation areas of Canada*.

In his intervention on Friday, May 9, 2008, the hon. Deputy Government House Leader also reviewed the sequence of events surrounding the Committee consideration of the Bill and referred to the two rulings just cited. He went on to argue that, in his view, the Committee's decision to report the Bill back to the House prior to the May 7, 2008 deadline represents a conscious decision of the majority of the Committee not to make full usage of the time remaining and thus to forego further opportunities to propose amendments at the committee stage. On this basis, he concluded that the motions at report stage should not be selected.

Four report stage motions have been submitted. These motions are identical to committee amendments which were not considered due to the impasse, as described in the Committee's report and the adoption by the Committee of the motion to report the Bill. The motions relate to clauses of the Bill which were deemed carried at the committee stage, quite clearly as a way out of the impasse.

The Chair is now faced with the matter of selection. The note accompanying S. O. 76(5) reads, in part: "The Speaker… will normally only select motions which were not or could not be presented [in committee]."

Having carefully reviewed the sequence of events and the submissions made by the hon. Member for Windsor–Tecumseh and the hon. Deputy Government House Leader, the Chair is of the opinion that we are facing very exceptional circumstances. The Committee recognized that the impasse was significant and wanted to bring that situation to the attention of the House. It did so in a report which states in part:

> Given the impasse, the Committee opted not to consider the remaining clauses and parts of the Bill….

Therefore, I am satisfied that these motions could not be presented during the Committee consideration of the Bill, and accordingly I have selected them

for debate at report stage. Accordingly, Motions Nos. 1 to 4 will be grouped for debate and voted upon according to the voting pattern available at the Table.

I shall now propose Motions numbered 1 to 4 to the House.

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1. *Debates*, May 8, 2008, pp. 5631-2.
2. Third Report of the Standing Committee on Environment and Sustainable Development, presented to the House on April 14, 2008 (*Journals*, p. 701).
3. Sixth Report of the Standing Committee on Environment and Sustainable Development, presented to the House on April 29, 2008 (*Journals*, p. 740).
4. *Debates*, May 9, 2008, pp. 5681-2.

The Legislative Process

Stages

Report stage: power of the Speaker to select amendments; not presented in committee

September 20, 2010 *Debates*, pp. 4068-9

Context: John McKay (Scarborough–Guildwood), in a written submission to the Speaker, described the efforts he had made to overcome the inability of the Standing Committee on Foreign Affairs and International Trade to consider Bill C-300, *Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act,* within the prescribed timelines. These efforts included the moving of a motion that the Committee begin clause-by-clause study of the Bill. Mr. McKay advised the Speaker that he had not been successful and that, although he had submitted his amendments to the Committee, he had not had an opportunity to propose them.

Resolution: On September 20, 2010, the Speaker delivered his ruling with respect to the selection and grouping for debate of motions in amendment at report stage for Bill C-300. He specified that he was departing from the Chair's usual practice of not providing the reasons for the selection because of the exceptional circumstances. The Speaker declared that he was satisfied that Mr. McKay's motions could not have been presented during the Committee's consideration of the Bill and, accordingly, he had selected them for debate at report stage.

Decision of the Chair

The Speaker: There are 16 motions and amendments standing on the *Notice Paper* for the report stage of Bill C-300**.**

Motions Nos. 1 to 16 will be grouped for debate and voted upon according to the voting patterns available at the Table.

The Chair does not ordinarily provide reasons for its selection of report stage motions. However, having been made aware of the exceptional

circumstances surrounding the Committee study of this Bill, I would like to convey to the House the reasoning involved in considering these motions.

The note accompanying Standing Order 76(5) reads, in part:

> The Speaker… will normally only select motions which were not or could not be presented [in committee].

The Chair takes note that the hon. Member for Scarborough–Guildwood sits on the Standing Committee on Foreign Affairs and International Trade, which was mandated to study Bill C-300. Although I believe that the majority of the amendments in his name could have been proposed during the Committee consideration of the Bill, they were not.

In a written submission to the Chair, the Member outlined his efforts to overcome the Committee's inability to deal with the Bill in the prescribed timelines, even going so far as to move a motion that the Committee begin clause-by-clause study of the Bill. These efforts proved fruitless, and although the Member had submitted his amendments to the Committee, he was not afforded the opportunity to propose them.

Having carefully reviewed the sequence of events and the submission made by the hon. Member for Scarborough–Guildwood, I am satisfied that these motions could not be presented during the Committee consideration of the Bill and, accordingly, I have selected them for debate at report stage.

I shall now propose Motions Nos. 1 to 16 to the House.

The Legislative Process

Stages

Third reading: Member requesting a reprint of a bill

October 9, 2003 *Debates*, p. 8353

Context: On October 6, 2003, Paul Szabo (Mississauga South) rose on a question of privilege to call for Bill C-13, *Assisted Human Reproduction Act*, to be reprinted at third reading.[1] He stated that a reprint would reflect the numerous and significant changes made at report stage. Considering the complexity of the Bill, the time elapsed since the last occasion on which the Bill was debated, and the number of amendments presented and adopted at report stage, he argued that Members did not have the information in a form that allowed reasoned debate (On March 31, 2003,[2] and October 3, 2003,[3] Mr. Szabo had unsuccessfully sought unanimous consent to have the Bill reprinted). The Acting Speaker (Réginald Bélair) took the matter under advisement.

Resolution: On October 9, 2003, the Acting Speaker (Réginald Bélair) delivered his ruling. He reminded Members that it was not the practice of the House to have bills reprinted at third reading, and that the unanimous consent of the House was required if a motion to order a reprint was to be put without notice.

Decision of the Chair

The Acting Speaker (Mr. Bélair): I will now give the ruling on the question of privilege raised by the hon. Member for Mississauga South on October 6. I thank the hon. Member for raising the question, as well as the hon. Member for Yellowhead for his comments.

The hon. Member for Mississauga South argued that, in light of the complexity of the Bill and of the number of amendments which the House had adopted at report stage, Members required a reprint of the Bill in order to be able to properly conduct debate at third reading. He pointed out that this need was all the more pressing given that the Bill had not been debated since April 10 of this year.

The unanimous consent of the House was sought on March 31 and again on October 3 to permit a motion ordering a reprint of the Bill to be put to a vote. The consent was denied.

I would like to remind the hon. Member that it is not the practice of the House to have bills reprinted at third reading. In this regard I refer him to the ruling by the Deputy Speaker on the same point concerning Bill C-13 on March 31, at page 4922 of the *Debates*.

As the hon. Member is fully aware, the House may, if it chooses, order a reprint of the Bill. The unanimous consent necessary to allow such a motion to be put without notice has so far not been forthcoming.

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1. *Debates*, October 6, 2003, pp. 8188-9.
2. *Debates*, March 31, 2003, p. 4920.
3. *Debates*, October 3, 2003, p. 8141.

The Legislative Process

Stages

Third reading: amendment to recommit bill to committee; admissibility

May 8, 2008 *Debates*, p. 5632

Context: On May 2, 2008, Peter Van Loan (Leader of the Government in the House of Commons) rose on a point of order with respect to the admissibility of an amendment moved by Dennis Bevington (Western Arctic) to Bill C-33, *An Act to amend the Canadian Environmental Protection Act, 1999*. The amendment proposed that the Bill not be read a third time, but rather be recommitted to the Standing Committee on Agriculture and Agri-Food for the purpose of reconsidering clause 2. The Government House Leader argued that the amendment was inadmissible because it used the words "with a view to making sure that". The Government House Leader noted that the phrase "making sure" gave a mandatory instruction to the Committee by providing instructions on how it should dispose of the Bill.[1] After hearing from other Members, the Acting Speaker (Royal Galipeau) took the matter under advisement.

Resolution: On May 8, 2008, the Speaker delivered his ruling. He declared that the amendment did not contravene any of the accepted principles for recommitting a bill to committee and that it was consistent with past practices of the House in this regard. He added that it was not a mandatory instruction to the Committee as it provided the latter with ample discretion to determine how it wished to reconsider the clause in question. Accordingly, he ruled the amendment in order.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on Friday, May 2, 2008, by the hon. Leader of the Government in the House of Commons concerning the admissibility of the amendment to the motion for third reading of Bill C-33, *An Act to amend the Canadian Environmental Protection Act, 1999*, moved by the hon. Member for Western Arctic.

I would like to thank the Government House Leader for raising this matter, as well as the hon. Member for Vancouver East for her intervention.

The hon. Government House Leader contended that the amendment proposed by the hon. Member for Western Arctic was inadmissible because it sought to provide a mandatory instruction to the Committee. He was of the opinion that the use of the words "with a view to making sure that" in the amendment constituted a mandatory instruction on how the Committee should dispose of the Bill.

The hon. Member for Vancouver East, for her part, felt that the proposed amendment was clearly permissive. In her opinion, the words "with a view to", contained in the amendment, support that argument.

As stated in *House of Commons Procedure and Practice* on pages 672 and 673, regarding amendments to the motion for third reading of a bill:

> The purpose of such an amendment may be to enable the committee to add a new clause, to reconsider a specific clause of the bill or to reconsider previous amendments. However, an amendment to recommit a bill should not seek to give a mandatory instruction to a committee.

House of Commons Procedure and Practice also mentions further on page 793, with respect to instructions to Committees of the Whole, which also applies to standing committees:

> Instructions to a Committee of the Whole dealing with legislation are not mandatory but permissive, that is the Committee has the discretion to decide if it will exercise the power given to it by the House to do something which it otherwise would have no authority to do.

The issue before us today is to determine if the amendment proposed by the hon. Member for Western Arctic meets the requirements as set out in our rules and practices, and more specifically, if it indeed constitutes a mandatory instruction to the Committee.

There are many precedents of similar amendments to the motion for third reading that have included the words "with a view to" combined with various action verbs akin to "making sure". For example, amendments moved in the past have used the verbs "to ensure" on November 8, 2001, "to change" on January 31, 2003, "to eliminate" on March 4, 2004, and "to incorporate"

on June 22, 2005, and all were ruled admissible. In fact, with time, this has become an established and accepted form for an amendment at third reading that seeks to recommit all or certain clauses of a bill.

In reviewing the texts of the amendment and of Bill C-33, I find that the amendment does not, in my view, infringe on any of the principles that I mentioned earlier and that form the basis of past practices of the House. The amendment asks the Committee to reconsider a clause of the Bill, taking into consideration certain issues, but it does not specify that any amendment is required or exactly how the Committee should modify the Bill to attain that objective. In my opinion, the text of the amendment provides the Committee ample discretion in how it wishes to reconsider the particular clause in question.

As such, I declare the amendment in order. I thank the hon. Leader of the Government in the House of Commons for bringing this issue to the attention of the House.

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1. *Debates*, May 2, 2008, pp. 5405-7.

The Legislative Process

Stages

Passage of Senate amendments: alleged discrepancy between the French and English versions

February 4, 2002 *Debates*, pp. 8648-9

Context: On February 4, 2002, Michel Bellehumeur (Berthier–Montcalm) rose on a point of order with respect to an alleged discrepancy between the English and French versions of a Senate amendment to Bill C-7, *Youth Criminal Justice Act*. He pointed out that, in the French version, the expression "*doivent faire*" implied a requirement, whereas the expression "should be" used in the English version was a suggestion. Peter MacKay (Pictou–Antigonish–Guysborough) also intervened on the matter.[1]

Resolution: The Speaker ruled immediately. He declared that it was not for the Speaker of the House of Commons to judge the procedural regularity of Senate proceedings and of amendments made by the Senate to bills. He concluded that he had no power to intervene in the matter.

Decision of the Chair

The Speaker: I appreciate the fact that hon. Members have raised this matter once again. It is perhaps an indication that it is a serious one.

I hope the comments made by the hon. Deputy Speaker and Chairman of Committees of the Whole House when he was here, when the matter was first raised by the Member for Berthier–Montcalm, will be applicable at this time.

In my opinion, they are.

I could cite the authority of *Marleau and Montpetit* on this point at page 674 where it states:

> It is not for the Speaker of the House of Commons to rule as to the procedural regularity of proceedings in the Senate and of the amendments it makes to bills.

That citation in my view is important, direct and applicable in this case.

I can perhaps make a suggestion for the hon. Member for Berthier–Montcalm and the hon. Member for Pictou–Antigonish–Guysborough. They can consult the Law Clerk and Parliamentary Counsel and perhaps find other explanations with respect to these amendments.

The Chair has taken some steps to ensure the procedural regularity of things within the powers of the Speaker of the House of Commons in these circumstances. I have a feeling that if hon. Members consult they might get, if not complete, at least increased satisfaction.

I will leave the matter there but I am afraid I am powerless to intervene in this matter.

The amendment was passed by the Senate and it is the amendment which is now being considered by the House.

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1. *Debates*, February 4, 2002, p. 8648.

The Legislative Process

Stages

Passage of Senate amendments: request to divide a bill

December 5, 2002 *Debates*, pp. 2334-6

Context: On December 4, 2002, Bill Blaikie (Winnipeg–Transcona) rose on a point of order with respect to an instruction from the Senate to its Standing Committee on Legal and Constitutional Affairs that it divide Bill C-10, *An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act*, into two Bills.[1] Mr. Blaikie stated that it was inappropriate for the Senate to divide a bill passed by the House of Commons and that, since the original Bill had been accompanied by a royal recommendation, the division of that Bill would result in the creation of two new Bills, at least one of them involving public funds, originating in the Senate and would thereby infringe upon the financial privileges of the House. Since, at the time of Mr. Blaikie's point of order, a message had not yet been received from the Senate, nor was a motion on notice to send any message to the Senate, the Speaker declined to address the matter until such a message had been received and stated that ultimately it was a matter for the House to decide. Mr. Blaikie then unsuccessfully sought and was declined the unanimous consent of the House to send a message to the Senate asking it to reverse its decision. The Senate message indicating that the Bill had been divided in two and asking for the concurrence of the House was received at the end of the sitting on December 4. Carol Skelton (Saskatoon–Rosetown–Biggar) rose on a point of order the following day to argue that it was not in order for the Senate to divide a bill from the House, and that the House cannot waive its privileges.[2] Immediately thereafter, Peter MacKay (Pictou–Antigonish–Guysborough) rose on a question of privilege on the same issue. Other Members also contributed to the discussion.

Resolution: On December 5, 2002, the Speaker delivered his ruling. Since there had been no change in the circumstances, manner and purpose of the appropriation of public revenue in the Bill that was the subject of the Royal Recommendation, he saw no need to insist on the financial prerogatives of the House. He stated that the privileges of the House would indeed be involved should the Senate divide a House bill without first obtaining the House's concurrence. However, concurrence

having been requested in this case, the Speaker stressed that it was up to the House to address the issue as it saw fit by claiming its privileges or by waiving them by way of a motion to concur in the Senate message. Accordingly, the Speaker concluded there was no breach of privilege.

Decision of the Chair

The Speaker: I am ready to rule on the point of order raised yesterday by the hon. Member for Winnipeg–Transcona and again today by the hon. Member for Saskatoon–Rosetown–Biggar, and then the question of privilege raised by the hon. Member for Pictou–Antigonish–Guysborough this morning, concerning the message received from the Senate relating to Bill C-10, *An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act*, and the actions taken by the other place in connection with this Bill.

I wish to thank the hon. Member for Acadie–Bathurst, the Parliamentary Secretary to the Leader of the Government in the House, and the hon. Member for Sarnia–Lambton for their interventions.

On Wednesday, December 4, the hon. Member for Winnipeg–Transcona raised a point of order to draw to the attention of the House the action taken by the hon. Senate in dividing Bill C-10 into two Bills, Bill C-10A, which the other House passed, and Bill C-10B, which it still retains. The hon. Member pointed out that this was the House that should decide which pieces of House legislation were divided up and how they should be dealt with. At that time no message had been received from the other place and therefore the matter was, in the view of the Chair, hypothetical. The Chair was not prepared to deal with a purely academic matter, noting that it was inappropriate until a message had in fact been received. I did point out however, that though the Chair might have something to say in this matter, that was probably a matter for the House to decide.

A message from the Senate on Bill C-10 was received at the end of Wednesday's sitting, and the matter has now properly been brought to the attention of the House. There is also a motion on the *Order Paper* for consideration of the Senate amendments to the Bill. As hon. Members are aware this motion, when called, is debatable and amendable and the

Government House Leader has just indicated that he intends to call this matter before the House tomorrow.

I must point out at the outset that I cannot make comments on the workings of the honourable Senate. This would be quite inappropriate.

The fact that Bill C-10 was reinstated from the previous session, as provided for by Special Order of this House, does not have any bearing on its subsequent proceedings, either in this House or the other place.

As noted in the intervention of the hon. Member for Saskatoon–Rosetown–Biggar, this is not the first time the Senate has divided a bill originating in this House. In 1988 the other place divided Bill C-103, *An Act to Increase Opportunity for Economic Development in Atlantic Canada to establish the Atlantic Canada Opportunities Agency and Enterprise Cape Breton Corporation and to make consequential and related amendments to other acts*, and returned only part of the Bill to the House.

At that time the propriety of the Senate's action was raised and Mr. Speaker Fraser ruled on the matter. His ruling was extensive and exhaustive and has been much quoted this morning, although I must say the quotations seemed selective and incomplete.

Some hon. Members: No.

The Speaker: I am afraid so. I know hon. Members would not think of such a thing but it seems to have happened.

In that ruling of July 11, 1988, at pages 17382 to 17385 of the *Debates*, the Speaker noted that there were several cases in which the Speaker of the House of Commons had ruled certain bills originating in the Senate out of order because they infringed the financial privileges of this House.

Mr. Speaker Fraser noted a precedent where two Commons bills were consolidated into a single legislative measure by the Senate. That took place, and the Parliamentary Secretary made reference to this as well, on June 11, 1941, with a message from the Senate asking for the concurrence of

this House. The Commons agreed with the Senate proposal. I would refer hon. Members to the *Journals* of June 11, 1941, at page 491. On that occasion, the Commons waived its traditional privilege and a single bill was eventually given Royal Assent.

In the 1941 case, the Senate specifically sought the concurrence of the House for its action and it was the disposition of this House to accept it. In the 1988 case, the Senate did not seek the Commons' concurrence in the division of the Bill and simply informed this House that it had done so and returned half of the Bill. The House did not accept that action by the Senate and the Senate subsequently reversed itself and the Bill was adopted by the Senate in its original form.

In making his ruling in 1988, Speaker Fraser stated at page 17384:

> The Speaker of the House of Commons by tradition does not rule on constitutional matters. It is not for me to decide whether the Senate has the constitutional power to do what it has done with Bill C-103. There is not any doubt that the Senate can amend a bill, or it can reject it in whole or in part. There is some considerable doubt, at least in my mind, that the Senate can rewrite or redraft bills originating in the Commons, potentially so as to change their principle as adopted by the House without again first seeking the agreement of the House. That I view as a matter of privilege and not a matter related to the Constitution.

In the case of Bill C-103, it is my opinion, and with great respect of course, that the Senate should have respected the propriety of asking the House of Commons to concur in its action of dividing Bill C-103 and in reporting only part of the Bill back as a *fait accompli* has infringed the privileges of this place.

In the current case, unlike the case in 1988, the Senate explicitly seeks the concurrence of this House in its action. This was contained in the message we received from the Senate yesterday.

The hon. Member for Saskatoon–Rosetown–Biggar cited Mr. Speaker Fraser to the effect that the privileges of the House had been infringed. However

the hon. Member did not fully cite a passage she read to the House where the Speaker went on to state the following:

> However, and it is important to understand this, I am without the power to enforce them directly. I cannot rule the Message from the Senate out of order for that would leave Bill C-103 in limbo. In other words, it would be nowhere. The cure in this case is for the House to claim its privileges or to forgo them, if it so wishes, by way of message to Their Honours, that is, to the Senate, informing them accordingly.

I agree fully with Mr. Speaker Fraser in this matter. Just as the cure proposed at that time was for the House to claim its privileges or to forgo them if it so wished, that is the course that is available to the House in respect of the message that we have received today.

With respect to the Royal Recommendation, the Chair cannot see that there has been any change in the circumstances, manner and purpose of the appropriation of public revenue in the legislation that was the subject of the Royal Recommendation, and so I see no need to intervene to insist on the financial prerogatives of the House in this case.

In his intervention, the Parliamentary Secretary pointed out that the financial provisions in Bill C-10 applied to that part of the Bill that had been returned to the House as Bill C-10A, that is the firearms section, which had been passed by the other place without amendment. I have examined that part of Bill C-10, which has been appended to the Senate message as Bill C-10B, the cruelty to animals section, and I am of the opinion that it would not require a royal recommendation were it introduced into this House in that form.

In conclusion, I want to make three points. First, the Chair does not see any grounds to intervene with respect to the financial aspects of this issue. Second, while the Speaker agrees with the view of Mr. Speaker Fraser that privileged matters are involved where the Senate divides a House bill without first having the House's concurrence, this is not the case in this instance. Our concurrence has in fact been requested.

Therefore I cannot find that there is a *prima facie* question of privilege, but I stress that it is open to the House to address this issue as it sees fit and as it no doubt will do by adopting some kind of motion in respect of this matter.

Finally, in their consideration of their motion to concur in the Senate Message, I would remind all hon. Members that they will have the opportunity to debate fully the motion and propose whatever amendments they see fit within the rules that they wish to do to that motion.

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1. *Debates*, December 4, 2002, pp. 2267-8.
2. *Debates*, December 5, 2002, pp. 2293-302.

The Legislative Process

Stages

Passage of Senate amendments: motion to concur in Senate's message to divide a bill not considered a stage; time allocation

April 10, 2003 *Debates*, pp. 5363-4

Context: On April 7, 2003, John Reynolds (West Vancouver–Sunshine Coast) rose on a point of order with respect to a motion to concur in a Senate message purporting to divide Bill C-10, *An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act*.[1] Mr. Reynolds argued that the motion to concur in the message from the Senate regarding Bill C-10 could not be considered a stage of a bill nor could the Senate's division of Bill C-10 be considered an amendment to the Bill. He maintained that the motion to concur in the Senate message should therefore not be listed on the *Order Paper* under Government Bills as a motion in response to an amendment made to a bill, but rather should be listed as a Government motion. He added that consequently an ancillary time allocation motion, for which notice had been given by the Government, would be invalid as this was not permitted on a Government motion, and since the motion would not be worded properly since it was as a motion to concur in the Senate message regarding an amendment to a bill. Mr. Reynolds requested that the Speaker refuse to allow a time allocation motion to be moved, and defer any vote on the motion with respect to the Senate message until the matter was resolved. After hearing from other Members, the Speaker took the matter under advisement.[2]

Resolution: On April 10, 2003, the Speaker delivered his ruling. Referring to his previous ruling on this same matter delivered on December 5, 2002,[3] he reiterated that the motion to concur in the Senate message was a proper motion properly before the House. He stated that, having considered the arguments presented in this unusual circumstance, he was of the view that the motion was intrinsic to the legislative process for this particular Bill. He stated that a decision must be taken by the House either to concur in or defeat the motion to concur in the Senate proposal to divide the Bill. Accordingly, he concluded that the Government would be permitted to give notice of and move time allocation on this motion.

Decision of the Chair

The Speaker: I wish now to indicate to the House that I am ready to rule on a point of order raised on Monday, April 7, by the hon. Member for West Vancouver–Sunshine Coast concerning the motion on the *Order Paper* to concur in the Senate's message to divide Bill C-10, *An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act*.

I would like to thank the hon. Member for West Vancouver–Sunshine Coast for raising the issue. I also wish to thank the hon. Leader of the Government in the House of Commons and the Member for Vancouver East for their interventions on the matter.

The hon. Member for West Vancouver–Sunshine Coast raised a number of interesting points, stating that the message from the Senate regarding Bill C-10 could not be considered a stage of a bill nor could the Senate's division of Bill C-10 be considered an amendment. He went on to argue that the motion to concur in the Senate's message should therefore not be listed on the *Order Paper* under Government Bills as a motion in response to an amendment made to a bill but rather should be listed as a motion under the heading Government Motions.

In consequence, the hon. Member argued that the notice given by the Government to time allocate the motion was invalid since Standing Order 78 can only be used to curtail debate on motions related to the stages of bills and not on a Government motion.

At the time this point of order was raised, I indicated that this matter had previously been before the House in December 2002, when questions were raised about the admissibility of the motion and the possible breach of the privileges of the House in relation to the actions taken by the other place in dividing the Bill.

In my ruling delivered on December 5, 2002, I stated that there was no basis for a *prima facie* question of privilege, and I made the following point at that time:

> —while the Speaker agrees with the view of Mr. Speaker Fraser that privileged matters are involved where the Senate divides a House bill

> without first having the House's concurrence, this is not the case in this instance. Our concurrence has in fact been requested—

See *House of Commons Debates*, December 5, 2002, p. 2336.

Given the conclusions delivered in my ruling in December, the motion to concur in the Senate message to divide the Bill is a proper motion and it is properly before the House, and accordingly I consider the issue of the admissibility of the motion closed.

In my December ruling, I also pointed out to hon. Members that they would have the opportunity to debate the motion when it was brought before the House and to propose amendments as they saw fit. That process is well underway. Debate on the motion to concur in the Senate's request to divide Bill C-10 commenced on December 6, 2002, and Members of the Official Opposition have since proposed an amendment and a subamendment to the motion.

On February 14, the Government gave notice of time allocation on consideration of the motion to concur in the message from the Senate, and this is the issue to which I would now like to turn. In his arguments, the hon. Member for West Vancouver–Sunshine Coast questioned whether the Senate message seeking concurrence to divide Bill C-10 could properly be considered an amendment and treated as a stage of a bill under the provisions of Standing Order 78. The December ruling on this matter found the motion to be in order and therefore properly before the House.

After full consideration of the arguments presented in this unusual circumstance, I have now concluded that the motion to concur in the Senate message to divide Bill C-10 is indeed intrinsic to the legislative process for this particular Bill.

The hon. Member for West Vancouver–Sunshine Coast sought to draw a parallel with the case of a motion from the House instructing one of its committees to divide a bill. Whereas it might be argued that such a motion is complementary to the legislative process already in train and not integral to it, in the case before us, the motion to waive House privileges and permit the

other House to divide Bill C-10 is, in my view, clearly part of the critical path of the legislative process with regard to this Bill.

For this Bill to proceed down its unique and admittedly unprecedented legislative path to Royal Assent and proclamation, a decision must be taken by the House either to concur in or defeat the motion to concur in the Senate proposal to divide the Bill. I therefore feel that this motion is part of the legislative process on this Bill, not an additional motion introduced to do something to a bill otherwise before the House.

Given this set of circumstances, I find that it is in order for the Government to give notice and move time allocation pursuant to Standing Order 78 on the consideration of this motion. I draw the attention of Members to page 563 of *Marleau and Montpetit*, where the following point is made regarding the use of time allocation:

> … although the rule permits the government to negotiate with opposition parties towards the adoption of a timetable for the consideration by the House of a bill at one or more stages (including the stage for the consideration of Senate amendments), it also allows the government to impose strict limits on the time for debate.

In conclusion, I would concur with the hon. Member for West Vancouver–Sunshine Coast that this is indeed an unprecedented case. Absent a definitive rule or practice of the House with respect to the Senate's proposed division of House bills, the Chair believes it prudent to act with an abundance of caution. The Senate has properly sought the concurrence of the House in its proposed course of action and now awaits the decision of the House before proceeding further. This motion clearly seeks the concurrence of the House to divide Bill C-10, thus responding to the Senate request. This dialogue is intrinsic to the legislative process for Bill C-10 and the Speaker is thus bound to accept that the procedure being followed is acceptable in this case.

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1. *Debates*, April 7, 2003, pp. 5182-4.
2. *Debates,* April 7, 2003, pp. 5185-7.
3. *Debates*, December 5, 2002, pp. 2334-6.

The Legislative Process

Senate Public Bills

Admissibility: taxation

June 12, 2001 *Debates*, pp. 5024-7

Context: On May 30, 2001, Don Boudria (Leader of the Government in the House of Commons) rose on a point of order with respect to the admissibility of Bill S-15, *Tobacco Youth Protection Act*. The Government House Leader argued that the purpose of the Bill was to impose a new tax and that it should not, therefore, have been introduced in the Senate. Even had it been introduced in the House, he maintained that it would have to have been preceded by a ways and means motion which could be proposed only by a Minister of the Crown. The Government House Leader further argued that the Bill was the same in purpose and operation as Bill S-13, which had been introduced in the First Session of the Thirty-Sixth Parliament and ruled out of order by Mr. Speaker Parent on the grounds that it was a tax bill, which, constitutionally and procedurally, could be initiated by the House only.[1] In response to André Bachand (Richmond–Arthabasca), who argued that the point of order should have been raised before the introduction of the Bill, the Speaker replied that a Member may challenge the admissibility of a bill at any time before third reading. After hearing from other Members that day[2] and the next,[3] the Speaker took the matter under advisement.

Resolution: On June 12, 2001, the Speaker delivered his ruling. He quoted different procedural and constitutional authorities on the primacy of the House of Commons in taxation matters, a central issue of the ruling, as well as the need, in the present case, to establish a distinction between a levy and a tax. He declared that it was essential to determine whether or not the charge imposed was for a purpose beneficial to the tobacco industry. He found that the Bill sought primarily to attain a public policy end and only secondarily sought to benefit the industry. He thus remained unable to regard Bill S-15 as anything other than a bill which sought to attain its principal aim by imposing a tax on the industry. He mentioned that he had not been able to identify dispositions in the Bill that provided for the alleged benefits to the industry. He concluded, accordingly, that the levy provided for in Part IV of Bill S-15 in fact constituted a tax, and, on both procedural and

constitutional grounds, ordered that the first reading proceedings be declared null and void, and that the Bill be withdrawn from the *Order Paper*.[4]

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Leader of the Government in the House on May 30, 2001, concerning the procedural acceptability of Bill S-15, *An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young people in Canada*.

I wish to thank the hon. Government House Leader, the hon. Member for Hochelaga–Maisonneuve, the hon. Member for Richmond–Arthabaska, the hon. Member for Winnipeg North Centre, the hon. Member for Lac-Saint-Louis, the hon. Member for Notre-Dame-de-Grâce–Lachine and the hon. Member for Calgary West, as well as the hon. Opposition House Leader and the hon. Member for Pictou–Antigonish–Guysborough for their interventions.

I would also like to thank hon. Members for the additional material they submitted for my consideration.

Let me first set the stage for this ruling. As your Speaker, it is my duty to examine each case on which I must rule in light of our practice and procedure and to make my decision, mindful that each ruling adds to that body of precedent.

Marleau and Montpetit, in *House of Commons Procedure and Practice*, at page 261, phrase this simply, stating:

> It is the responsibility of the Speaker to act as the guardian of the rights and privileges of Members and of the House as an institution.

Chapter 18 of *Marleau and Montpetit* provides a comprehensive history of our financial procedures and I would commend to hon. Members reading pages 701 to 714, if they have not read the whole book already, as being particularly helpful.

Before I address the arguments presented for and against Bill S-15 proceeding in the House, I want to provide the procedural context against which I have to consider this point of order. I ask hon. Members to bear with me as I present the following extracts from pages 701 to 703 of *Marleau and Montpetit* so as to situate the issues raised by Bill S-15 in the larger context:

> The manner in which Canada deals with public finance derives from British parliamentary procedure, as practised at the time of Confederation—

That is on page 701. It continues:

> The whole law of finance, and consequently the whole British constitution is grounded upon one fundamental principle, laid down at the very outset of English parliamentary history and secured by three hundred years of mingled conflict with the Crown and peaceful growth. All taxes and public burdens imposed upon the nation for purposes of state, whatsoever their nature, must be granted by the representatives of the citizens and taxpayers—

That is on pages 701 to 702. It continues:

> Initially, the Commons were content simply to have grants of Supply originate in their House. However, over time the Lords began "tacking on" additional legislative provisions to Commons "money bills", by way of amendments. This was viewed by the House as a breach of its prerogative to originate all legislation which imposed a charge either on the public or the public purse, and led the Commons in 1678, to resolve that:
>
> > All aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint, in such Bills, the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords.

It is striking that over 300 years later a virtually identical formulation is found in our own House of Commons Standing Order 80(1) which reads:

> All aids and supplies granted to the Sovereign by the Parliament of Canada are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit and appoint in all such bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate.

This same principle is captured in an early source on Canadian procedure, *Bourinot*, 4th ed., at page 491, which states, and this is a translation:

> As a general rule, public bills may originate in either house; but whenever they grant supplies of any kind, or involve directly or indirectly the levying or appropriation of any tax upon the people, they must be initiated in the popular branch, in accordance with law and English constitutional practice.

In Canada, the Constitution itself enshrines the ancient English practice whereby the elected representatives of those who will be affected by any tax measure should be the first to examine such a measure and accept or reject it.

In matters of taxation, the House is provided with priority over the Senate. The *Constitution Act, 1867* provides, in section 53: "Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons." The Standing Orders provide that the House may only consider taxation measures that have been initiated by a Minister through the usual ways and means procedures.

I have judged it necessary to offer this rather lengthy, but by no means comprehensive, review of the history of our financial procedures because I believe that the question of the primacy of the House of Commons in taxation matters lies at the very heart of our parliamentary practice and is, of course, central to a ruling on this point of order.

I fully appreciate the frustration exhibited by passionate proponents of the aims of this Bill who want to give the House an opportunity to debate

the merits of the Bill. They may balk at arguments about procedure, calling them obtuse or arcane, or technicalities irrelevant to debate on public policy in the twenty-first century.

Whatever sympathy I as a Member or a citizen may have for those views, as your Speaker I am bound to be the guardian of the parliamentary rules and precedents that guide our deliberations and it is against that standard that my ruling must be made.

Now let us return to consider the specifics of the matter at hand.

The Government House Leader's complaint is twofold: first, that Bill S-15 originated in the Senate rather than the House and so violates the priority of the House in matter of taxation; secondly, that Bill S-15 was not preceded by a ways and means motion, an essential preliminary to the introduction of a tax bill.

Those who spoke in defence of the Bill claim that the Bill does not in fact seek to impose a tax but rather a levy desired by the tobacco industry for a purpose which the industry considers as beneficial to itself. If this argument is accepted then the major impediment to the Bill has been overcome, for as *Erskine May,* 22nd edition at page 781, states:

> Levies upon employers in a particular industry for the purpose of forming a fund used to finance activities beneficial to the industry are not normally regarded as charges—

That is, taxes. It is this issue, the distinction between a levy and a tax, which will provide the key to the ruling.

I have re-examined with care previous cases where levies were imposed. As the House knows, there have been very few bills involving levies, and fewer still which gave rise to procedural discussion. I have studied the examples cited by the hon. Member for Lac-St-Louis, namely: the 1997 *Act to amend the Copyright Act* imposing a levy on blank tapes in favour of performers and recording artists; the 1987 *Canada Shipping Act* imposing a levy against shipowners to deal with oil spills caused by tankers and other ships; and

the 1985 *Canada Petroleum Resources Act* imposing a levy to support an environmental studies research fund.

It is true that none of these Bills gave rise to any challenge regarding financial procedure, but it is also true that all these Bills originated in this House, a point I would ask hon. Members to keep in mind.

A brief review of the history of Bill S-15 may be helpful here since it was mentioned by many hon. Members rising to present the case for the Bill going forward.

The predecessor to this Bill is Bill S-13, introduced in the Thirty-Sixth Parliament where much the same objection was raised to that Bill. On December 2, 1998, Mr. Speaker Parent ruled that since the Bill proposed a tax, did not originate in the House of Commons and was not preceded by a ways and means motion, it was not properly before the House. He declared first reading proceedings null and void and ordered the item withdrawn from the *Order Paper*.

Basically the same issue, that is, the establishment through an industry levy of a foundation to prevent the use of tobacco products and actively promote non-smoking by Canadian youth, is now before us, though in significantly modified form.

The original Bill has been redrafted with a view to addressing the procedural difficulties identified in Mr. Speaker Parent's ruling and so make the new Bill, Bill S-15, conform with House of Commons practice and procedure. Supporters of Bill S-15, led by its Commons sponsor, the hon. Member for Lac-St-Louis, argue that the modifications made to the text of the Bill are sufficient to ensure that it is now properly before the House and may proceed. Let us now examine the arguments.

It is not my intention to deal with all aspects of the distinction between a tax and a levy, or the various ways in which the two may be confused. For instance, while a levy may not raise funds that find their way into the consolidated revenue fund, that is not an issue in the present case, and we will therefore set it aside.

As well, it is admitted that the Bill provides benefits to others besides those in the industry, but benefits of this kind are not prohibited in a bill which imposes a levy, and that question need not detain us here.

The central issue in the case before us is whether or not the levy contained in Bill S-15 is imposed for purposes beneficial to the tobacco industry.

In order to make this determination it is necessary to turn to the Bill itself. Indeed several Members have enjoined the Chair not to go beyond the text of the Bill or to engage in speculation concerning matters not dealt with directly in the clauses of the Bill. The Chair has accepted this advice in the spirit in which it is given. I intend to confine myself solely and exclusively to a consideration of the procedural issue which is before us.

The Bill's supporters contend that the moneys raised to finance the work of the foundation constitute a levy, not a tax, because the creation of this foundation is beneficial to the tobacco industry. Pointing to the preamble of the Bill as well as to part III, clause 34, which states the specific industry benefits of the Bill, they argue that these declaratory statements constitute compelling evidence of a levy.

If such is the case then there would be no problem with the Bill originating in the other place. As Mr. Speaker Parent said in his ruling on Bill S-13, and this applies equally to Bill S-15, the central issue is whether or not the charge imposed is imposed for a purpose beneficial to the tobacco industry.

In Bill S-13 no industry benefits were indicated in the text of the Bill as they now are in clause 34 of Bill S-15. However a recitation of benefits in the text of the Bill does not necessarily resolve this issue, particularly where it is clear from clause 3 that the Bill also has a purpose that is beneficial to the public which would support the view that the charge imposed by the Bill is a tax and not a levy. In that case significant impediments would remain, for as *Erskine May*, 22nd edition, explains at page 779:

> Modern legislation, however, frequently makes provision for the imposition of other types of fees or payment which, although not taxes in a strict sense, have enough of the characteristics of taxation to require to be treated as "charges upon the people".

I think any reader of the terms of Bill S-15 would agree that it serves two purposes. One is a public purpose, that is protecting young persons against possible adverse health effects derived from the use of tobacco products. The other is an industry purpose, namely attracting the benefits indicated in the Bill derived from the industry supporting and being seen to support its public purpose.

In ruling on this point of order, the Chair must determine which of these two purposes is the primary purpose of the Bill so that it can decide whether the charge imposed by the Bill can be seen as a levy or must be considered as having "enough of the characteristics of taxation" to be considered a tax.

The summary that accompanies Bill S-15 reads as follows:

> This enactment incorporates the Canadian Tobacco Youth Protection Foundation, a non-profit corporation established on behalf of the tobacco industry, whose mandate is to prevent the use of tobacco products by young persons in Canada. A levy would be imposed on tobacco manufacturers in order to provide the Foundation with the necessary funds to carry out its objects and activities.

An examination of the provisions of the Bill has satisfied me that this summary is in general an accurate account of the purpose of the Bill. This aim is, in the words of the hon. Member for Lac-Saint-Louis, a public policy objective, a conclusion further supported by material submitted by the hon. House Leader of the Official Opposition, that is, advertisements by tobacco manufacturers in support of Bill S-15 which state:

> The sole purpose of Bill S-15 is to protect the health of Canadian children.

Based upon my reading of the text of Bill S-15, I am satisfied that the Bill seeks primarily to attain a public policy end and only secondarily seeks to attain benefits to the industry. The hon. Member for Lac-Saint-Louis has asked:

> Is a foundation created by an industry under suspicion because it carries out objectives that are completely different from those of the industry itself?

My reply is that the foundation to be created is in no way suspect, but the fact that legislation is required to establish that body and to provide it with funds remains profoundly troubling if I am to be persuaded that this Bill is primarily an initiative that is of benefit to the industry.

The question could be asked: What prevents the industry itself from simply raising prices on its products so that it can fund the work of such a foundation? Why is legislation required to achieve that end?

While it is not my role to comment on such measures one way or the other, I must recognize that there is very broad public support for measures to reduce and even eliminate youth smoking. This is, in my view, germane to the issue of distinguishing between public purpose and industry purpose.

I accept on their face the statements in the preamble and in clause 34 spelling out the benefits to the tobacco industry of the enactment of this Bill. Neither am I judging what has been called "the substance of (the Bill) or the moral or ethical considerations of why the foundation is being created". Nevertheless, I remain unable to regard Bill S-15 as anything other than a bill which seeks to attain, as its principal aim, a reduction in youth smoking by the imposition of a tax on the tobacco industry.

The declared benefits to the tobacco industry in Bill S-15 are expressly set out in clause 34 but it still causes the Chair considerable difficulty, for while it states the benefits which the proposed act seeks for the tobacco industry, clause 34 does not actually provide any of those benefits. It is purely declaratory in nature. In fact I have not been able to identify in the Bill any dispositions that provide for the alleged benefits to the industry other than those which provide support exclusively to what is acknowledged as being a public policy objective.

Let me give the House an example of what I mean. Among the declared benefits listed in clause 34 is the claim in section (i) that in the Bill:

> —the basis is laid for
>
> (i) a greater tolerance of the industry to the extent that its products are used in a legal market, and
>
> (ii) reasonable limits on regulation of the industry.

Even accepting at face value that these two items would be beneficial to the tobacco industry, I can find no measures in the Bill to promote greater tolerance or to touch in any way the current regulatory regime or limit the Government in any manner with respect to the regulation of the industry.

Simply stated, I can find no indication that the declared benefits in clause 34, insofar as they are benefits to the industry, are provided for in the operative clauses of Bill S-15. The use of a levy must be one where the industry benefits sought are, if not direct, at least clear to a reasonable person. I do not speculate on whether or not these benefits would or would not accrue to the industry subsequent to the adoption of this Bill, but in my view the Bill itself does not provide for them.

What I have sought to do in this ruling is not to innovate or set a new standard, but only to make explicit those factors that, in my view, have always formed the basis of our practice when distinguishing levies from taxes.

As your Speaker, I have to be concerned with where the Bill originates, for I am charged with defending the privileges of this House, particularly in a case such as Bill S-15 involving the constitutional primacy of this House *vis-à-vis* the other place in respect of the imposition of taxes.

And, in my judgment, the strict standard for accepting as legitimate a proposed levy has not been met.

As your Speaker, I am not blind to the irony of my position. In judging Bill S-15 to be imposing what amounts to a tax to fund an initiative with a worthy public policy objective, I will, in effect, be blocking that initiative.

However to do otherwise, to give Bill S-15 the benefit of the doubt and turn a blind eye to the public purpose for which the levy on the industry is being imposed, would be to shirk my duty as Speaker of this House. It would be to leave open the possibility that the primacy of this House in respect of taxation, as well as the financial initiative of the Crown in this House, would be compromised to where they had meaning in form only.

Accordingly, I must conclude that the levy provided for in part IV of Bill S-15 constitutes a tax. I am therefore obliged on both procedural and constitutional grounds to order that the first reading proceedings on Bill S-15 be declared null and void and that the Bill be withdrawn from the *Order Paper*.

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1. *Debates*, May 30, 2001, pp. 4406-7.
2. *Debates*, May 30, 2001, pp. 4408-13.
3. *Debates*, May 31, 2001, pp. 4483-5.
4. *Journals*, June 12, 2001, p. 537.

The Legislative Process

Senate Public Bills

Admissibility: taxation

November 27, 2001 *Debates*, pp. 7573-4

Context: On November 27, 2001, Jim Abbott (Kootenay–Columbia) rose on a point of order with respect to Bill S-7, *An Act to amend the Broadcasting Act*. Mr. Abbott argued that the Bill would violate the financial privileges of the House in that it would introduce a new tax by increasing the liabilities on an existing fund. He concluded that Bill S-7 should accordingly be withdrawn from the *Order Paper*.[1]

Resolution: The Speaker ruled immediately. He declared that Bill S-7 would not impose taxes and that, although the word "taxation" was used in the Bill, it referred to the taxation of costs, meaning the review of costs with a view to determining whether they were authorized and reasonable, consistent with existing, applicable regulations. This being the case, he concluded that the Bill was properly before the House.

Decision of the Chair

The Speaker: The Chair wants to thank the hon. Member for Kootenay–Columbia for his very able argument on this point. I cannot tell him how pleased I am to have my own decision cited as an authority for something in the House. Having said that I am afraid I must disagree with the premise of his question.

In my view Bill S-7 would not impose taxes. Rather it would give to the CRTC, a quasi-judicial body, the power to make regulations enabling the Commission to direct that the costs of a party appearing before the Commission be paid by another party according to a scale of costs set out by the Commission in its regulations similar to that which any court in this country can do upon the adjudication of a case before it.

As explained in the Bill's summary, costs are the allowed expenses that a party incurs in respect of a proceeding. The taxation of costs means the review

of the costs by an officer of the Commission with a view to determining that they are authorized and reasonable.

The subject matter of Bill S-7 is not the imposition of any tax although the word taxation is used in the Bill. Accordingly I cannot find the hon. Member's point of order to be well taken. In my view Bill S-7, at least on this ground, is properly before the House.

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1. *Debates*, November 27, 2011, pp. 7572-3.

The Legislative Process

Form of Bills

Omnibus bills: request to divide

September 20, 2001 *Debates*, pp. 5328-9

Context: On September 20, 2001, Vic Toews (Provencher) rose on a question of privilege with respect to Bill C-15, *Criminal Law Amendment Act, 2001*. Mr. Toews maintained that it was an omnibus bill containing several unrelated principles which impeded the ability of Members to debate or cast their votes responsibly and intelligibly. In his view, it was appropriate that the matter be resolved through a question of privilege, because the work of Members as legislators was being threatened. He suggested that the Bill could, with some justification, be broken down into five general subject areas. Claiming that the views of the opposition could not be properly heard, Mr. Toews appealed to the Speaker to use his authority to divide the Bill. Other Members intervened on the matter.[1]

Resolution: The Speaker ruled immediately. He indicated that the matter was not a question of privilege, and that he would therefore treat it as a point of order. He noted that almost every amendment in Bill C-15 dealt with the *Criminal Code of Canada*, adding that there was no precedent for the Chair to split such a bill. Citing *House of Commons Procedure and Practice, 2000*, he reminded the House that Canadian practice did not permit the Chair to divide a bill because of its complexity or composite nature. Accordingly, the Speaker concluded that it was not for the Chair to divide a bill in the House.

Decision of the Chair

The Speaker: The Chair has carefully weighed all the arguments put forward by hon. Members this morning. I thank them for their interventions.

In my view this issue is not a question of privilege. At best it is a point of order and I will treat it as such. I do not believe the privilege of the House is involved in the discussions on this matter.

I can only note that Bill C-15, which is before the House, deals with amendments to the *Criminal Code* and other Acts. The other Acts are pretty consequential. There are minor, slight changes but almost every amendment in this voluminous Bill deals with the *Criminal Code of Canada*.

I can only imagine what a nightmare it would be for the Standing Committee on Justice and Legal Affairs to be studying the whole *Criminal Code* if that were the Act before the House for passage.

One day it was. One day the *Criminal Code* was adopted in the House. It dealt with far more issues than are dealt with in Bill C-15 and it apparently got through somehow.

There were no invitations extended to the Speaker that we know of to divide that Bill into chunks. If such arguments were put forward they were ignored because there has not been a single precedent cited to the Chair where the Chair has in fact split a bill. I note that in all the arguments this morning. I have asked for this kind of citation and have found none because I submit there is no precedent for the Chair to split such a bill.

I can only refer, as the Government House Leader did in his argument, and he got there before I got to it, to the sections of *Marleau and Montpetit* to which I had reference after receiving the notice of the question of privilege from the hon. Member for Provencher yesterday. I cite again from this work:

> It appears to be entirely proper, in procedural terms, for a bill to amend, repeal or enact more than one Act, provided that the necessary notice is given, it is accompanied by the Royal Recommendation (where necessary), and it follows the form required. However, on the question of whether the Chair can be persuaded to divide a bill simply because it is complex or composite in nature, there are many precedents from which it can be concluded that Canadian practice does not permit this.

The citation referred to in support of that contains, for example, the rulings of Madam Speaker Sauvé which were referred to in argument in which she refused to divide the Bill then before the House, which caused such trouble and the bell ringing incident.

Then of course there was the decision of Mr. Speaker Fraser when he was asked to divide the *Canada-United States Free Trade Agreement Implementation Act*. That was in June 1988, and I know the hon. Government House Leader may have been arguing the point in June. If he was suggesting that someone I knew more personally was involved he is incorrect. I was not elected to the House until November 1988 and I was not part of that argument. In any event, the argument was lost and Mr. Speaker Fraser said this:

> Until the House adopts specific rules relating to omnibus bills, the Chair's role is very limited and the Speaker should remain on the sidelines as debate proceeds and the House resolves the issue.

I have to rule with reluctance that it is not for the Chair to divide a bill in the House. The argument I think would be stronger were this what could be called an omnibus bill, that is one dealing with a myriad of amendments to many different Acts, as was the case, for example, with the Free Trade Implementation Bill, rather than a bill which seeks to amend one Act of the Parliament of Canada.

In my opinion, this is not a point of order, and we can get on with debate.

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1. *Debates,* September 20, 2001, pp. 5326-8.

The Legislative Process

Form of Bills

Ways and means bills: Member arguing subclause to be inappropriate delegation of subordinate law

May 3, 2007 *Debates*, pp. 9047-8

Context: On April 17, 2007, Derek Lee (Scarborough–Rouge River) rose on a point of order. He challenged the admissibility of subclause 13(1) of Bill C-52, *Budget Implementation Act, 2007,* which contained a provision amending the *Income Tax Act* as regards the regulation of the taxation of income trusts by providing for interim taxation rates based on the "Normal Growth Guidelines" issued by the Department of Finance on December 15, 2006. Mr. Lee drew the attention of the Chair to the absence of a corresponding measure from a related ways and means motion. He charged that the Bill attempted to exempt a measure which was, in all but name, delegated legislation, from the rules of the House governing parliamentary scrutiny of subordinate law, and that it did not comply with the Government's own guidelines on the proper drafting of legislation. The Speaker took the matter under advisement.[1] On April 19, 2007, Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform) rose to argue that the matter raised by Mr. Lee was one of debate, noting the absence of any procedural authorities precluding the House from "legislating in this manner". The Speaker continued his consideration of the matter.[2]

Resolution: On May 3, 2007, the Speaker delivered his ruling. He reminded the House that his role was restricted to ensuring that the rules of procedure and practice were respected, and stated that it was not for the Speaker to answer or resolve potential questions or difficulties with respect to the interpretation and future implementation of bills currently before the House. He added that the determination of the legal status of the "Normal Growth Guidelines" issued by the Department of Finance and referred to in subclause 13(1) of the Bill and the authority of the Minister to issue such guidelines were beyond the purview of the Chair. He also noted that it was not for the Speaker to rule on questions related to the Government's compliance with its own rules for drafting legislation. With regard to the issue of ways and means motions and legislation based upon them, he agreed that the contested provision in subclause 13(1) of Bill C-52 did not appear

in Ways and Means Motion No. 10, to which Mr. Lee had referred, but noted that it did appear in Ways and Means Motion No. 20, tabled on March 27 and adopted on March 28, 2007. Since the wording of the Bill accurately reflected that of the motion, he affirmed that the Bill was fully in compliance with the requirements of the Standing Orders in that respect. He concluded that he had not found any procedural irregularities and that consequently subclause 13(1) and Bill C-52 as a whole were in order.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Member for Scarborough–Rouge River on April 17, 2007, concerning the procedural admissibility of Bill C-52, *An Act to implement certain provisions of the budget*, tabled in Parliament on March 19, 2007.

I would like to thank the hon. Member Scarborough–Rouge River for having raised this issue as well as the hon. Leader of the Government in the House of Commons for his submission.

In raising this point of order, the Member for Scarborough–Rouge River appealed to the Chair to find that Bill C-52 is improperly before the House by virtue of the provision included in subclause 13(1) of the Bill, which amends paragraph 122.1(2)(*b*) of the *Income Tax Act*.

This provision, if enacted, would regulate the taxation of existing income trusts during a transitional period by providing for interim taxation rates based on the "Normal Growth Guidelines" issued by the Department of Finance on December 15, 2006.

The hon. Member drew the attention of the Chair to the absence of a corresponding measure from a ways and means motion tabled on October 31, 2006, Ways and Means Motion No. 9.

In reviewing the hon. Member's submission, it became apparent to the Chair that the hon. Member for Scarborough–Rouge River must have been referring to Ways and Means Motion No. 10, tabled on November 2 and concurred in on November 7, 2006, since Ways and Means Motion No. 9 is still on the *Order Paper* and has not been concurred in.

That being said, the Member is quite correct in pointing out that while the motion to which he refers does provide for a transitional exemption applicable to existing income trusts, it does not include the protocol based on the "Normal Growth Guidelines" which later appeared in subclause 13(1) of the Bill.

Describing these "Normal Growth Guidelines" as "no more than a press release", the hon. Member characterized the effect of the provision in question as "a delegation of subordinate law, not by regulation nor by ministerial directive, but by press release".

He expressed concern about the possibility alluded to in the Minister's press release that criteria not included in the Bill might be invoked after its coming into effect to rescind the taxation deferral with respect to specific income trusts and he declared that this would amount to the imposition of an unlegislated supplementary tax burden.

The hon. Member went on to cite a number of authorities, including the *Statutory Instruments Act*, in support of his contention that subclause 13(1) of the Bill attempts to exempt from parliamentary scrutiny by the Standing Joint Committee on the Scrutiny of Regulations a measure that is, in all but name, delegated legislation.

Finally, the hon. Member stated that subclause 13(1) of the Bill fails to conform to the Government's own drafting guidelines, in particular to its standards for the making of proper subordinate law as expressed in the *Guide to Making Federal Acts and Regulations* promulgated by the Privy Council Office. He concluded with an appeal to the Chair to rule subclause 13(1) of Bill C-52 null and void.

The hon. Government House Leader responded to the point of order on April 19. On the issue of the prior inclusion of the provision of subclause 13(1) in a previously adopted ways and means motion, he drew the attention of the Chair to Ways and Means Motion No. 20, adopted by the House on March 28, affirming that the latter motion did indeed include the provision in question.

With respect to the argument that subclause 13(1) of the Bill provides for the inappropriate delegation of the right to make subordinate law, he declared that the provision in question violates no procedural prohibition recognized

by this House and is therefore a matter for debate. He added that the same principle applies to the issue of the conformity of the Bill to the Government's drafting guidelines.

The hon. Government House Leader also noted that it is not at all uncommon for bills to establish forms of delegated legislation not subject to the *Statutory Instruments Act*.

I have examined this matter with care in view of the complexity of the issues raised. As I have done on many occasions in the past, I must remind the House that my role here is restricted to ensuring that our rules of procedure and our practice are respected. Potential questions or difficulties with respect to the interpretation and future implementation of bills currently before the House are matters of law and are not for the Speaker to answer or resolve.

The legal status of the "Normal Growth Guidelines" issued by the Finance Department on December 15, 2006 and referred to in subclause 13(1) of the Bill and the authority of the Minister to issue such guidelines are likewise beyond the purview of the Chair. What does or does not fall within the definition of "statutory instrument" is a legal question and not one of procedure.

In our practice, the Standing Joint Committee on the Scrutiny of Regulations has the duty of examining whether the Government is employing "the appropriate principles and practices… in the drafting powers enabling delegates of Parliament to make subordinate laws". That quote comes from page 689 of *House of Commons Procedure and Practice*.

It is not, however, for the Speaker to rule on such questions or to evaluate the Government's compliance with its own rules for drafting legislation. There is, furthermore, no procedural objection to making reference in legislation to documents which are not subject to review by the House or its committees. Whether provisions which do so should be adopted, amended or rejected is a decision for the House to make.

With regard to the issue of the link between ways and means motions and legislation based upon them, it is perhaps useful to quote a passage from *House of Commons Procedure and Practice* at page 760. It states:

> Ways and Means motions can be expressed in general terms, or be very specific, as in the form of draft legislation. In either case, they establish limits on the scope—specifically tax rates and their applicability—of the legislative measures they propose.

This principle is reflected in Standing Order 83(4), which states in part:

> The adoption of any Ways and Means motion shall be an order to bring in a bill or bills based on the provisions of any such motion—

Having carefully examined the ways and means motions relevant to this question, the Chair agrees that the contested provision in subclause 13(1) of Bill C-52 does not appear in Ways and Means Motion No. 10, to which the hon. Member for Scarborough–Rouge River refers, which was tabled on November 2 and adopted on November 7, 2006.

However, as the Government House Leader has indicated, the provision does appear in Ways and Means Motion No. 20 tabled on March 27 and adopted on March 28, 2007. Bill C-52 is based on Ways and Means Motion No. 20. Since the wording of the Bill accurately reflects that of the motion, the Chair must conclude that the Bill is fully in compliance with the requirements of Standing Order 83(4).

The other issues raised in the point of order of the hon. Member for Scarborough–Rouge River, while interesting and cogently argued, are related to the substance of the Bill and to legal issues arising therefrom and not to procedural considerations. While they may well be of interest to Members as they consider this legislative proposal, they are beyond the purview of the Chair.

In conclusion, the Chair has not found any procedural irregularities in this matter. Subclause 13(1) of the Bill and Bill C-52 as a whole are in order and the Bill can proceed in its current form.

I would like to once again thank the hon. Member for Scarborough–Rouge River for his vigilance in drawing these matters to the attention of the House.

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1. *Debates*, April 17, 2007, pp. 8308-10.
2. *Debates*, April 19, 2007, pp. 8454-6.

The Legislative Process /067

Form of Bills

Drafting: constitutionality; improper form

April 17, 2008 *Debates*, pp. 5070-2

Context: On April 9, 2008, Derek Lee (Scarborough–Rouge River) rose on a point of order with respect to the constitutionality and form of Bill C-505, *An Act to amend the Canadian Multiculturalism Act (non-application in Quebec).* He argued that the Bill as formulated should not be considered for debate. He submitted that it was unconstitutional as clause 2 was inconsistent with section 27 of the *Canadian Charter of Rights and Freedoms*. Another possibility was that the Bill, he affirmed, could be seen as a *de facto* constitutional amendment, in which case it should not be in the form of a bill but, instead, in the form of a resolution. Based on both constitutionality and form, he requested either that clause 2 be struck from the Bill or that the Bill be struck from the *Order Paper*.[1] After hearing from other Members, the Speaker took the matter under advisement.[2]

Resolution: On April 17, 2008, the Speaker delivered his ruling. He emphasized that since the Speaker has no authority to rule on the constitutionality of legislation, he had examined the Bill only with respect to whether it was in the appropriate form. He stated that the Bill could not be ruled out of order simply because it was in the form of a bill and not a resolution. He ruled that as the purpose of the Bill was to restrict the application of an existing statute and as it proposed to amend an existing statute to achieve that objective, it was in the proper form. Accordingly, the Speaker ruled that deliberations on the Bill could continue.

Decision of the Chair

The Speaker: I am now prepared to rule on a point of order raised on April 9, 2008 by the hon. Member for Scarborough–Rouge River concerning Bill C-505, *An Act to amend the Canadian Multiculturalism Act (non-application in Quebec).*

I would like to thank the Member for Scarborough–Rouge River for having drawn this matter to the attention of the House, as well as the hon. Whip of

the Bloc Québécois, the hon. House Leader of the Bloc Québécois, and the hon. Member for Mississauga South for their comments.

The hon. Member for Scarborough–Rouge River raised two issues in relation to this Bill. First, he argued that the Bill as formulated is unconstitutional in that clause 2 states, "The Government of Canada's multiculturalism policy does not apply in Quebec". This, he believed, was inconsistent with section 27 of the *Charter of Rights and Freedoms*.

Second, he argued that Bill C-505 could be seen as a *de facto* constitutional amendment. He based this assertion on the claim that the provisions in the *Canadian Multiculturalism Act* mirror the provisions concerning multiculturalism that are enshrined in the *Canadian Charter of Rights and Freedoms*. If the proposed measure is indeed an attempt to amend the Constitution, the Member argued, as his second point, that it should not be in the form of a bill but, instead, in the form of a resolution. His conclusion is that Bill C-505 is not in the correct form and requested either clause 2 be struck from the Bill or that the Order for second reading of the Bill be discharged and that the Bill be struck from the *Order Paper*.

In his intervention, the Whip of the Bloc Québécois pointed out that one of the criteria used by the Subcommittee on Private Members' Business in determining the votability of an item is whether or not it appears to be unconstitutional. As the Subcommittee did not judge Bill C-505 to be non-votable, the Member argued that the matter of constitutionality had been settled.

In his arguments on April 10, the hon. House Leader of the Bloc Québécois argued that the objections raised to the Bill were of a legal nature, and not procedural, and reminded the House that the Speaker does not rule on legal matters. He also claimed that the Bill seeks to amend an existing law only and has no effect on the Constitution.

The Member for Mississauga South stated that the Subcommittee on Private Members' Business, in determining whether or not a bill should be votable, may not be in a position to assess fully its constitutionality. He maintained that the process for dealing with reports of that Subcommittee did not afford an opportunity for Members to express concerns regarding

constitutionality and stated that it was therefore appropriate for the Member for Scarborough–Rouge River to seek a ruling from the Speaker.

In light of the issue at hand and the arguments put forth, I would be remiss if I did not refer Members to *House of Commons Procedure and Practice*, at page 542, which states:

> Though raised on a point of order, hypothetical queries on procedure cannot be addressed to the Speaker nor may constitutional questions or questions of law.

Mr. Speaker Fraser also succinctly addressed this limited role of the Chair, when he declared in a ruling regarding a similar matter, which can be found in the *Debates* of September 16, 1991, at page 2179, and I quote:

> It may later be for a court to decide that the House has done something that does not have the force and effect of law, but that is a matter for the court and not a matter for the Speaker.

Therefore, mindful of my limited responsibility in this case, I have undertaken to examine the Bill only with respect to whether it is in the appropriate form for the purpose that it seeks to achieve.

Let me first address the contention of the hon. Member for Scarborough–Rouge River that amendments to the Constitution must be in the form of a resolution. There is no disputing that the House has in recent years considered several resolutions of the type referred by the hon. Member. For example, on November 18 and December 9, 1997, the House adopted resolutions dealing with the school systems in Quebec and Newfoundland respectively; and, on October 30, 2001, the House adopted a resolution changing the name of Newfoundland to Newfoundland and Labrador.

But the House has also seen bills proposing to amend the Constitution. Examples in this Parliament include private Member's Bill C-223, *An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms and to amend the Constitution Act, 1867*, standing in the name of the hon. Member for Yorkton–Melville; as well as Government Bills C-22, *An Act to amend the Constitution Act, 1867 (Democratic representation)* and C-19, *An Act to amend*

the Constitution Act, 1867 (Senate tenure), both standing in the name of the hon. Government House Leader.

I offer these examples simply to explain that this Bill cannot be considered not in order simply because it is in the form of a bill and not a resolution. That said, let us examine the actual provisions of the disputed bill.

Bill C-505 consists of two clauses, both of which seek to amend provisions of the *Canadian Multiculturalism Act*. Clause 1 proposes the addition of a new paragraph to the preamble of the Act, concerning the special situation of Quebec and clause 2 adds a subsection to section 3 of the Act, exempting the province of Quebec from the Government's multiculturalism policy. There is no reference in the Bill to any other statute or for that matter to the *Canadian Charter of Rights and Freedoms*.

I have therefore concluded that, since the purpose of this Bill is to restrict the application of an existing statute and since this Bill proposes an amendment to the existing statute to achieve that objective, Bill C-505 is in the proper form.

As your Speaker, I have no authority to rule on the constitutionality of Bill C-505. Accordingly, given that Bill C-505 is in the proper form, deliberations on it may continue in accordance with our rules governing the consideration of Private Members' Business.

I thank the hon. Member for Scarborough–Rouge River for having raised this matter.

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1. *Debates,* April 9, 2008, pp. 4686-7.
2. *Debates,* April 9, 2008, p. 4687; April 10, 2008, pp. 4723-4.

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Chapter 6 — Financial Procedures

Introduction

The written rules and parliamentary practices governing financial procedures specifically, the business of supply, the business of ways and means, and the royal recommendation are among the most intricate and difficult aspects of parliamentary procedure. The roots of these practices extend far back into British parliamentary history. They involve the process by which the various taxation and appropriation bills, as well as substantive bills with financial implications are introduced and passed.

A brief explanation of the business of supply and the business of ways and means may help to clarify the issues addressed in this chapter.

The business of supply is the process by which the Government submits its projected expenditures for parliamentary approval. The process has two phases: the legislative phase, which involves the estimates and the necessary appropriation bills, and a general debate phase, involving opposition supply motions on allotted days, the number and disposition of which are governed by specific Standing Orders.

The business of ways and means is the process by which the Government obtains the funds necessary to meet its expenses. It is, in essence, the mechanism by which the Government raises taxes, presents its budgets and thus influences the nation's economy. The ways and means process has two phases: the budget presentation, in which the Minister of Finance delivers a statement setting out the Government's economic policy and tables notices of ways and means motions; and the legislative phase, in which a ways and means motion is called and then concurred in as a prerequisite to the introduction and first reading of any tax bill providing legislative authority for an increased charge on the taxpayer.

In Canada, the Crown alone, acting on the advice of the Cabinet, initiates all public expenditure and Parliament may authorize only that spending which has been recommended by the Governor General. This prerogative, referred to as the "financial initiative of the Crown" is essential to the system of responsible Government and is signified by way of the royal recommendation.

The Speaker has the duty and responsibility to ensure that proper procedure is followed throughout the financial cycle and that all public bills, whether they emanate from the Government or a private Member, in the House or the Senate, respect the financial prerogative of the Crown. Mr. Speaker Milliken's decisions frequently contained a detailed analysis and explanation of the procedural points at issue. The 21 decisions selected for this chapter touch upon supply issues, ways and means issues, and legislative practices involving the royal recommendation. With respect to supply issues, the decisions address a variety of topics, including: the designation of allotted days; the procedural validity of opposition day motions and amendments proposed to such motions; and the presentation of Votes in the estimates without legislative authority. It is also important to note that a key statement made by the Speaker on May 7, 2002, is included since it dealt with the first time the estimates were considered in the Committee of the Whole under new procedures.

With respect to ways and means issues, Mr. Speaker Milliken dealt with the admissibility of ways and means motions, as well as the question of the procedural significance of the practice of budget secrecy. Also, included in this chapter are decisions pertaining to the financial prerogative of the Crown and those relating to the use of lapsed Governor General's Special Warrants to cover payments for certain programs.

Financial Procedures

Business of Supply

Allotted days: apportionment between parties

November 13, 2007 *Debates*, pp. 775-6

Context: On November 13, 2007, Pierre Paquette (Joliette) rose on a point of order with regard to the allocation of the supply day designated for that day. The prorogation of the First Session of the Thirty-Ninth Parliament had resulted in fewer total sitting days than anticipated by the House of Commons calendar, and there was accordingly a reduction in the number of supply days. This had led to a disagreement between the Bloc Québécois and the New Democratic Party as to who was entitled to that day's supply day motion. Mr. Paquette noted that both parties had put motions on notice. Citing the Standing Orders and *House of Commons Procedure and Practice,* 2000, referring to the relative standing of the two parties in the House, and summarizing the distribution of allotted days, he asked the Speaker to allocate the day to the Bloc Québécois. Libby Davies (Vancouver East) then responded, pointing out that the two parties had been unable to agree on the distribution of opposition days for the supply period ending December 10, 2007, and argued that the day should be allocated to the New Democratic Party.[1]

Resolution: Having received correspondence on the issue and having heard the arguments, the Speaker ruled immediately. He explained the process for the selection and allocation of allotted days among the parties and ruled that November 13, the fourth day in the current period, should be allotted to the Bloc Québécois on the grounds that the days allotted to each party should reflect its representation in the House. He added, however, that the House has never seen fit to elaborate the grounds on which the Chair might exercise such discretion and, as his predecessors had done, he invited the Standing Committee on Procedure and House Affairs to make recommendations to clarify these issues.

Decision of the Chair

The Speaker: Order, please. The Chair obviously was aware this argument might take place, because correspondence had been sent outlining the arguments of the two parties that have made submissions and of others. I have had an opportunity to read that correspondence. I would like to thank the Members who intervened in the matter and thank those who sent the letters. I am quite prepared to make a ruling now on the apportionment of the remaining allotted days for the supply period ending on December 10, 2007.

The number of supply days and how they are distributed throughout the year are set out in Standing Order 81(10)(*a*), which states:

> In any calendar year, seven sitting days shall be allotted to the Business of Supply for the period ending not later than December 10; seven additional days shall be allotted to the Business of Supply in the period ending not later than March 26; and eight additional days shall be allotted to the Business of Supply in the period ending not later than June 23; provided that the number of sitting days so allotted may be altered pursuant to paragraph (*b*) or (*c*) of this section. These twenty-two days are to be designated as allotted days. In any calendar year, no more than one fifth of all the allotted days shall fall on a Wednesday and no more than one fifth thereof shall fall on a Friday.

As is the practice at the beginning of each Parliament, an agreement was reached among the opposition parties concerning the apportionment of the 22 allotted days for the calendar year. However, in 2007, prorogation intervened, so some three weeks of sittings otherwise projected by the House of Commons calendar were not held. As a result, given that the House did not begin sitting until October 16, pursuant to Standing Order 81(10)(*b*) the number of supply days for the supply period ending December 10 was reduced from seven to five.

As the House has heard this morning, this reduction in the number of allotted days has resulted in the parties in opposition to the Government being unable to reach an agreement concerning how those days should be apportioned in this supply period. Specifically, there is disagreement about whose motion should be debated today.

The Speaker's role in the apportionment of supply days is addressed directly in Standing Order 81(14)(*b*), which states:

> When notice has been given of two or more motions by Members in opposition to the government for consideration on an allotted day, the Speaker shall have power to select which of the proposed motions shall have precedence in that sitting.

Furthermore, as has been mentioned in the arguments made today, *House of Commons Procedure and Practice*, p. 725, states:

> Generally, in making their decision, Speakers will take into consideration the following: representation of the parties in the House; the distribution of sponsorship to date; fair play towards small parties; the date of notice; the sponsor of the motion; the subject matter; whether or not the motion is votable; and what has happened, by agreement among the parties, in the immediate past Supply periods.

In the vast majority of cases, of course, the opposition parties are able to reach an agreement as to which party will bring forward the motion to be debated in the House on a particular supply day. The number of cases in which the parties have not been able to agree is so small it is only rarely that the Speaker has been called upon to adjudicate such a dispute, fulfilling the obligation set out in the Standing Orders.

Past Speakers have noted that little guidance is provided concerning how the Speaker should exercise his discretion in carrying out those responsibilities. Even though factors to be taken into consideration are listed in *House of Commons Procedure and Practice*, the resolution of any particular case will depend, as it usually does in most procedural difficulties that the House encounters, on the particular circumstances which confront the House.

By way of example, let us consider the factor of votability cited in *Marleau and Montpetit*. It might be argued that votability ceases to have much significance when the Speaker adjudicates a dispute, given that [in][2] 2005 amendments to the Standing Orders made all opposition motions automatically votable.

However, in any dispute, one factor always plays a major role. As Speaker Francis stated in a ruling given on May 31, 1984, at page 4223 of *Debates*:

> The Chair's selection must be based on the representations of the Parties in the House…

At the time of that ruling, there were only two parties in opposition; today there are three. However, the representation of the various opposition parties remains the primary consideration in ensuring procedural fairness to all opposition parties, large and small.

As we have already reviewed, the Standing Orders explicitly set out the number of allotted days and their distribution among the three supply periods on the basis of the calendar year. In this Parliament, as in the past, the agreement among the parties on apportionment of those days was based on the proportional representation of each opposition party and calculated using the traditional numerical rounding conventions. Translated into practical terms, this meant that of the 22 supply days, the Official Opposition got 12, the Bloc Québécois 6, and the NDP 4. However, prorogation saw the total number of supply days for this calendar year go from 22 to 20.

Any intervention by the Chair at this stage must, of course, take into account the apportionment that has already occurred during the two preceding supply periods.

An examination of the *Journals* of the House for the first two supply periods—ending in March and June respectively—shows that the Official Opposition has so far received eight allotted days, the Bloc Québécois four and the New Democratic Party three.

It seems only reasonable, then, that in the situation before us the Chair make its decision on the number of supply days to be allocated to each party in these new circumstances on the same basis as that used in reaching the original agreement among the parties. The number of days allotted to each party should reflect that party's representation in the House. By using the same method of calculation the parties used to arrive at their original agreement, the Chair has determined that the apportionment for the revised total of 20 days

works out as follows: 11 for the Official Opposition, 6 for the Bloc Québécois, and 3 for the NDP.

While the Chair recognizes that this distribution is only approximate with respect to the relative numbers of each opposition party, it provides the closest approximation possible to their representation. Furthermore, let me stress again that this conclusion is based on the very same calculation used by the parties in reaching their original agreement.

I suppose it might be argued that had it been known at the beginning of the year that there would only be 20 allotted days, the parties, among themselves, might have reached a different agreement concerning the apportionment of allotted days for the 2007 calendar year, or for one or more of the supply periods in it, but for the Speaker that remains speculation. The Chair must address the specific situation in which the House finds itself today and must, of course, take into account what has occurred so far this year.

In this current and last supply period, the Official Opposition has so far had two allotted days, for a total of 10 this year; the Bloc Québécois has had one allotted day, for a total of five in 2007.

It is therefore my ruling that today, November 13, 2007, the fourth day in the current period, shall be allotted to the Bloc Québécois. The fifth day, when it is designated, shall be allotted to the Official Opposition.

I remind the House that the guidance provided by the Standing Orders and our practice is of limited assistance to the Speaker in adjudicating this kind of dispute. The application of a mathematical formula may seem to be a crude method for a Speaker to use, one that does not take sufficient account of more subtle aspects of the problem. I believe that the Speaker's discretion in these matters is limited, especially given that the House itself has never seen fit to elaborate on the grounds on which the Chair might exercise such discretion. I do no more than repeat the request of my predecessors when I say that the Chair would welcome any recommendations from the Standing Committee on Procedure and House Affairs that might clarify these issues for the future.

I thank hon. Members for their attention.

1. *Debates*, November 13, 2007, pp. 773-5.
2. The word "in" is missing from the published *Debates*.

Financial Procedures

Business of Supply

Opposition motions: admissibility

March 20, 2001 *Debates*, p. 1875

Context: On March 20, 2001, Don Boudria (Leader of the Government in the House of Commons), rose on a point of order with respect to the admissibility of an opposition motion moved by Stockwell Day (Leader of the Opposition). The motion sought Government assistance for farm families. The Government House Leader argued that the motion called for the Government to authorize the expenditure of public funds, thus contravening Standing Order 79(1), which requires a royal recommendation to accompany any vote, resolution, address or bill which contains provisions for such expenditures. Other Members spoke to the point of order.[1]

Resolution: The Speaker ruled immediately. He made reference to several instances of similar motions being moved in the House, and noted that no procedural arguments as to their admissibility had been presented at the time. The Speaker emphasized that when a motion is put to the House, the Chair reviews its procedural acceptability to ensure that it is within the rules and the precedents of the House. He stated that this was the case with the motion in question and declared the motion to be in order.

Decision of the Chair

The Speaker: The Chair thanks all hon. Members who have made contributions to this debate, the House Leader for the Official Opposition, the Government House Leader and the Member for Pictou–Antigonish–Guysborough.

I start by citing to hon. Members page 724 of *Marleau and Montpetit*:

> Members in opposition to the government may propose motions for debate on any matter falling within the jurisdiction of the Parliament of Canada, as well as on committee reports concerning Estimates. The Standing Orders give Members a very wide scope in proposing

> opposition motions on Supply days and, unless the motion is clearly and undoubtedly irregular (e.g., where the procedural aspect is not open to reasonable argument), the Chair does not intervene.

Notwithstanding the very able arguments of the Government House Leader, the Chair has reviewed this motion and I will allow myself to fall into the temptation that the Government House Leader warned me against by citing to the House past practice in respect of this matter.

On October 25, 1999, the hon. Member for Selkirk–Interlake proposed a motion to the House:

> That, in the opinion of this House, the government has failed to defend the interest of Canadian farmers from the unfair subsidies and unfair trading practices by foreign countries accordingly, the government should immediately ensure that emergency compensation is delivered to farmers—

On March 2, 2000, the hon. Member for Halifax moved:

> That this House calls upon the government to stand up for the Canadian value of universal public health care by announcing within one week of the passage of this motion a substantial and sustained increase in cash transfers for health—

On March 20, 2000, the hon. Member for Calgary–Nose Hill moved:

> That this House calls on the Minister of Finance to increase the Canada health and social transfer by $1.5 billion—

There is ample precedent for these kinds of motions to be moved in the House. The Chair, in considering these motions, admittedly heard no argument on the admissibility of the motions. However, in putting any motion to the House, the Chair reviews its procedural acceptability, and unless the Chair feels that the motion is within the rules and the precedents of the House, the Chair will decline to put the motion and may instruct hon. Members that amendments are required, and that consultations are an ongoing feature of submissions of motions and amendments in the House.

As hon. Members know, if they submit an amendment that in the opinion of the staff of the House working under the Speaker's direction feel is inappropriate or out of order, suggestions are made to improve the wording or change the wording to bring it within the practices of the House.

While the hon. Government House Leader feels it might be falling into temptation on my part to rely on these past practices, the fact is they have been allowed in the past because the Chair took the view that they were in order. It might have been urged otherwise, but I suspect the ruling then would have been the same as it is today, and that is, that this motion is in fact in order. Notwithstanding the very able arguments of the hon. Government House Leader, we will proceed with the debate.

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1. *Debates*, March 20, 2001, pp. 1873-5.

Financial Procedures

Business of Supply

Opposition motions: votable motions; allocation

March 11 and 12, 2002 — *Debates*, p. 9481 and pp. 9547-8

Context: On March 11, 2002, the Speaker informed the House that the opposition motion to be considered on Tuesday, March 12, 2002, pursuant to Standing Order 81(14), would be that on national security standing on the *Order Paper* in the name of Peter MacKay (Pictou–Antigonish–Guysborough). The Speaker added that the motion would be votable. Randy White (Langley–Abbotsford) rose on a point of order and stated that the motion should be non-votable, given that the Progressive Conservative/Democratic Representative Coalition (PC/DR) Coalition had already exhausted their allotment of votable motions.[1] (According to the allotment negotiated by the parties, the Coalition was entitled to two opposition motions, one of which was votable.) The Speaker took the matter under advisement.

Later that day, the Speaker delivered his ruling. He noted what appeared to be disagreement about the allocation of votable motions among the parties. He invited the opposition House Leaders to resolve the matter and proposed that, if there was no resolution, he would have the House proceed with the consideration of the motion as it then appeared on the *Order Paper*, as a votable motion. After hearing further from Mr. White and Mr. MacKay, the Speaker stated that he would decline to intervene in the debate and again, invited the House Leaders to meet in order to attempt to reach an agreement.[2]

The following day, March 12, 2002, Michel Gauthier (Roberval) rose on a point of order, asking the Speaker to reconsider his decision. After hearing from several other Members, the Speaker again took the matter under advisement.[3]

Resolution: Later in the sitting of March 12, 2002, the Speaker delivered his second ruling on the matter. He noted that although the Standing Orders empower the Speaker to resolve disputes over which opposition party's motion is to be considered on a given day, they were silent on the Speaker's authority to designate a motion as votable. Accordingly, he advised the House that he would not accept the designation of any motion as votable until such time as a written agreement

regarding the allocation of opposition days and of votable motions was received by the Chair.

(**Editor's Note:** Both decisions on this matter are reproduced below.)

Decisions of the Chair

Monday, March 11

The Speaker: Before we resume debate, I want to give a ruling with regard to the point of order raised this morning by the hon. House Leader of the Official Opposition with regard to the status of the motion to be debated during the opposition day tomorrow.

The hon. Member for Langley–Abbotsford contends that the motion should be non-votable. I have now looked into the matter and it appears that there is disagreement about the allocation of votable motions among the various parties in opposition.

I wish to refer all hon. Members to Standing Order 81(16) which reads in part as follows:

> —Not more than fourteen opposition motions in total shall be motions that shall come to a vote during the three supply periods provided pursuant to section (10) of this Standing Order.

I do not think I need to read the rest of it. I refer hon. Members to *Marleau and Montpetit*. It is quite clear about the guidance that is given to the Chair in these matters when it states at page 726:

> —The allocation of the 14 votable motions is worked out in an informal agreement among the opposition parties.

In the absence of such an agreement, *Marleau and Montpetit* does not suggest that the Chair provide a resolution.

I refer you to page 726, and I quote:

> —However, except in a situation where the limit of allowable votable motions in a Supply period or in any year has been reached, it is not within the competence of the Chair to rule whether or not a particular motion should be votable.

I would therefore invite the opposition House Leaders to discuss the matter as soon as possible since this item of business is before the House tomorrow. I would hope that they will be able to resolve the dispute that has arisen and inform the Chair of that resolution. Failing such an agreement, I would propose to proceed with the consideration of tomorrow's motion as it now appears, that is, as a votable motion.

Tuesday, March 12

The Speaker: Order, please. I am now ready to rule with regard to the point of order raised this morning by the hon. House Leader of the Bloc Québécois relating to a decision made yesterday concerning the votable status of the PC/DR motion to be debated today.

I want to thank the hon. Member for Roberval, the hon. Member for Winnipeg–Transcona, the hon. Member for Langley–Abbotsford, the hon. Member for Pictou–Antigonish–Guysborough, the Parliamentary Secretary to the Government House Leader and other hon. Members who contributed to the discussion.

I have carefully reviewed the interventions of hon. Members and the procedural authorities that govern our deliberations. I would like first to review the current situation in which the House finds itself.

Standing Order 81 lays down the rules for consideration of the business of supply. I need not remind the House of all the provisions in the 22 sections of the Standing Order. Let us simply look at those sections that need concern us.

Standing Order 81(10)(*a*) states, in part, "twenty-one days are to be designated as allotted days".

Standing Order 81(16) provides that: Not more than 14 opposition motions in total shall be motions that shall come to a vote—

There are, as we can see, two aspects to any allotted day: first, a motion is put forward by the opposition party; and second, the motion may be designated votable.

The Standing Orders clearly provide for the Speaker to resolve any disputes arising about the first aspect, namely which opposition party's motion is to be considered on a given day. Standing Order 81(14)(*c*) states:

> When notice has been given of two or more motions by Members in opposition to the government for consideration on an allotted day, the Speaker shall have power to select which of the proposed motions shall have precedence in that sitting.

By contrast, should a dispute arise on the second aspect, namely designation of the motion as votable, the Standing Orders are silent.

Our practice provides guidance in these matters. *Marleau and Montpetit* states at page 726:

> The allocation of the 14 votable motions is worked out in an informal agreement among the opposition parties.

In their remarks earlier today, some hon. Members have suggested that by the ruling yesterday the Chair intervened in a matter in which it had no place and, by implication, had unfairly sided with one of the parties to the dispute. I trust that the House will agree that the Chair never intended to do any such thing and sees matters from an entirely different perspective.

Yesterday the Chair was asked to decide whether the PC/DR motion was properly designated a votable motion. Given no authority by the Standing Orders to judge the matter, except insofar as to determine whether the maximum number of votable days had been used, the Chair would ordinarily turn, as indeed I did, to see what was provided in the usual informal agreement among the parties. It is to be noted that no agreement signed by all parties

was ever given to the Chair. It now transpires, as the exchanges this morning amply demonstrate, that the very existence of such an agreement is in dispute.

In the circumstances, I decided yesterday that I could not intervene to reverse the designation of the motion as votable given to the Chair by the sponsoring opposition party when the motion was put on notice, in keeping with the usual practice in these matters.

I could not find any authority for so doing since only 8 of 14 votable motions have been used to date and so I declared that, unless a contrary agreement were reached by the House Leaders, the motion would go forward, as requested by the sponsor, as a votable motion. This morning, I find that this decision is interpreted as exactly the kind of intervention I sought to avoid.

I can find little comfort in the choices that the House Leaders presented to me this morning. If the Chair persists in the view that it has no authority to refuse a sponsor putting forward a votable motion before the full 14 votable motions have been used, it may be viewed as being complicit in what some have characterized as parliamentary mischief that violates an informal agreement. If the Chair is persuaded by the interventions of three of the four opposition Leaders to abide by an informal agreement from which the fourth dissents, it may be viewed as interference by the Chair and the prerogatives of the House Leaders by the interpretation and enforcement of their agreements.

The circumstances underlying the exchanges this morning leave the Chair in a difficult position. I do not think the interests of the House will be well served if the Speaker is drawn into disputes among parties. I would therefore again urge the hon. House Leaders to resume constructive dialogue in the management of the business of the House.

I understand that they will be meeting this afternoon. I would ask that the matter of the allocation of opposition days and the matter of the allocation of votable motions be addressed anew. I hope that they will reach agreement on these matters and that they will inform me of their conclusions in writing, duly signed by all opposition House Leaders.

In the meantime it seems to me that it would be most prudent for the Chair not to accept the designation of any motion as votable either today or until such time as I have received an agreement.

Postscript: The following day, March 13, 2002, Mr. White sought and obtained unanimous consent to adopt a motion stating the party allotment of opposition motions on allotted days and their votable status.[4]

1. *Debates*, March 11, 2002, p. 9441.
2. *Debates*, March 11, 2002, pp. 9481-2.
3. *Debates*, March 12, 2002, pp. 9508-14.
4. *Debates*, March 13, 2002, p. 9594.

Financial Procedures

Business of Supply

Opposition motions: admissibility; similar to recommendation contained in a committee report

October 31, 2002 *Debates*, pp. 1149-50

Context: On October 31, 2002, a motion to concur in the Second Report of the Standing Committee on Procedure and House Affairs was moved. Debate began but was interrupted by Statements by Members and thus was deemed adjourned.[1] Later in the sitting, Don Boudria (Leader of the Government in the House of Commons) rose on a point of order to state that the supply motion, concerning the election of committee Chairs and Vice-Chairs by secret ballot, chosen for debate that day by the Official Opposition, was identical to a recommendation included in the Second Report. The Government House Leader argued that it was contrary to the rule of anticipation to have a motion anticipate a matter which was standing on the *Order Paper* for further discussion, and that the opposition motion was therefore inadmissible. The Speaker heard from other Members on the matter.[2]

Resolution: The Speaker delivered his ruling immediately. He declared that the rule of anticipation was no longer strictly applied in Canada, and that a very wide latitude had always been extended in relation to opposition day motions. Accordingly, he ruled the opposition motion in order.

Decision of the Chair

The Speaker: First, the Chair wants to thank all hon. Members for their assistance on this important issue.

I want to say first that yesterday the Government House Leader raised a point of order expressing concern at the idea of the Speaker reading, pursuant to Standing Order 81(14)(*a*), notice of more than one motion to be debated on a designated supply day. I want to make sure the House is aware that I have taken this matter under advisement and will deliver at least advice to the House on that matter, since one has now been withdrawn, at a later date.

With respect to the issue that has been raised with regard to the admissibility of the opposition motion that has been proposed for the supply day today, what is left of it, I draw attention to the ruling of Mr. Speaker Lamoureux on March 6, 1973 where he said:

> The Standing Order, as the hon. Member said, gives the opposition very wide scope in proposing motions. That is one of the reasons why, since the inception of this particular Standing Order in 1968, not a single opposition motion has ever been ruled out of order. On a number of occasions the Chair expressed doubts as to whether an opposition motion would not bring forward for the consideration of the House a matter on which a decision had already been taken in the course of the then current session. However, in all cases the mover was given the benefit of the doubt.

I must say that a search was done today but we were not able to find a motion that had been ruled out of order. There may have been one or two, but we just have not located any. That assists the Chair in making its ruling today. The fact is it appears that a very wide latitude has always been extended to the opposition in respect of these matters. I am sure that recognition will be extended by the Speaker now and in the future.

The Government House Leader however made reference to page 477 of *Marleau and Montpetit*, particularly to the rule of anticipation. I would like to quote a little from page 476 of *Marleau and Montpetit* in respect of this rule of anticipation. It states:

> The moving of a motion was formerly subject to the ancient "rule of anticipation" which is no longer strictly observed. According to this rule, which applied to other proceedings as well as motions, a motion could not anticipate a matter which was standing on the *Order Paper* for further discussion, whether as a bill or a motion, and which was contained in a more effective form of proceeding.

In other words, if there is a motion, as we now have, standing on the *Order Paper* to concur in a committee report, the argument that the House Leader is advancing, as I understand it, is that this rule of anticipation would prevent another motion that is the same or similar from being moved.

The next paragraph states:

> While the rule of anticipation is part of the Standing Orders in the British House of Commons, it has never been so in the Canadian House of Commons. Furthermore, references to attempts made to apply this British rule to Canadian practice are not very conclusive.

In the circumstances, since they are not conclusive, it is difficult for the Chair to accept the argument put forward by the Government House Leader that the opposition's right to move this motion should somehow be restricted by this rule of anticipation.

It further states:

> The rule is dependent on the principle which forbids the same question from being raised twice within the same session. It does not apply, however, to similar or identical motions or bills which appear on the *Notice Paper* prior to debate. The rule of anticipation becomes operative only when one of two similar motions on the *Order Paper* is actually proceeded with. For example, two bills similar in substance will be allowed to stand on the *Order Paper* but only one may be moved and disposed of. If the first bill is withdrawn, the second may be proceeded with.

I could go on. What we are faced with here is a motion to concur in a committee report, the Committee Report's purport of which is similar to the motion that the opposition proposes to put to the House today. The Chair is being asked to say that because the words of the opposition motion are similar to the words in the Committee Report, concurrence in which has been moved, I must conclude that the two are therefore the same and the second ought to be ruled out of order or at least inadmissible at this time because of this rule of anticipation.

The Chair is very reluctant to do this because in the Chair's view the opposition has the right to move whatever motion it chooses to on an opposition day. As has been pointed out in argument, to allow the Government to argue this would mean that any time there was an awkward opposition motion that the Government chose not to want to debate, it could bring in a

committee report, then move concurrence and thereby preclude the debate from taking place.

I am sure that was not the intent of the Standing Order. It certainly was not the intent of the Modernization Committee when it said that notice had to be given a day in advance which allows this kind of, if I can call it so, game to be played.

Accordingly, I must in my view find that the opposition motion is in order. I say that notwithstanding the very generous offer on the part of the Government House Leader to allow the one that had been withdrawn to be brought back and reinstated for debate should my ruling be contrary. I recognize his great generosity in this regard, as I am sure do all Members of the opposition and for that we are all very grateful.

In the circumstances I find the motion that has been proposed in order and I intend now to put it to the House.

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1. *Journals*, October 31, 2002, pp. 147-8.
2. *Debates*, October 31, 2002, pp. 1147-9.

Financial Procedures

Business of Supply

Opposition motions: admissibility of subsequent motions

November 25, 2002 *Debates*, pp. 1823-9

Context: On November 25, 2002, Stephen Harper (Leader of the Official Opposition) rose on a point of order to challenge the admissibility of a motion on the *Order Paper* calling on the Government to ratify the Kyoto Protocol.[1] Mr. Harper argued that the motion was inadmissible because it was not in compliance with an opposition motion adopted by the House on October 29, 2002. Upon adoption, this motion had, he claimed, become an Order of the House, directing it to take certain actions before ratifying the Protocol.[2] Other Members also participated in the discussion.

Resolution: Later that sitting, the Speaker delivered his ruling. He declared that the motion adopted on October 29, 2002 was permissive in that it used the word "should" with respect to the implementation plan, and was therefore not binding on the Government. He added that the requirements of the motion had in any case been met as an implementation plan had been tabled in the House and that, though there might be arguments about whether this plan was sufficient, it was not for the Speaker to judge the quality of material tabled in the House. Accordingly, he ruled the motion in order.

Decision of the Chair

The Speaker: Once again the hon. Leader of the Opposition has raised an interesting point concerning the supply motion adopted on October 29 earlier this year. The motion has been quoted by both hon. Members of the opposition who have spoken on this matter and I thank them for their submissions.

However I point out that the motion reads that before the Kyoto Protocol is ratified by the House there should be an implementation plan. It does not say there shall be, or there must be, or there has to be. This motion is permissive. It suggests that there ought to be, that somehow we should have this. That is the first point that must be made to the House.

The second point is that we do have an implementation plan that was tabled last Thursday in the House by the Minister. I know there are disagreements about whether it is good or sufficient in accordance with the terms of the motion that was adopted on October 29, but it is hardly for the Speaker to express a view on the quality of the material that the Minister submitted to the House. However something was indeed submitted.

If the Speaker is wrong in his interpretation of the use of the word should in the motion, there is still the argument, in my view a valid one, that some kind of document, being an implementation plan of some sort, has been tabled in the House. Whether it is going to be good enough for everybody is of course a matter of considerable argument, I have no doubt, and one that no doubt we are going to hear about during the course of the argument on the motion that is coming before the House, which has been put to the House today by the Minister of the Environment.

In the circumstances, I do not think it is for the Chair to rule that the Government cannot proceed because of an alleged violation of this motion adopted on October 29, which in my view expresses an ought. Even if I am wrong that interpretation has been complied with in my view by the tabling that was made by the Minister last Thursday. Accordingly, I do not find the point of order well raised and I intend to proceed to put the motion to the House.

Editor's Note: Immediately after this ruling was delivered, the Leader of the Official Opposition rose on a subsequent point of order stating the motion should instead be ruled out of order as it contravened international law as well as established Canadian practices and rules for the ratification of treaties by asking the Government to ratify a treaty prior to the approval of implementation legislation by the House.[3]

1. *Debates*, November 25, 2002, pp. 1823-9.
2. *Journals*, October 29, 2002, pp. 134-5.
3. See *Debates*, November 28, 2002, pp. 2016-8.

Financial Procedures

Business of Supply

Opposition motions: admissibility; adoption of several bills at all stages

March 29, 2007 *Debates*, pp. 8136-8

Context: On March 21, 2007, Peter Van Loan (Leader of the Government in the House of Commons) rose on a point of order with respect to the admissibility of an opposition motion proposing the adoption at all stages of Bills C-18, *An Act to amend certain Acts in relation to DNA identification*, C-22, *An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act*, C-23, *An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*, and C-35, *An Act to amend the Criminal Code (reverse onus in bail hearings for firearm-related offences)*. The motion had been placed on the *Notice Paper* in the name of Marlene Jennings (Notre-Dame-de-Grâce–Lachine). The Government House Leader argued that it infringed on the prerogative of the Government to move Government business forward and that it sought to circumvent the legislative process and, thus, required unanimous consent.[1] The Speaker ruled immediately that the motion was out of order in its present form and would not be allowed to be moved the following day. He noted that he would return to the House with a formal ruling.[2]

Resolution: On March 29, 2007, the Speaker delivered his ruling. He stated that he had previously ruled the motion out of order because it circumvented the rules and practices governing the legislative process in a manner prejudicial to the proper consideration of proposed legislation and because it usurped the Government's prerogative to decide how to put forward its legislative program and to arrange the business of the House. Citing *Bourinot*, the Speaker also reminded the House of the first principles of parliamentary practice, which are predicated on the existence of a balanced framework that respects the rights and responsibilities of both the Government and the opposition. He also noted that over time the House may have strayed from the original purpose of opposition motions, namely the airing of grievances prior to the granting of supply. He concluded that using a supply motion actually to impose closure or time allocation on four separate bills was out of order and that therefore he was in no doubt that Ms. Jenning's motion, as it appeared on the *Notice Paper*, was "clearly and undoubtedly irregular" and thus out of order.

Decision of the Chair

The Speaker: I am now ready to give a ruling that everybody has been waiting a week for on the point of order raised on Wednesday, March 21, 2007 by the hon. Government House Leader alleging the inadmissibility of the opposition motion placed on the *Notice Paper* on March 20, 2007 in the name of the hon. Member for Notre-Dame-de-Grâce–Lachine.

I would like to thank the hon. Government House Leader for raising this matter, as well as the hon. Member for Wascana, the hon. Member for Roberval–Lac-Saint-Jean and the hon. Member for Vancouver East for their interventions.

In order to recapitulate the contributions made by the hon. House Leaders and because of the complexity of the question before us, I have regrouped thematically the arguments presented.

The first argument to consider is the fundamental issue of balance between the majority and the minority in the proceedings of the House. This was raised by the Government House Leader when he stated that allowing the opposition motion appearing on the *Notice Paper* to proceed would "deny the minority parties… the opportunity and protections that exist in the Standing Orders for a full debate".

The hon. Member for Vancouver East also touched on this concept when stating that, "the smallest party in the House, would be the ones who would often be the victims of this kind of procedure".

Second, the concept of the Government prerogative to schedule Government business was argued. The Government House Leader cited Standing Order 40(2) to the effect that, "Government Orders should be called and considered in such sequence as the Government determines."

Noting that the Standing Orders may be set aside temporarily only by unanimous consent and without setting a precedent, the Minister contended that the motion in question proposes effectively to enact legislation under the rubric of supply, in violation of constitutional conventions reserving to the Government the right to move Government business.

The hon. Members for Wascana and for Roberval–Lac-Saint-Jean invoked Standing Order 81(13) and *House of Commons Procedure and Practice* (page 724) respectively, to the effect that opposition motions "may relate to any matter within the jurisdiction of the Parliament of Canada".

This touches upon the third issue that I wish to address today namely, as the hon. Member for Roberval–Lac-Saint-Jean underscored, the "wide scope on supply" afforded to Members by the Standing Orders with respect to opposition motions and the correlative practice of the Chair not to intervene unless a supply motion is "clearly and undoubtedly irregular", i.e., where the procedural aspect is not open to reasonable argument.

Finally, the hon. Member for Vancouver East pointed out that the proposed opposition motion would, if adopted, have the effect of an omnibus bill, bundling together a group of legislative proposals in order to expedite their passage. This fourth issue, which touches on the complexity of the motion itself, also requires separate examination.

As I pointed out when I ruled the motion unacceptable, the proposed opposition motion would have the effect of imposing closure or time allocation on four bills simultaneously, something which, in my view, would be out of order even if the Government were to propose it.

If the Government wanted to do what this motion does, it would need to move a motion after due notice and, in the absence of agreement among the parties, it might resort to closure to have the matter decided and that would come only at a cost of at least one and one-half sitting days.

I would also note that our precedents, with the exception of cases dealing with the reinstatement of bills, would not permit the Chair to allow a Government motion to deal with more than one bill in such a circumstance. At best then, the Government could expedite passage of only one bill at a time through several stages using this procedure.

The arguments presented in this matter go to the essence of parliamentary procedure and provide a good opportunity for the Chair to remind the whole House of the underlying principles which support the work we do here.

House of Commons Procedure and Practice, at page 209, states that procedure is "at once the 'means' used to circumscribe the use of power and a 'process' that legitimizes the exercise of, and opposition to, power".

Naturally, over time, our rules have evolved. The House has seen fit to adopt rules from time to time to govern how business is to be transacted and certain changes—closure in 1913 and time allocation in 1969, among others—have effectively given the Government, in a majority situation, greater control over the advancement of its business. Nevertheless, to quote *House of Commons Procedure and Practice* (p. 210) again:

> —it remains true that parliamentary procedure is intended to ensure that there is a balance between the government's need to get its business through the House, and the opposition's responsibility to debate that business without completely immobilizing the proceedings of the House.

At the present time, the Chair Occupants, like our counterparts in House committees, daily face the challenge of dealing with the pressures of a minority Government, but neither the political realities of the moment nor the sheer force of numbers should force us to set aside the values inherent in the parliamentary conventions and procedures by which we govern our deliberations.

Honourable Members are all aware of situations in committees of this Parliament where, because decisions of the Chair are subject to appeal, decisions that were procedurally sound have been overturned by the majority on a committee.

Unlike the situation faced by committee Chairs, a Speaker's decision is not subject to appeal. All the more reason then for the Chair to exercise its awesome responsibility carefully and to ensure that the House does not, in the heat of the moment, veer dangerously off course.

The Speaker must remain ever mindful of the first principles of our great parliamentary tradition, principles best described by John George Bourinot, Clerk of this House from 18[8]0[3] to 1902, who described these principles thus:

> To protect the minority and restrain the improvidence and tyranny of the majority, to secure the transaction of public business in a decent and orderly manner, to enable every Member to express his opinions within those limits necessary to preserve decorum and prevent an unnecessary waste of time, to give full opportunity for the consideration of every measure, and to prevent any legislative action being taken heedlessly and upon sudden impulse.[4]

In the present case, although the Government does not have a majority in the House, it still has a duty to present to the House a legislative program and is entitled to expect that it could do so with all the responsibilities but also all the protections associated with our balanced framework of parliamentary law.

It is for this reason that the issue of prerogative is so important. The Government has certain prerogatives; the opposition has certain other prerogatives. Our rules now even provide that private Members have certain prerogatives. As *House of Commons Procedure and Practice* states at page 390:

> Different categories of business have developed over the years in response to the need to adapt to the organization of House business. Some categories are now uniquely reserved for the government or the opposition; some are reserved for private Members—

As the Government House Leader has pointed out, these prerogatives are given effect by the Standing Orders. He has cited Standing Order 40(2) as an example but there are many more. Only a Minister may move closure or time allocation. Only a Minister may move to suspend the Standing Orders pursuant to Standing Order 53. Only a Minister may move a motion under Standing Order 56.1 when unanimous consent has been denied. The Chair has consistently ruled—and there are Speakers' rulings from 1928, 1944, 1961 and 1982 on this point—that any motion pertaining to the arrangement of the business of the House should be introduced by the Ministry.

In short, as Mr. Speaker Fraser ruled in 1988, and I refer to the *Debates* of July 13 of that year at page 17506, it is, with very few specific exceptions "the Government's unquestioned prerogative to determine the agenda of business before the House".

In a similar vein, several of our rules give the prerogative to the opposition—Standing Order 81(4)(*a*) concerning the consideration of estimates in Committee of the Whole is an example—and an entire chapter of our Standing Orders describes the prerogatives of private Members with regard to the business that they may bring forward.

Where these prerogatives intersect is with regard to supply day opposition motions. Supply is Government business; the Government designates supply days or allotted days on which the opposition can exercise what *Marleau and Montpetit* has called "the right to have its grievances addressed before it considers and approves the financial requirements of the Crown" by proposing motions for debate. I refer hon. Members in this regard to *House of Commons Procedure and Practice*, at page 701.

As the hon. Members for Wascana and Roberval–Lac-Saint-Jean reminded us, such motions "may relate to any matter within the jurisdiction of the Parliament of Canada". Members "enjoy a very wide scope in proposing opposition motions on supply days and, unless the motion is clearly and undoubtedly irregular (e.g., where the procedural aspect is not open to reasonable argument), the Chair does not intervene."

Past interventions from the Chair have, accordingly, been rare, restricted to cases in which a motion is "clearly and undoubtedly irregular". Speaking to this principle, Mr. Speaker Fraser declared that "the use of an allotted day ought not to be interfered with except on the clearest and most certain procedural grounds". I quote from the *Debates* of June 8, 1987 at page 6820.

Still, there is nothing whatever in the relevant procedural authorities to suggest that opposition motions on supply days were ever conceived of as a means of fast-tracking bills already present elsewhere on the *Order Paper*. Indeed, it is evident from their historical background that opposition motions on supply days were never envisaged as an alternative to the legislative process.

While we are reflecting this afternoon on the nature of opposition motions on supply days, may I say that neither were they created to address concerns about House procedure. To be sure, as hon. Members have pointed out, the phrasing of Standing Order 81(13) is very broad indeed, stating as it does:

> Opposition motions on allotted days… may relate to any matter within the jurisdiction of the Parliament of Canada—

In the same vein, I myself as Speaker in a ruling on October 31, 2002 mused that the opposition has "the right to move whatever motion it chooses to on an opposition day". It should come as no surprise therefore that, sheltered by that very broad umbrella, the House may have strayed rather far from the original crux of the matter, namely, airing grievances before voting supply to fund the Crown's program. Perhaps the Standing Committee on Procedure and House Affairs can review these Standing Orders to consider whether revisions to their wording might be helpful in realigning them with their original mission.

The motion which concerns us proposes to expedite the passage of four Government bills simultaneously via their deemed adoption at all remaining stages. In this it is similar in form and substance to motions from Government Ministers which seek to expedite the legislative business of the House. There is, however, a crucial distinction between the two: although both seek the implementation of their provisions notwithstanding any rule or practice of the House, except in very well-established circumstances such as for the reinstatement of bills at the beginning of a session, for example, the Government generally may not move such motions without unanimous consent.

Such motions permit the Government to rearrange the business of the House by means of temporary suspensions of the Standing Orders. They represent a well-established practice whereby the Government introduces motions pertaining to the arrangement of the business of the House. Furthermore, such abbreviations of the legislative process can take place only by unanimous consent, which may be difficult to obtain in respect of the simultaneous fast-tracking and adoption of more than one bill.

The very high threshold of unanimous consent creates a pivotal safeguard in ensuring that every measure before the House receives full and prudent consideration. What is being proposed not only does away with that safeguard,

it takes advantage of the stringent regime governing supply days. In that regard, for example, it is important to note the precedence accorded to opposition motions over all Government supply motions on allotted days.

Furthermore, recent amendments to the rules dealing with such motions offer an especially stringent regime: first, the rules provide what amounts to an automatic closure mechanism, since the motion comes to a vote at the end of the day, thus guaranteeing a decision on the motion; and second, no amendment to the motion is possible without the consent of the mover.

In stark contrast, any motion which could be brought forward by the Government to expedite consideration of a bill would be debatable and amendable, and the imposition of time allocation or closure would necessitate a separate question from the motion proposing adoption of the bill at a particular stage or stages in the legislative process.

This brings the Chair to the important point raised by the hon. Member for Vancouver East regarding the complexity of the motion. The motion in question seeks to fast-track not one but four separate bills. Since it is a supply motion, any amendment would require the consent of the motion's sponsor and the unanimous consent of the House would not be required for adoption of the motion.

The Chair has been unable to find any examples even of Government-sponsored multi-bill motions being moved after due notice, with the exception, as noted earlier, of motions to reinstate legislation at the beginning of a session. Even in these cases, the authority of the Speaker to divide a motion is unquestioned.

On this point I refer hon. Members to pages 299-300 of *Debates* for October 4, 2002 where I ruled that just such a motion be divided. In doing so, I quoted page 478 of *House of Commons Procedure and Practice* which states:

> When a complicated motion comes before the House (for example, a motion containing two or more parts each capable of standing on its own), the Speaker has the authority to modify it and thereby facilitate decision-making for the House.

This passage is supported by rulings from Mr. Speaker Macnaughton in 1964, see *Journals* of June 15, 1964, pages 427-31, and another from Mr. Speaker Fraser in 1991, see *Debates*, April 10, 1991, page 19312.

There is little doubt that the motion of the hon. Member for Notre-Dame-de-Grâce–Lachine is a complicated one since it concerns four distinct legislative proposals, each of which would be disposed of, in some cases through more than one stage, through a single vote of this House. The motion before us clearly seeks to circumvent the rules and practices governing the legislative process in a manner prejudicial to the proper consideration of proposed legislation.

By curtailing the legislative process, interrupting the consideration of bills in committee, and eliminating opportunities for amendment at various stages of the legislative process without the requirement for unanimous consent, a fertile imagination is not required to imagine that supply motions similar to this could be used to deprive the Government of effective control over the content and disposition of its own bills once these have been introduced to the House. Not only would this violate the entire ethos of the business of supply, it would clearly interfere with the "unquestioned prerogative" of the Government and it would do so in a manner utterly inconsistent with the limited exceptions contemplated by *House of Commons Procedure and Practice* and other authorities.

By way of analogy, hon. Members might wish to consider their own reaction should the Government seek to interfere with the consideration of Private Members' Business in a similar fashion. In the Chair's view, any of these scenarios of usurpation, whether the opposition seeks to hijack the Government's agenda or the Government the opposition's or that of private Members, might reasonably be characterized as a "tyranny of the majority" of a type unforeseen even by Monsieur Bourinot.

As your Speaker, it is my duty to remind the House of some of these fundamental tenets of parliamentary procedure. It is now up to the House to determine how it wishes its procedures to evolve. In the meantime, the Chair is not in doubt that in this case, the motion of the hon. Member for Notre-Dame-de-Grâce–Lachine as it appeared on the *Notice Paper* was "clearly and undoubtedly irregular" and therefore out of order.

I apologize for taking all this time of the House to come back with these lengthy reasons, but I felt that the issue was an important one and I wanted to make very clear what the views of the Chair were on this matter.

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1. *Debates*, March 21, 2007, pp. 7729-34.
2. *Debates*, March 21, 2007, pp. 7734-5.
3. The published *Debates* originally read 1890 instead of 1880.
4. Bourinot, J.G., *Parliamentary Procedure and Practice in the Dominion of Canada*, 2nd ed., rev. and enlarged, Montreal, Dawson Brothers, Publishers, 1892, pp. 258-9.

Financial Procedures

Business of Supply

Opposition motions: admissibility; application of confidence convention

March 6, 2008 *Debates*, p. 3754

Context: On March 6, 2008, Peter Van Loan (Leader of the Government in the House of Commons) rose on a point of order at the commencement of debate on an opposition motion standing on the *Order Paper* in the name of Maria Minna (Beaches–East York) to challenge its admissibility. The motion concluded with "… therefore, the House condemn the irresponsible and self-serving actions on November 28, 2005, by the New Democratic Party and the Bloc Québécois which led to the installation of a Government that is hostile to the rights and needs of vulnerable Canadians". The Government House Leader argued that an opposition motion could not bring into question the conduct of an opposition party, and that the use of the word "condemn" brought the confidence convention into play.[1] The Speaker took the matter under advisement and allowed debate on the motion to proceed.[2]

Resolution: The Speaker delivered his ruling later that day. He declared that, since the Standing Orders provide that opposition motions may relate to any matter within the jurisdiction of the Parliament of Canada and Members enjoy a wide scope in proposing opposition motions on supply days, the Chair is very reluctant to intervene unless the motion is clearly and undoubtedly irregular. As to the use of the word "condemn" in relation to the confidence convention, he stated that confidence is not a matter of parliamentary procedure and the Speaker could not be asked to rule on it. Accordingly, he ruled that he would allow debate on the motion to continue.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised earlier today by the hon. Leader of the Government in the House of Commons alleging the inadmissibility of the opposition motion currently being debated, standing in the name of the hon. Member for Beaches–East York.

The hon. Government House Leader has raised a number of arguments, but has principally focused on two main points. First, he has argued that an opposition day motion cannot bring into question the conduct of an opposition party and, second, he has suggested that the use of the word "condemn" in relation to an opposition party brings the confidence convention into play, with the intended consequences on that opposition party.

On the first point, the Chair is extremely reluctant to intervene in view of the fact that Standing Order 81(13) and *House of Commons Procedure and Practice*, at page 724, make it very clear that such motions "may relate to any matter within the jurisdiction of the Parliament of Canada" and that Members "enjoy a very wide scope in proposing opposition motions on Supply days and, unless the motion is clearly and undoubtedly irregular (e.g., where the procedural aspect is not open to reasonable argument), the Chair does not intervene".

As I stated in a ruling delivered on March 29, 2007:

> Past interventions from the Chair have, accordingly, been rare, restricted to cases in which a motion is "clearly and undoubtedly irregular". Speaking to this principle, Mr. Speaker Fraser declared that "the use of an allotted day ought not to be interfered with except on the clearest and most certain procedural grounds." (*Debates*, June 8, 1987, p. 6820).

The Government House Leader's reference to a ruling from 1983, while interesting, speaks to a different era, when anyone, even the Government, could move amendments to supply day opposition motions. In that particular case, it was a Progressive Conservative Party motion to which the New Democratic Party moved an amendment that did not respect the Standing Orders in that it did not "relate to any matter within the jurisdiction of the Parliament of Canada".

Of course, Standing Order 85, which requires the consent of the mover for an amendment, now makes that kind of manoeuvre impossible. In the circumstances, it seems unreasonable to extend this 1983 precedent to a motion which clearly has as its central theme a subject matter which falls squarely within the jurisdiction of Parliament.

The Chair does recognize, however, that it must remain vigilant in these matters. As I indicated in the March 2007 ruling referred to earlier, the original purpose of opposition motions was for "… airing grievances before voting supply to fund the Crown's programme". At that time, I went on to suggest that perhaps the Standing Committee on Procedure and House Affairs could review the relevant Standing Orders to consider whether revisions to their wording might be helpful in realigning current practice on opposition motions with their original mission.

Almost a year has elapsed since I made that suggestion and I will reiterate that request again today.

On the second point raised by the Government House Leader, specifically the use of the word "condemn" and its significance, the Chair has considerably less sympathy with the argument being presented. I refer the House to *House of Commons Procedure and Practice*, at page 37, where it is stated:

> What constitutes a question of confidence in the government varies with the circumstances. Confidence is not a matter of parliamentary procedure, nor is it something on which the Speaker can be asked to rule.

This seems rather conclusive and I do not see what I could usefully add.

Accordingly, for the reasons I have just explained, the Chair will allow debate to continue on the motion. I thank hon. Members for their attention.

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1. *Debates*, March 6, 2008, pp. 3707-8.
2. *Debates*, March 6, 2008, p. 3708.

Financial Procedures

Business of Supply

Opposition motions: admissibility; adoption of a bill at all stages

November 16, 2009 *Debates*, pp. 6790-1

Context: On October 27, 2009, Jay Hill (Leader of the Government in the House of Commons) rose on a point of order to challenge the admissibility of an opposition motion standing on the *Order Paper* in the name of Bruce Hyer (Thunder Bay–Superior North). The motion proposed to deal with all stages of Bill C-311, *Climate Change Accountability Act* after only a few hours of debate, which the Government House Leader maintained could not be done without unanimous consent. After interventions by other Members, the Speaker ruled the motion out of order, adding that he would return with a more fully considered ruling in the matter.[1]

Resolution: On November 16, 2009, the Speaker delivered his ruling. He reminded Members that recent amendments to the rules dealing with opposition motions offered an especially stringent regime: first, the rules provided what amounted to an automatic closure mechanism since the motion comes to a vote at the end of the day, thus guaranteeing a decision on the motion; and second, no amendment to the motion is possible without the consent of the mover. He explained that opposition motions on supply days were never envisaged to fast-track bills or as an alternative to the legislative process and that the motion, as worded, failed to provide Members with any opportunity to debate the Bill itself, in effect short-circuiting the legislative process. For these reasons, he ruled the motion out of order.

Decision of the Chair

The Speaker: Order, please, if the House will grant some indulgence.

On Tuesday, October 27, the hon. Government House Leader rose on a point of order concerning the admissibility of an opposition motion placed on notice on October 26, in the name of the hon. Member for Thunder Bay–Superior North. The hon. Member for Vancouver East intervened on the matter, as did the hon. Member for Wascana. So that the work of the House

could proceed without delay, I immediately stated that the motion was out of order and I promised to return to the House at a later date with a fully considered ruling.

I would now like to put before the House the reasons for my decision that day.

For the benefit of the House, the motion printed in the *Notice Paper* read as follows:

> That Bill C-311, *An Act to ensure Canada assumes its responsibilities in preventing dangerous climate change*, be deemed reported from committee without amendment, deemed concurred in at report stage and deemed read a third time and passed.

In explaining why he felt the motion was out of order, the Government House Leader's main argument was that what this motion was proposing to do could be done only by unanimous consent.

He added that in his view the best the House can do to expedite legislation, without the unanimous consent of the House, is to offer a motion that considers each stage separately with a separate vote. Otherwise, he argued, a situation would arise in which any opposition party could put forward a similarly draconian motion on any private Member's bill and have it expedited through the legislative process.

For her part, the House Leader for the NDP stressed the wide latitude given to opposition parties on supply days to propose motions of their choosing.

In support of this argument, she quoted from *House of Commons Procedure and Practice* at page 724:

> The Standing Orders give Members a very wide scope in proposing opposition motions on Supply days and, unless the motion is clearly and undoubtedly irregular (e.g., where the procedural aspect is not open to reasonable argument), the Chair does not intervene.

The House will remember that on March 21, 2007, in a situation analogous to the one before us, I ruled out of order an opposition motion submitted by the Member for Notre-Dame-de-Grâce–Lachine. In that case, the motion in question sought to expedite the consideration and adoption of several Government bills in a manner similar to the motion of the hon. Member for Thunder Bay–Superior North.

As I pointed out in a subsequent ruling on March 29, 2007, past interventions from the Chair regarding opposition motions have been rare, restricted to cases in which a motion is "clearly and undoubtedly irregular". I also explained that there is nothing whatsoever in the relevant procedural authorities to suggest that opposition motions on supply days were ever conceived of as a means of fast-tracking bills already present elsewhere on the *Order Paper*. *House of Commons Procedure and Practice* stresses, at page 701, that a key principle underlying the business of supply is that the House, and by extension the opposition via motions proposed on allotted days, has:

> —the right to have its grievances addressed before it considers and approves the financial requirements of the Crown.

As I stated in 2007, (*Debates*, March 29, 2007, p. 8138) it is evident from their historical background that opposition motions on supply days were never envisaged as an alternative to the legislative process:

> The very high threshold of unanimous consent creates a pivotal safeguard in ensuring that every measure before the House receives full and prudent consideration. What is being proposed not only does away with that safeguard, it takes advantage of the stringent regime governing supply days. In that regard, for example, it is important to note the precedence accorded to opposition motions over all government supply motions on allotted days.

Furthermore, recent amendments to the rules dealing with such motions offer an especially stringent regime: first, the rules provide what amounts to an automatic closure mechanism since the motion comes to a vote at the end of the day, thus guaranteeing a decision on the motion; and second, no amendment to the motion is possible without the consent of the mover.

In stark contrast, any motion which could be brought forward by the Government to expedite consideration of a bill would be debatable and amendable, and the imposition of time allocation or closure would necessitate a separate question from the motion proposing adoption of the bill at a particular stage or stages in the legislative process.

In addition, as mentioned in my initial comments when ruling the motion out of order, as worded, the motion fails to provide Members any opportunity to debate the Bill itself, in effect short-circuiting the legislative process. The Chair is mindful of the wide latitude available to the opposition with regard to supply motions, but as your Speaker, it is my duty to ensure that matters placed before the House are in keeping with our rules. The reasons outlined above make it clear why the motion of the hon. Member for Thunder Bay–Superior North was ruled out of order.

In conclusion, I would ask hon. Members to bear in mind today's ruling and the ruling of March 29, 2007, when they are preparing future opposition motions. The Chair will continue to give the traditional latitude to the sponsors of motions to be debated during supply proceedings, but the Chair counts on the cooperation of the sponsors to respect, and not go beyond, traditional limits for such motions.

I thank the House for its attention in this matter.

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1. *Debates*, October 27, 2009, pp. 6245-6.

Financial Procedures

Business of Supply

Opposition motions: admissibility; order for the production of papers

December 10, 2009 *Debates*, pp. 7876-7

Context: On December 10, 2009, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons) rose on a point of order to challenge the admissibility of a supply motion moved by Ujjal Dosanjh (Vancouver South) with respect to the production of documents relating to the detention of combatants by Canadian Forces in Afghanistan. Mr. Lukiwski argued that, if the motion were adopted, the result would be an order to the Government to produce a series of documents in their original and uncensored form. This, he argued, would contravene the law and conventions adopted by Parliament. He asked that the Speaker recognize that the motion exceeded long-standing conventions surrounding supply day motions. The Speaker also heard from other Members on the matter.[1]

Resolution: The Speaker delivered his ruling immediately. He made reference to the broad, absolute power of Parliament to order the production of papers and added that, in the circumstances, a motion to demand the production of papers was entirely in order. The question was whether such a motion could be considered on a supply day. The Speaker stated that the motion was in accordance with the practice with respect to supply motions. He noted that the motion could have been adopted by a committee and affirmed that the House can also do whatever a committee can do, and more. He accordingly declared the motion to be in order.

Decision of the Chair

The Speaker: I have carefully considered all the arguments that have been advanced. First, I should cite to hon. Members the citations that have been read by the hon. Member for Mount Royal in his argument, largely.

On pages 978-9 of *O'Brien and Bosc*, I will quote again:

> The Standing Orders do not delimit the power to order the production of papers and records. The result is a broad, absolute power that on the surface appears to be without restriction. There is no limit on the type of papers likely to be requested; the only prerequisite is that the papers exist—in hard copy or electronic format—and that they are located in Canada… No statute or practice diminishes the fullness of that power rooted in the House privileges unless there is an explicit legal provision to that effect, or unless the House adopts a specific resolution limiting the power. The House has never set a limit on its power to order the production of papers and records.

I go back also to page 136 of *O'Brien and Bosc*, to further this:

> By virtue of the Preamble in section 18 of the *Constitution Act, 1867*, Parliament has the ability to institute its own inquiries, to require the attendance of witnesses and to order the production of documents, rights which are fundamental to its proper functioning. These rights are as old as Parliament itself. *Maingot* states:
>
> > The only limitations, which could only be self-imposed, would be that any inquiry should relate to a subject within the legislative competence of Parliament, particularly where witnesses and documents are required and the penal jurisdiction of Parliament is contemplated. This dovetails with the right of each House of Parliament to summon and compel the attendance of all persons within the limits of their jurisdiction.

Therefore, in the circumstances and on the face of it, a motion to demand the production of papers is entirely in order. The question is whether it can be done on a supply day, as suggested by the Parliamentary Secretary in his submission.

The Chair has intervened once on a supply day, to prevent the supply day from being used as a vehicle for restricting debate on a bill, because it was something that was allowed for in other parts of the Standing Orders and so on,

and then fitted in there. However, I believe this motion, which is demanding that documents be tabled in the House, is something that could reasonably be requested on a supply day.

It is not a procedural motion in that sense. It is demanding the production of documents. Supply motions have called on the Government to do things. They have expressed House opinions on various things in the past and in my view, this one fits within that. Accordingly, in accordance with our practice in respect to supply days, I feel the motion is in order and will allow it to proceed.

It is unfortunate, if I may make this comment, that arrangements were not made in committee to settle this matter there, where these requests were made and where there might have been some agreement on which documents and which format would be tabled or made available to Members. How they were to be produced or however it was to be done, I do not know, but obviously that has not happened.

We now have this motion here, and it seems to me the House has the power to do what a committee can do and then some. A committee could have requested this and demanded the production of these materials. The House can also do whatever a committee can do and then some. Accordingly I feel the motion is in order and I will allow the matter to proceed.

Postscript: Later that day, the House adopted the motion with an amendment to include additional documents.[2]

1. *Debates*, December 10, 2009, pp. 7872-6.
2. *Journals*, December 10, 2009, pp. 1193-7.

Financial Procedures

Business of Supply

Legislative phase: main estimates; admissibility of a Vote

June 12, 2001 *Debates*, pp. 5022-4

Context: On June 11, 2001, John Williams (St. Albert) rose on a point of order with respect to the Main Estimates tabled in the House on Tuesday, February 27, 2001,[1] and specifically to Vote 1 under NATIONAL DEFENCE. Mr Williams cited the Auditor General's Report of October 2000 to the effect that approximately $2 million of the $4.8 million in operating expenditures provided for in the Vote were being used for the development of the Downsview Park site in Toronto. He argued that the $2 million was not a valid charge against NATIONAL DEFENCE Vote 1. He added that if the Government had wanted to finance the project, it should have introduced legislation to that end, and then sought the appropriate funding through the estimates. Mr. Williams concluded by asking the Speaker to strike the NATIONAL DEFENCE Vote 1 from the Estimates. After hearing from other Members, the Deputy Speaker (Bob Kilger) took the matter under advisement.[2]

Resolution: On June 12, 2001, the Deputy Speaker delivered his ruling. He pointed out that Mr. Williams, David Collenette (Minister of Transport and formerly the Minister of National Defence), and the Auditor General, were in agreement that: the Department of National Defence continued to hold title to the lands in question; that in its 1994 Budget, approved by the House, the Government had indicated its intentions with respect to the Downsview base; that the Auditor General had found the development of Downsview Park to be in accordance with the relevant governing legislation; and that the House had previously, in 1999-2000, given its approval for the allocation of funds for its operations and development. He acknowledged the disagreement between the Government and the Auditor General with respect to the extent of the existing authority of the Department of National Defence to allocate funds to Downsview Park but noted that the House had up to that point not seen fit to challenge the Government's view of the matter. He stated that when the Standing Committee on National Defence and Veterans Affairs had met to consider the main estimates, no questions had been raised with respect to Downsview Park and that the Committee had elected not to present a report to the House. The Deputy Speaker emphasized that it was not for the Chair

but rather the House or its committees to decide about the disagreement between the Auditor General and the Government concerning certain accounting practices. He concluded that he saw no clear evidence that any procedural irregularity had occurred and, accordingly, ruled that there was no valid point of order.

Decision of the Chair

The Deputy Speaker: I am now prepared to rule on the point of order raised by the hon. Member for St. Albert concerning Vote 1 under NATIONAL DEFENCE of the operating expenditures in the Main Estimates for the fiscal year ending March 31, 2002.

In his argument the hon. Member states that the estimate should be ruled out of order because in his view and that of the Auditor General the expenditures related to the development of the Downsview Park site, approximately $2 million of the $4.8 million, are not a valid charge against NATIONAL DEFENCE Vote 1 and that the Department of National Defence should not be funding Downsview Park from its operation expenditures. If the Government wants to develop and operate Downsview Park, it should introduce legislation accordingly, then seek the appropriate funding through the estimates rather than through National Defence.

Before beginning, I would like to thank the hon. Member for raising the matter and I also want to acknowledge the contributions of the hon. Minister of Transport, the hon. House Leader of the Progressive Conservative Party, the hon. Leader of the Government in the House, the hon. Opposition House Leader and the hon. Member for Athabasca on this point.

In his point the hon. Member for St. Albert stated that in the 1994 Budget the Government announced the closure of Canadian Forces Base Toronto at Downsview and indicated that it was to be held in perpetuity as a unique urban recreational green space. For the project to go ahead, the Government issued an Order in Council authorizing Canada Lands Company Limited to incorporate a new Crown corporation, Parc Downsview Park Inc., as a subsidiary of Canada Lands Company Limited pursuant to the *Financial Administration Act*.

The hon. Member also stated that management of the Downsview lands has been transferred from National Defence to the Canada Lands Company and that National Defence still continues to hold the title to the lands.

In addition, initial funding to the Parc Downsview Park Inc. was provided for from an existing National Defence vote. The Government issued an Order in Council authorizing the transfer of the first parcel of land to Parc Downsview Park Inc. pursuant to the *Federal Real Property Act*.

The parties to this complaint, that is, the hon. Member for St. Albert, the Minister of Transport (formerly the Minister of National Defence), and the Auditor General, are in agreement on several key elements.

First, as all three have noted, the Department of National Defence continues to hold title to the lands in question.

Second, in its 1994 Budget, approved by the House, the Government announced its intention to close certain Canadian Forces bases, and referred to the National Defence budget impact paper tabled with the budget, which spoke of the intention to hold the Downsview site "in perpetuity and in trust primarily as a unique urban recreational green space for the enjoyment of future generations".

Third, as the Auditor General has noted "each step in the founding and development of Downsview Park was completed in accordance with the relevant governing legislation".

Finally, the House has previously, in 1999-2000, given its approval for the allocation of funds to operations and development of Downsview Park.

These facts are not in dispute. The Minister has informed the House that in addition to retaining title to the lands, the Department of National Defence maintains ongoing activities on the Downsview property.

The Auditor General in his report takes the position in paragraph 17.73 that:

> —if the Government of Canada wishes to set up an urban park and invest… public funds therein, it should have… approval from parliament to do so.

The Government takes the position that it has the necessary approval, having received parliamentary approval first on its budgetary policy of 1994 and second on its allocation of funds in 1999-2000. I note the observation in the Auditor General's report:

> The mandate and purposes of Parc Downsview Park Inc. are fully consistent with those of the parent corporation, the Canada Lands Company Limited, and the other current and past subsidiary corporations of the parent, for example, the CN Tower and the Old Port of Montreal.

That is, there is no departure here from previous Government practice.

There is a disagreement between the Government and the Auditor General with respect to the extent of the existing authority of the Department of National Defence to allocate funds to Downsview Park. However, on the basis of the evidence submitted by the hon. Minister of Transport, it seems that the House has up to this point sided with the Government.

For example, when the Standing Committee on National Defence and Veterans Affairs met on March 13 of this year to consider the main estimates, my understanding is that no questions were raised pertaining to Downsview Park and the Committee elected not to present a report in the House. In this regard, therefore, the Speaker can find nothing out of order.

It also seems evident that the Government and the Auditor General are not in agreement concerning certain of the Government's accounting practices. If this is indeed the case and if it is something hon. Members wish to investigate further, that would be for the House or its committees to pursue. It is not a matter for the Speaker to decide.

To conclude, I see no clear evidence that any procedural irregularity has occurred, and accordingly I rule that there is no point of order here. I thank the hon. Member for St. Albert as well as those who contributed to the discussion.

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1. *Journals*, February 27, 2001, p. 135.
2. *Debates*, June 11, 2001, pp. 4929-33.

Financial Procedures

Business of Supply

Legislative phase: supplementary estimates; admissibility of a Vote

November 22, 2001 *Debates*, pp. 7453-5

Context: On November 1, 2001, John Williams (St. Albert) rose on a point of order with regard to two items in the Supplementary Estimates (A), 2001-02,[1] which had been tabled in the House earlier that day: Vote 10 under ENVIRONMENT CANADA and Vote 10 under NATURAL RESOURCES CANADA. Mr. Williams maintained that these items together constituted a $100 million grant to the Canada Foundation for Sustainable Development Technology, of which two amounts of $25 million corresponding to each Vote had already been transferred, in April 2001, from the Treasury Board contingencies fund and then paid out to a non-profit corporation called the Canada Foundation for Sustainable Development Technology. He pointed out that Bill C-4, *Canada Foundation for Sustainable Development Technology Act*, the legislation providing for the non-profit corporation to continue as the Foundation, had not received Royal Assent until June 2001. Mr. Williams objected to what he characterized as the Government's apparent use of a multi-year appropriation as well at its use of estimates and appropriation acts as vehicles to fund programs that had not received legislative authority. He accordingly asked that the Chair rule out of order Vote 10 under ENVIRONMENT CANADA and Vote 10 under NATURAL RESOURCES CANADA.[2] After hearing from another Member, the Speaker took the matter under advisement.[3]

Resolution: The Speaker delivered his ruling on November 22, 2001. He ruled that there had been no multi-year appropriation in this case, nor had there been any attempt to legislate through the estimates. He stated that, although the legal authority existed for the grants, no concomitant authority under the supply process to make the payments had been sought from Parliament for the earlier grants totalling $50 million and that he did not consider that the notes in the Supplementary Estimates (A) respecting the disbursement of these earlier monies as sufficient to be considered as a request for approval of those grants. The Speaker expressed concern about the lack of clarity and transparency in this case but declined to rule the disputed Votes out of order, noting that there remained ample

time for the Government to take corrective action by making the appropriation request of Parliament through the supplementary estimates process.

Decision of the Chair

The Speaker: I am now ready to rule on a point of order raised by the hon. Member for St. Albert on Thursday, November 1, 2001, relating to two items in the Supplementary Estimates: Vote 10 for $50 million for the Sustainable Development Technology Fund under ENVIRONMENT CANADA and Vote 10 also for $50 million for the Sustainable Development Technology Fund under NATURAL RESOURCES CANADA.

In his submission the hon. Member for St. Albert argued that these votes should be ruled out of order for two reasons. First, in his view, the Government expenditures of $100 million funding related to the Canada Foundation for Sustainable Development Technology constituted a multi-year appropriation. Second, he contended that there had already been a transfer of money for these purposes without parliamentary approval.

In support of his position the Member referred to the Auditor General's observations in the *Public Accounts of Canada 2000-01* tabled in the House on September 27, 2001, in which she expressed serious concerns with the events surrounding these grants.

I wish to thank the hon. Member for St. Albert for raising this matter and I also want to acknowledge the contribution of the hon. Government House Leader on this subject.

At the outset, I want to draw the attention of the House not only to the seriousness of this question but also to its complexity. I ask the House to bear with me as I review the events which have led us to the current situation.

Let me begin with a chronology of events that may be helpful.

The initial announcement of funds to support sustainable development technology was made in the budget statement presented by the hon. Minister of Finance on February 28, 2000. The enabling legislation for that initiative,

Bill C-46, *An Act to establish a foundation to fund sustainable development*, died on the *Order Paper* at the dissolution of the Thirty-Sixth Parliament.

At the beginning of this Parliament on February 2, a new bill, Bill C-4 was introduced and given first reading.

Bill C-4 provides, in addition to the provisions of the original Bill C-46, that the Government may designate a corporation already incorporated under part two of the *Canada Corporations Act* to continue as the Canadian Foundation for Sustainable Development Technology. A not-for-profit corporation of this type was established in March of this year. In early April, Natural Resources Canada and Environment Canada each granted $25 million to this not-for-profit corporation using funds transferred from the Treasury Board contingencies Vote for this year.

On June 14 Bill C-4, *An Act to establish a foundation to fund sustainable development technology*, received Royal Assent. Thus Bill C-4 became law prior to the tabling of the Supplementary Estimates (A) so there need be no concern that an attempt is being made here to legislate through an appropriation.

The Chair can find no specific request under our supply process for authority to make the two payments for the corporation. In other words, neither the Main Estimates 2001-02 nor interim supply mention these particular grants. This is a significant fact and we will return to it later.

That being said, and this is a technical point but one of key importance, the money transferred to Natural Resources Canada and Environment Canada to make these payments was taken from the Treasury Board contingencies Vote for this year, so there is no question of a multi-year appropriation in the case before us. That answers the hon. Member for St. Albert's first concern.

However, we are still left to deal with the allegation that no approval has been given for the original expenditures in this case. I said a moment ago that I could find no authority for the original grants totalling $50 million in either the Main Estimates 2001-02 or in interim supply.

Let us then return to what is being requested in the Supplementary Estimates (A) 2001-02 tabled in the House on November 1.

At page 58 of the Supplementary Estimates, Vote 10 under the Environment Department requests $50 million for the Sustainable Development Technology Fund. A note indicates that funds in the amount of $25 million were advanced from the Treasury Board contingencies Vote to provide temporary funding for this program. A similar entry for the same program is listed at page 115 under Vote 10 of the Natural Resources Department. A total of $100 million is therefore being sought for the Sustainable Development Technology Fund.

Two questions arise.

The first question is the confusion between the "Fund" as referred to in Supplementary Estimates and the "Foundation" created by Bill C-4.

Neither Bill C-4 nor its predecessor, Bill C-46, mentions "Sustainable Development Technology Fund". Indeed, in speaking on second reading of Bill C-4, the hon. Minister of National Resources and Minister responsible for the Canada Wheat Board stated, and I quote the *Debates* of February 19th, 2001, page 852, said:

> In Budget 2000, we first announced the government's intention to establish a foundation with initial funding of $100 million to stimulate the development and demonstration of new environmental technologies, in particular climate change and clean air technologies. Bill C-4 delivers on that commitment from Budget 2000. It creates the organizational structure, the legal status and the *modus operandi* of the foundation.

On the basis of the Minister's statement, I am led to conclude that what is being sought in the Supplementary Estimates (A) is funding for the Canada Sustainable Development Technology Foundation, established pursuant to Bill C-4. From a procedural point of view, such a request poses no difficulty.

However, the Supplementary Estimates do not identify the Foundation as the recipient. Instead, the estimates refer only to a Sustainable Development Technology Fund.

The second question is the crux of the matter: what is the link, if any, between the $100 million requested in Supplementary Estimates (A) for

the Foundation/Fund and the $50 million already paid to the not-for-profit corporation in April of this year?

As I have already mentioned in the chronology, notes in the Supplementary Estimates list the Sustainable Development Technology Fund as the recipient of a total of $50 million in interim funding through the Treasury Board contingencies Vote. However, these funds were paid to the pre-existing not-for-profit corporation, established under an altogether different legal authority, namely, the *Canada Corporations Act*, and not under Bill C-4 creating the Foundation.

The Chair cannot see that the request for $100 million funding relates in any way to the original grants made to the corporation using the legal authority of the *Energy Efficiency Act* and the *Department of the Environment Act*. Simply put, the $100 million now being sought cannot be used both to fund the Foundation and to refund the Treasury Board contingencies Vote for $50 million paid out earlier to the corporation.

Bourinot 4th edition at page 416 has this to say on the subject of supplementary estimates: "All these estimates are divided into votes or resolutions, which appropriate specified sums for services specially defined. They are arranged under separate heads of expenditure, so as to give the full information upon all matters contained therein."

The lack of clarity and transparency in this case must be of considerable concern to the Chair. Requests for funds in the estimates are tied to particular programs, previously approved by Parliament. I have noted, of course, the Auditor General's comment that she is satisfied that legal authority existed for these grants under the *Energy Efficiency Act* and the *Department of the Environment Act*. However, the concomitant authority under the supply process to make these payments has never been sought from Parliament. That is the crux of the procedural difficulty raised by the hon. Member for St. Albert and I must conclude that he is correct in his assessment of the situation, if not perhaps in the remedy he suggests.

In summary, then, the Chair has concluded that no authority has ever been sought from Parliament for grants totalling $50 million made to the corporation in April of this year and does not consider that the notes

in the Supplementary Estimates (A) concerning the disbursement of these earlier monies are sufficient to be considered as a request for approval of those grants. In other words, the approval that is being sought in Supplementary Estimates (A) cannot be deemed to include tacit approval for the earlier $50 million grant.

However, as there remains ample time for the Government to take corrective action by making the appropriate request of Parliament through the supplementary estimates process, the Chair need not comment further at this time. The Supplementary Estimates (A) for 2001-02 can therefore proceed.

I wish to thank the hon. Member for St. Albert for having drawn this matter to the attention of the House. I commend him for his vigilance in matters of supply. I especially appreciate his having raised it early enough to allow the Chair to examine closely a very complex issue and I hope my ruling has not confused hon. Members.

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1. *Debates*, November 1, 2001, p. 6801, *Journals,* pp. 777-9.
2. *Debates*, November 1, 2001, pp. 6802-3.
3. *Debates*, November 1, 2001, p. 6804.

Financial Procedures

Business of Supply

Legislative phase: supplementary estimates; withdrawal of a Vote

December 4, 2001 *Debates*, pp. 7859-60

Context: On December 4, 2001, Peter MacKay (Pictou–Antigonish–Guysborough) rose on a point of order with respect to Vote 36a of under FOREIGN AFFAIRS AND INTERNATIONAL TRADE in the Supplementary Estimates (A), 2001-02. He explained that Vote 36a provided for the transfer of $2 million to compensate the Export Development Corporation for the liability transferred to it by the Government with respect to contributions made by the Corporation's employees to the Public Service Death Benefit Account. Mr. MacKay argued that there was no statutory authority for the transfer as Bill C-31, *Export Development Act*, which would authorize this transfer, was then before the Senate. Since it had not yet been passed into law, he maintained that it would be inappropriate for the House to include this Vote in the appropriation bill, Bill C-45, *Appropriations Act No. 3, 2001-2002*. Mr. MacKay asked the Speaker to strike this item from the appropriation bill. The Speaker took the matter under advisement.[1] Later in the sitting, Geoff Regan (Parliamentary Secretary to the Leader of the Government in the House of Commons) explained that the payment simply covered the Export Development Corporation for the one-time liability incurred when it withdrew from the *Public Service Superannuation Act* in April 2000. He noted that the authority to do this was provided under the *Public Service Superannuation Act* and had nothing to do with Bill C-31.[2]

Resolution: The Speaker delivered his ruling later that day. He declared that, in light of the explanations offered by the Parliamentary Secretary and after having examined the text of Bill C-31 and the Supplementary Estimates, he found the Vote to be in order, as was the corresponding amount in the appropriation bill.

Decision of the Chair

The Speaker: I am now ready to rule on the point of order raised earlier today by the hon. House Leader of the PC/DR Coalition concerning Vote 36a under FOREIGN AFFAIRS AND INTERNATIONAL TRADE in the Supplementary Estimates (A), 2001-02.

The hon. House Leader drew to the attention of the House that Vote 36a provides for the transfer of $2 million to the Export Development Corporation from the Government. The purpose of the transfer is to compensate the Corporation for the liability transferred to it by the Government with respect to contributions made by Corporation employees to the Public Service Death Benefit Account.

The hon. PC/DR House Leader pointed out that this liability will be transferred only with the passage into law of Bill C-31, *An Act to amend the Export Development Act and to make consequential amendments to other Acts*.

While that Bill has been passed by the House, it is still being considered in the other place.

On that basis, he indicated that the request for funds in Vote 36a was without legal authority and requested that it be struck from the Supplementary Estimates and removed from the appropriation bill based on those estimates.

The principle that legislative authority must be in place before funds could be appropriated is clearly recognized.… *House of Commons Procedure and Practice*, at page 735, provides the following citation from the ruling of Mr. Speaker Jerome.

This was on March 22, 1977, and I quote:

> —it is my view that the government receives from Parliament the authority to act through the passage of legislation and receives the money to finance such authorized action through the passage by Parliament of an appropriation act. A supply item, in my opinion, ought not, therefore, to be used to obtain authority which is the proper subject of legislation.

The hon. Parliamentary Secretary to the Government House Leader later informed the House that such statutory authority does exist and can be found in the *Public Service Superannuation Act*. He explained that the Export Development Corporation—and it is useful to note that the existing name is what appears in the appropriation bill—incurred a one-time liability when it

withdrew from the *Public Service Superannuation Act* in April 2000, and that is the situation that Vote 36a addresses.

In the short time available, I have examined the text of Bill C-31 and the Supplementary Estimates and I have concluded that in light of the explanations offered by the Parliamentary Secretary the Vote is in order and can proceed.

I am therefore ruling that the amount of $2 million in Vote 36a under FOREIGN AFFAIRS AND INTERNATIONAL TRADE in the Supplementary Estimates is in order, as is the corresponding amount in the appropriation bill.

I thank the hon. Member for Pictou–Antigonish–Guysborough for his vigilance in raising the matter.

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1. *Debates*, December 4, 2001, p. 7842.
2. *Debates*, December 4, 2001, p. 7859.

Financial Procedures

Business of Supply

Legislative phase: main estimates; consideration in Committee of the Whole

May 7, 2002 *Debates*, pp. 11332-3

Context: On May 7, 2002, following Private Members' Business and pursuant to Standing Order 81(4)(*a*), the House resolved itself into a Committee of the Whole for the purpose of considering the Votes under NATIONAL DEFENCE in the Main Estimates for the fiscal year ending March 31, 2003. The Chairman of Committees of the Whole (Bob Kilger) made a statement with regard to the rules of debate for this new procedure. At the conclusion of the debate,[1] the Deputy Chairman of Committees of the Whole (Reginald Bélair) declared that, in accordance with Standing Order 81(4)(*a*), the Votes considered were deemed reported.[2]

Statement of the Chair

The Chairman: House in Committee of the Whole on all Votes under NATIONAL DEFENCE in the Main Estimates for the fiscal year ending March 31, 2003.

I would like to open this Committee of the Whole session by making a short statement. We are about to begin the first debate on the estimates in Committee of the Whole as provided under Standing Order 81(4)(*a*). The Standing Order provides for each of two sets of estimates selected by the Leader of the Opposition to be considered in Committee of the Whole for up to five hours.

Tonight's debate will be on all of the Votes under NATIONAL DEFENCE, less the amounts voted in interim supply.

No Member shall speak for more than 20 minutes. There is no formal period for questions and comments. Members may use his or her time to speak or to ask questions and the responses will be counted in the time allotted to that Member.

Members may speak more than once. Finally, Members need not be in their own seat to be recognized.

As your Chair, I will be guided by the rules of Committee of the Whole. However I am prepared to exercise discretion and flexibility in the application of these rules. The first round will be the usual round for all parties: the Canadian Alliance, the Government, the Bloc Québécois, the New Democratic Party and the Progressive Conservative Party. After that, we will follow the usual proportional rotation.

I also wish to remind Members that Members wishing to split their time will require unanimous consent. At the conclusion of tonight's debate we will rise, the estimates will be deemed reported to the House, and the House will adjourn until tomorrow.

To begin this session of Committee of the Whole I will recognize and give the floor to the hon. Member for Lakeland.

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1. *Debates*, May 7, 2002, pp. 11333-71.
2. *Debates*, May 7, 2002, p. 11371.

Financial Procedures

Business of Supply

Legislative phase: supplementary estimates; additional funding

February 17, 2003 *Debates*, pp. 3651-3

Context: On February 12, 2003, Roger Gallaway (Sarnia–Lambton) rose on a question of privilege in relation to a response by Martin Cauchon (Minister of Justice) to Paul Steckle (Huron–Bruce) during Oral Questions on February 11, 2003. In his response, the Minister had stated that the Canadian Firearms Program was "running at minimum cost".[1] Mr. Gallaway argued that the Minister had breached the privileges of the House by disregarding a motion to reduce the funding for the Program included in the Supplementary Estimates that had been adopted by unanimous consent on December 5, 2002.[2] Libby Davies (Vancouver East) added that the Government should disclose where the funding for the Program came from.[3] For his part, Don Boudria (Leader of the Government in the House of Commons) argued that what had been reduced to zero in the Supplementary Estimates was a request for additional funding and that the Program was running on funds approved in the Main Estimates earlier that year.[4] After hearing from other Members, the Speaker took the matter under advisement.[5]

Resolution: On February 17, 2003, the Speaker delivered his ruling. He stated that, although Supplementary Estimates had been withdrawn by unanimous consent, funding for the Program still existed from the Main Estimates. He also pointed out that the Minister had indicated that he would be requesting additional funding through further supplementary estimates. The Speaker stated that he could find no procedural irregularities and concluded that he could not, accordingly, find a *prima facie* question of privilege.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on February 12, 2003, by the hon. Member for Sarnia–Lambton concerning management of the Canadian Firearms Program.

I would like to thank the hon. Member for Sarnia–Lambton for having raised this question as well as the hon. Members for Yorkton–Melville, Vancouver East, and Pictou–Antigonish–Guysborough, as well as the hon. Government House Leader and the hon. House Leader of the Official Opposition for their comments.

In raising this question of privilege, the hon. Member for Sarnia–Lambton referred to a question posed by the hon. Member for Huron–Bruce during the oral question period on February 11, 2003, concerning the funding of the Firearms Registration Program. The hon. Member for Sarnia–Lambton took exception to the reply of the hon. Minister of Justice that, he said, "… reveals [the Minister's] failure to accept that the House reduced to zero his estimates on December 5…"

The Minister's response, as recorded at page 3424 of *Debates* of February 11, 2003, is as follows:

> Mr. Speaker, up until the approval of the supplementary estimates, we were moving with what we call cash management. We said that before Christmas. The program is running at minimum cost but we are able to fulfill our duty.
>
> Of course it is a short term solution and we are sure that the House will support gun control and will support public safety when we vote on the supplementary estimates.

The hon. Member for Sarnia–Lambton alleges that the Minister's response indicates that the Minister is ignoring an Order made by the House on December 5, 2002, and, in so doing, is breaching the privileges of the House in regard to its control of the public purse.

The Member further contends that the House both refused funding for the Firearms Registry and indicated that no more money was to be devoted to that Program.

Several other Members expressed considerable interest in how the Program is currently being funded, given the decision of the House on December 5. The hon. Government House Leader, in his intervention, pointed out that the

Firearms Registry continues to exist as a Program established by statute and that no decision has been made by the House to alter that fact. He insisted that:

> —the estimates were reduced at the request of the Minister. It is at the request of the Minister that the amounts were reduced—

and that this reduction:

> —is the amount of an increase in a supplementary estimate and nothing else.

In short, the gist of the argument presented by the hon. Government House Leader, a point to which I will return shortly, is that the sum removed from Supplementary Estimates (A) represented only funds that would have been added to the initial funding provided in the Main Estimates for the Canadian Firearms Program for this fiscal year.

The hon. House Leader of the Official Opposition noted that the decision to remove $72 million from the Supplementary Estimates had been taken by the House as a whole, by unanimous consent, rather than as a Government initiative. He acknowledged that the hon. Government House Leader had undertaken negotiations to secure the unanimous consent of the House to the withdrawal of the $72 million estimate for the Canadian Firearms Program. The hon. Government House Leader of the Official Opposition added, and I quote:

> —We agreed and the House agreed to drop the $72 million, so everybody assumed that we would see no new action [on the Program]…

Let us begin by examining the event where this dispute over the Canadian Firearms Program originates. The *Journals* of December 5, 2002 indicate the following. I quote:

> By unanimous consent, it was ordered,—That the Supplementary Estimates (A) be amended by reducing Vote 1a under JUSTICE by the amount of $62,872,916 and Vote 5a under JUSTICE by $9,109,670, and that the supply motions and the bill to be based thereon be altered accordingly.

A quick look at the context of this matter may be useful so let me review briefly how a Government program, such as the Canadian Firearms Program, is created and funded. First, such a program required authorizing legislation. Once the required statutory authority is in place, the Government can submit its request for program funding to Parliament through the estimates. I refer hon. Members to pages 697 to 698 of *Marleau and Montpetit* where the importance of this process is succinctly outlined. I quote again:

> The direct control of national finance has been referred as the "great task of modern parliamentary government". That control is exercised at two levels. First, Parliament must assent to all legislative measures which implement public policy and the House of Commons authorizes both the amounts and objects or destination of all public expenditures. Second, through its review of the annual departmental performance reports, the Public Accounts and the reports of the Auditor General, the House ascertains that no expenditure was made other than those it had authorized.

As Members well know, the main estimates provide a breakdown, by department and agency, of planned Government spending for the coming fiscal year. Each budgetary item or vote has two essential components: an amount of money and a destination; in other words, a description for what the money will be used. Should the amounts voted under the main estimates prove insufficient or should new funding or a reallocation of funding between votes or programs be required during a fiscal year, the Government must ask Parliament to approve additional amounts by submitting supplementary estimates.

In the case of the Canadian Firearms Program, legislative authority was provided by Parliament in 1995. The full financial history of the Program need not concern us here, since this particular dispute concerns the current funding of the Program, that is, funding for the fiscal year 2002-03.

In March 2002, the Government laid upon the Table the Main Estimates for the fiscal year 2002-03, including a planned spending estimate of $113.5 million for the Canadian Firearms Program. The Main Estimates were referred to appropriate standing committees for study and, in due course, were reported back to the House or deemed reported back and ultimately approved by the

House on June 6, 2002. The Government was thereby authorized to spend the $113.5 million on the Canadian Firearms Program as laid out in the Main Estimates for 2002-03.

Following the start of the new session last September, the Government presented Supplementary Estimates (A) for review and approval by this House. These Estimates were referred to standing committees for study and eventually came before the House for final approval.

The Supplementary Estimates (A) called for additional funding for the Canadian Firearms Program in the amounts of $62,872,916 under Vote 1a and $9,109,670 under Vote 5a of the DEPARTMENT OF JUSTICE. On December 5, the final day for consideration of the Supplementary Estimates by this House, these amounts were withdrawn from the Estimates package.

Clearly there is a difference of opinion among hon. Members on the motivation of different parties in granting their consent to this withdrawal and, perhaps more importantly, on the consequences of the motion that was adopted to effect that withdrawal.

Some hon. Members seem to equate the withdrawal of those Estimates by unanimous consent of the House to their being voted down. I cannot agree and I see more than a semantic difference in those scenarios.

Other hon. Members invite the Chair to conclude that the Firearms Registry Program must be halted because the negotiations among the parties and the circumstances leading to the House granting unanimous consent to withdraw the supplementary funding request for the Program were predicated on that very assumption. Your Speaker cannot reach that conclusion even though I do not doubt for a moment the *bona fides* of hon. Members making that claim. Honourable Members may argue that they only granted their consent to withdraw these estimates because they believed they were thus cancelling the Program but if that was their belief, they were mistaken and, if that was their objective, it has not yet been achieved.

As I have often stressed when delivering rulings on questions of privilege, and this is especially relevant when the House is seized with highly charged issues, the Chair can only ensure that a motion is properly before the House

and that the rules, practices and procedures of the House are followed. Your Speaker can no more consider why Members are supporting a motion than he can weigh the substantive merits of a motion before the House. This is especially true when the House proceeds by way of unanimous consent. In those circumstances, the House consciously chooses to set aside the usual procedural safeguards that the Chair can and must enforce. In other words, the House chooses to forgo its usual rules and practices so that it can proceed unhindered on a certain course of action; the Speaker has no role whatsoever in these circumstances except to ascertain whether or not unanimous consent exists.

Such was the case last December 5 when, by unanimous consent, the House adopted a motion to withdraw the Supplementary Estimates for the Firearms Program. Practically speaking, what occurred on December 5, 2002 was that the additional funding being requested for the Canadian Firearms Program was withdrawn from the package of Supplementary Estimates that was finally approved. This still left the Canadian Firearms Program with the original $113.5 million authorized by the House last June in the Main Estimates. That may not have been what some hon. Members understood to be the case, but that is exactly what happened.

The hon. Minister of Justice indicated on February 11 that he will be requesting additional spending authority in Supplementary Estimates (B), which will be presented to the House in the coming weeks. Honourable Members will have a further opportunity to pursue with the Minister of Justice all the issues related to the management and funding of the Canadian Firearms Program at that time.

Meanwhile, however, the Chair can find no procedural irregularities in anything that has been said by the hon. Minister of Justice in response to questions on the Canadian Firearms Program and I must conclude that no *prima facie* breach of privilege has occurred in this case.

Postscript: On February 20, 2003, Garry Breitkreuz (Yorkton–Melville) rose on a point of order, seeking clarification in view of newspaper articles that questioned some factual claims included in the Speaker's ruling.[6] The Speaker replied that he had relied "on the documents that are tabled in this House" and that if there were "a discrepancy between the figures that [he had] quoted and what the department

says was in fact intended to be included in the Main Estimates and what was intended to be in the Supplementary Estimates," the matter ought to be resolved in committee.[7]

1. *Debates*, February 11, 2003, p. 3424.
2. *Debates*, February 12, 2003, pp. 3471-2; see *Journals*, December 5, 2002, p. 263.
3. *Debates*, February 12, 2003, p. 3473.
4. *Debates*, February 12, 2003, p. 3474.
5. *Debates*, February 12, 2003, pp. 3472-5.
6. *Debates*, February 20, 2003, p. 3824.
7. *Debates*, February 20, 2003, p. 3827.

Financial Procedures

Business of Supply

Legislative phase: main estimates; *Report on Plans and Priorities*; disclosure prior to tabling in the House

March 20, 2003 *Debates*, pp. 4493-4

Context: On February 27, 2003, John Williams (St. Albert) rose on a question of privilege charging Martin Cauchon (Minister of Justice and Attorney General of Canada) with contempt of Parliament because of a Government news release which provided detailed information in relation to the funding of the Canadian Firearms Program. Mr. Williams noted that this information had not yet been provided to the House of Commons and he surmised that it would be included later in the department's *Report on Plans and Priorities*. Mr. Williams also drew attention to a note in Supplementary Estimates (B) for 2002-03 which indicated that $14,098,739 had been provided to the Department of Justice via TREASURY BOARD Vote 5, the contingencies Vote. He indicated that, if these funds had been intended to make up for a shortfall in the funding of the Firearms Registration Program, as a result of the withdrawal of the request for funds originally contained in Supplementary Estimates (A) 2002-03, this would be in disregard of the will of the House and would constitute a contempt thereof.[1] After hearing from other Members, the Speaker took the matter under advisement. The next day, Don Boudria (Leader of the Government in the House of Commons) rose to inform the House that these funds had been used for drug prosecution and aboriginal litigation and not for the Firearms Registration Program.[2]

Resolution: On March 20, 2003, the Speaker delivered his ruling. Accepting the explanation of the Government House Leader regarding the use of the funds provided via TREASURY BOARD Vote 5, the Speaker stated that he considered this aspect of the matter closed. With regard to the allegedly premature disclosure of information, the Speaker noted that practice in this area varies greatly, depending on the nature of the information and the purpose for which it is presented to the House. While it would be a breach of the privileges of the House to divulge the content of proposed legislation prior to its introduction or of any draft committee reports prior to their presentation in the House, he concluded that the disclosure of certain

information that may later be included in a department's *Report on Plans and Priorities* was not a breach of the privileges of the House.

Decision of the Chair

The Speaker: Before we go to Orders of the Day, I wish to indicate that I am now prepared to rule on the question of privilege raised by the hon. Member for St. Albert on February 27, 2003, concerning release to the media of information related to the Main Estimates 2003-04 before that information had been tabled in the House.

I would like to thank the hon. Member for St. Albert for having raised this matter, as well as the hon. Government House Leader and the hon. Member for St. John's West for their contributions.

The hon. Member for St. Albert complained that a Government press release provided detailed information concerning the breakdown of funds sought for the Canadian Firearms Program in the Main Estimates 2003-04. Further, he noted that a spokesperson for the Minister of Justice was cited in a report in the *National Post* as indicating that this detailed information would not be provided to the House until later in the month of March. The hon. Member surmised that the information would be included in the Department of Justice's *Report on Plans and Priorities*, the Main Estimates Part III, as they are commonly called.

In addition to this issue, the hon. Member also drew the Chair's attention to a note in Supplementary Estimates (B) for 2002-03 which, he said, indicated that the sum of $14,098,739 had been provided to the Justice Department out of TREASURY BOARD Vote 5, the contingencies Vote. He indicated that if this money had been provided to make up for a shortfall in the funding of the Firearms Registration Program, arising from the withdrawal of the request for funds originally contained in Supplementary Estimates (A) 2002-03, this would constitute a disregard of the will of the House and a contempt.

In speaking to these charges, the hon. Government House Leader informed the House that the $14 million provided out of the TREASURY BOARD contingencies Vote had been used by the Department of Justice for drug prosecution and aboriginal litigation.

In a further statement on this question of privilege, made on February 28, 2003, the Minister confirmed that these monies were indeed part of the incremental funding needed to address the core operational requirements he had identified, namely an increased workload in drug prosecutions and aboriginal litigation.

Given the Minister's explanation, the Chair can consider this aspect of the matter closed.

Members seeking further information on the use of the contingencies Vote funds have ample means at their disposal to obtain it. For example, Members may, of course, seek such information from the President of the Treasury Board during Question Period or when she appears before committee. Alternatively, Members may prefer to question individual Ministers, Parliamentary Secretaries or senior officials testifying before committees on main estimates as to whether their particular departments or agencies have had to seek additional funding from Treasury Board via the contingencies Vote.

The other point raised by the hon. Member for St. Albert concerns the premature release of information. Our practice in this area varies greatly, depending on the nature of the information and the purpose for which it is presented to the House.

As the hon. Member pointed out, previous rulings have made it clear that to divulge proposed legislation of which notice has been given prior to its introduction in the House is a breach of the privileges of the House. As I stated in a ruling given on March 19, 2001 at page 1840 of the *Debates*:

> The convention of the confidentiality of bills on notice is necessary, not only so that Members themselves may be well-informed, but also because of the pre-eminent role which the House plays and must play in the legislative affairs of the nation.

As well, all Members are familiar with the requirement for the confidentiality of committee reports prior to tabling, which is set out in *House of Commons Procedure and Practice*, at page 884.

Our practice also safeguards the confidentiality of all reports tabled pursuant to an act of Parliament or a resolution of the House, as provided for in Standing Order 32(1). With respect to annual reports, I refer hon. Members to the statement made by Mr. Speaker Fraser on May 7, 1992, at page 10407 of the *Debates*.

In the present case, the information whose disclosure is under dispute was apparently made public as background material related to the Main Estimates. Those Estimates were tabled in the House in proper form on February 26, 2003, and there has been no allegation that they were prematurely released to anyone outside this place. However the hon. Member for St. Albert surmises that this background information might be included in the Justice department's *Report on Plans and Priorities* when it is tabled later this month. It is on this surmise that he bases his allegation that the information was prematurely disclosed and it is on the charge of premature disclosure that his argument on contempt must rest.

Let us consider the context. First of all, it is important to recognize that there have been many attempts over the years to address the various frustrations encountered by Members in undertaking the scrutiny of the main estimates. Some hon. Members will remember a time when, along with what is commonly called the "Blue Book" in which parts I and II, namely the Government Expenditure Plan and the Main Estimates, respectively, the Government tabled the accompanying part IIIs. This additional Blue Book for each department and agency contained the detailed breakdown of all the votes listed in the Main Estimates. When Members of Parliament complained that the detailed forecast of proposed annual expenditures left them awash with information but no better informed as to the strategic plans on which those expenditures were presumably based, the Government responded by developing the current system of reports on plans and priorities.

The current form in which the *Reports on Plans and Priorities* are presented to the House resulted from considerable study of the business of supply by the Standing Committee on Procedure and House Affairs during

the period 1995-98. Now tabled annually, the *Reports on Plans and Priorities* are described in the Estimates documents as:

> —individual expenditure plans for each department and agency (excluding Crown corporations). These reports provide increased levels of detail on a business line basis and contain objectives, initiatives and planned results, including links to related resource requirements over a three-year period. The RPPs also provide details on human resource requirements, major capital projects, grants and contributions, and net program costs.

Reports on Plans and Priorities provide details about the Government's intentions not only during the current fiscal year, but also during the two following years. In addition, as the House has recently seen, they contain information about the budgetary requirements for the current year as reflected in the main estimates and involving as well supplementary requests that have not yet been placed before Parliament. They are examined by committees in conformity with the provisions of Standing Order 81(7). It may be, given their relatively recent development and the recent experience that the House has had with them, that further consideration should be given to their format or presentation.

In one sense, then, it is reasonable to conclude that, like departmental annual reports and the reports of our committees, it is a breach of the privileges of this House to make public *Reports on Plans and Priorities* before they have been tabled as required. In the case before us, however, we are not faced with the premature release of the *Report on Plans and Priorities* of the Department of Justice, but only with certain information that is presumed to be included in it. This is information that complements the information provided to the House in the proper form in the Main Estimates. While our procedure with respect to documents is clear cut, our practices concerning information are less well-codified.

Where information relates directly to decisions that the House is, or may be, called upon to make concerning legislation or the recommendations of committees, obviously the rights of the House must prevail and so must be considered pre-eminent. In other cases, there is considerably more latitude. We do not expect, for example, that every piece of information contained in

a department's annual report will have been kept from the public until that report is tabled in the House. This would require the Government to conduct its business under a shroud of secrecy that would be contrary to the openness and transparency that this House and all Canadians expect.

The Main Estimates 2003-04 are already before the House. Making public supplementary information concerning estimates figures which are already available does not seem to me to represent an objectionable practice and it might be unwise for your Speaker to comment on how sensible it is to make available to the media, information that is not, at least simultaneously, made available to Members.

Members may well believe that this information should have been included in the Main Estimates or perhaps tabled with them in a separate document. The Speaker is aware that both the manner in which the Estimates material is brought before the House and the nature and extent of that information is of ongoing concern to many Members. When, in due course, standing committees take up their study of the Main Estimates, they may wish to pursue the concerns arising from the case before us.

In light of our current practice, I do not find that the simple disclosure of this additional information constitutes a breach of the privileges of the House.

I would like once again to thank the hon. Member for St. Albert for having raised this issue and for his continued diligent interest in the proper observance of the rules governing our financial procedures.

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1. *Debates*, February 27, 2003, pp. 4147-8.
2. *Debates*, February 28, 2003, p. 4194.

Financial Procedures

Business of Supply

Legislative phase: main estimates; effect of motion to restore Vote

June 9, 2003 *Debates*, pp. 7030-1

Context: On June 9, 2003, John Reynolds (West Vancouver–Sunshine Coast) rose on a point of order with respect to a motion on the *Notice Paper* seeking to restore Vote 25 (VIA Rail) under TRANSPORT in the amount of $266,201,000. Mr. Reynolds pointed out that the Standing Committee on Transport had reduced this Vote by $9 million. He argued that the wording of the motion to restore might leave Members with the impression that a vote against it would have the effect of reducing the budget by the total amount of the Vote, an amount much greater than the $9 million reduction sought by the Standing Committee on Transport. Mr. Reynolds concluded that he wanted to clarify the impact of voting for or against the restoration motion.

Resolution: The Speaker delivered his ruling immediately. He stated that the motion to restore Vote 25 under TRANSPORT appeared to conform exactly to previous practice in the House and, consequently, ruled that the point of order was not well founded.

Decision of the Chair

The Speaker: I do not think I need to hear from the hon. Government House Leader in this case. I am sure all hon. Members appreciate the hon. Member for West Vancouver–Sunshine Coast's appreciation for the difficulties faced by the Chief Government Whip in communications with her colleagues, because of course he has had experience as a Whip himself and he knows how difficult that can be. Unfortunately, the Speaker has not had that experience but perhaps we can clarify the matter.

The hon. Member seems to suggest that there is some confusion in the wording of the motion, and that somehow it is suggesting that if the motion were not concurred in, VIA Rail would lose more money than has been suggested in the report from the Transport Committee that was tabled last week.

I point out to the hon. Member for West Vancouver–Sunshine Coast that on at least two previous occasions, June 22, 1973 and December 10, 1979, motions similar to the one that is now before the House were proposed by the then President of the Treasury Board. Those Votes were apparently concurred in by the House subsequently when Estimates were restored.

Accordingly, while I am sure the Chief Government Whip appreciates very much the helpful suggestions from the hon. Member, the practice that has been adopted in this case appears to conform exactly with previous practice in the House. I refer him to the *Notice Paper* for June 26, 1973, where there was a similar motion to restore a vote to its full amount, and a similar one on Friday, December 14, 1979, where there were a number of motions purporting to do exactly the same thing, where the wording is almost identical to the one before the House.

Accordingly, I find the point of order is not well taken. However, as I say, I am sure the advice he has offered is very much appreciated by the Chief Government Whip. I know the Government House Leader, as a former Whip, would appreciate it had he been in her position.

Financial Procedures

Business of Supply

Legislative phase: supplementary estimates; allegedly misleading statements

October 7, 2003 *Debates*, pp. 8241-3

Context: On September 24, 2003, Garry Breitkreuz (Yorkton–Melville) rose on a question of privilege charging Wayne Easter (Minister of Justice and Solicitor General of Canada) with misleading the House and thereby impeding his ability to function as a Member of Parliament.[1] The Minister had stated earlier in a reply during Oral Questions that funds relating to the Canadian Firearms Program in the Supplementary Estimates (A) 2003-04 were not new funds, and that they had already been approved by Parliament.[2] Since the funds in question were listed in the Supplementary Estimates as a new appropriation, Mr. Breitkreuz argued that either they were listed erroneously, or the Minister's statement had been incorrect. On September 25, 2003, Don Boudria (Leader of the Government in the House of Commons) rose in response to Mr. Breitkreuz' question of privilege. He declared that the funds had been approved, but not spent, during a previous fiscal year, and were thus being carried forward in the Supplementary Estimates. He pointed out that operating budget carry forwards are an accepted part of Government financial management practices. The Speaker took the matter under advisement.[3]

Resolution: On October 7, 2003, the Speaker delivered his ruling. He explained that only a portion of the funds approved by Parliament to finance the Canadian Firearms Centre had been spent in the original fiscal year, and that the approval of the funds had lapsed at the end of that fiscal year. The funds were listed in the Supplementary Estimates as a new appropriation because Parliament had to approve the carry forward from the last fiscal year in order to reapprove the spending authority. Carry forwards simply facilitate the transfer of funds from one fiscal year to the next. The Speaker stated that, although the wording in the Supplementary Estimates had proved unclear to some Members, the Minister had not misled the House when he had stated that there was no increase in the overall funding of the Program in question over the two fiscal years.

Decision of the Chair

The Speaker: On Wednesday, September 24, the hon. Member for Yorkton–Melville rose on a question of privilege arising out of the previous day's Question Period, charging that the Solicitor General had misled the House, thus impeding his ability to function as a Member of Parliament.

I would like to thank the hon. Member for Yorkton–Melville for having raised a matter of considerable importance. That he was not deterred by the financial complexities of the question is to his credit. That he was driven to raise a question of privilege in the House in order to obtain the kind of information that should be readily available to all Members of Parliament is most unfortunate.

In his presentation the hon. Member referred to the Supplementary Estimates (A) tabled in the House on September 23, pointing out that on pages 13 and 88 for Vote 7a it is stated, "Canadian Firearms Program New Appropriation $10,000,000", and "Canadian Firearms Centre—Operating expenditures… to provide a further amount of $10,000,000".

The hon. Member then proceeded to contrast the wording used in the Supplementary Estimates documents with the Solicitor General's response to a question during Question Period in which the hon. Minister had stated that the Government was not asking for any new money for the Firearms Registry and that the money had been previously approved by Parliament.

The hon. Member for Yorkton–Melville noted that if the Solicitor General was right, then the Supplementary Estimates were wrong, and Parliament would be voting for the same money twice. He maintained that this could not possibly be the case.

Describing the history of the House's actions concerning the Estimates of the Canadian Firearms Program, the hon. Member pointed out that Vote 7a was not a one dollar item, the usual means of transferring funds from one program to another in the Estimates, but was listed as a new appropriation. He further stated that the House had been assured that the $113.1 million approved in the Main Estimates for 2003-04 was the entire budget for the

Program. He argued that the Solicitor General's claim that this was not new money defied common sense.

In conclusion, the hon. Member said that an attempt "to fool Members" into believing that the 10 million dollars in Vote 7a were not new funds and thus somehow not subject to scrutiny or reduction was an affront to the dignity of the House and disrespectful of its role as "the grand inquest of the nation". The House needs accurate and truthful information to perform its functions and, therefore, the making of misleading statements in the House must be treated as contempt. In the opinion of the hon. Member for Yorkton–Melville, the Solicitor General clearly misled the House and he stated that he was prepared to move the appropriate motion should the Speaker rule that the matter is a *prima facie* case of privilege.

The hon. Government House Leader addressed the matter on behalf of the Solicitor General describing for the House the use of one dollar items in the Estimates, indicating that the Solicitor General had not misled the House and promising to return to the House with additional information.

The hon. Member for Pictou–Antigonish–Guysborough and the hon. Member for St. Albert also contributed to the discussion of one dollar items and what constitutes a new appropriation.

On September 25, the Government House Leader provided additional information concerning the nature of the request for $10 million. He pointed out that operating budget carry forwards are an accepted part of Government financial management practices. He stated that the Supplementary Estimates for the last fiscal year 2002-03 contained requests for the approval of a total of $629 million in carry forward funding for 87 departments and agencies. The Government House Leader also underlined the fact that the $10 million in question is money that had been previously approved by Parliament, to which point I will return.

It is understandable that the hon. Member for Yorkton–Melville finds the presentation of this item in the Supplementary Estimates (A) somewhat confusing. The funds in question are certainly presented in the document as a new appropriation.

As hon. Members know, Parliament provides the Government with funds by giving it the authority to withdraw specific amounts of money from the Consolidated Revenue Fund for specified purposes. In granting funds to the Government, Parliament sets an upper limit on the amount that may be spent on a program or activity. The Government may not exceed that limit without seeking additional funds from Parliament, which is done by way of supplementary estimates.

In the Supplementary Estimates (A) 2003-04, under SOLICITOR GENERAL, Vote 7a, Canadian Firearms Centre—Operating Expenditures (page 88) there is a request to Parliament for two amounts: a transfer of $84,840,694 and a "new appropriation" of $10,000,000.

With respect to the amount of the transfer, the Supplementary Estimates explain that the Government is requesting Parliament:

> To authorize the transfer of $84,840,694 from JUSTICE Vote 1, *Appropriation Act, No. 2, 2003-2004* for the purposes of this Vote….

This is a transfer of funds already approved by the House on June 12, 2003, as part of the current fiscal year's Main Estimates.

Under Explanation of Requirement, the new appropriation of $10 million is described as "Operating budget carry forward". A note explains this item as follows:

> This amount represents the operating budget carry forward for Justice for the Canadian Firearms Centre.

A further note states:

> Effective April 14, 2003, Orders in Council P.C. 2003-555 and 2003-556 established the Canadian Firearms Centre as a separate department and transferred from the Minister of Justice to the Solicitor General of Canada the control and supervision of the Canadian Firearms Centre.

It is important at this point that hon. Members clearly understand what is meant by an operating budget carry forward. The main features of a carry

forward can be identified as: first, carry forward is from one fiscal year to the next; second, carry forward of an operating budget is limited to 5% of that operating budget in the main estimates for the original fiscal year; and carry forwards are done individually by program and not for the main estimates Vote 1 (operating expenditures) overall.

Before proceeding further, it may also be useful to make clear the distinction between carry forwards and dollar items, since the matter of dollar items was raised during the initial discussion of this question of privilege. *House of Commons Procedure and Practice* at page 733 describes dollar items as follows:

> Supplementary Estimates often include what are known as "one dollar items", which seek an alteration in the existing allocation of funds as authorized in the Main Estimates. The purpose of a dollar item is not to seek new or additional money, but rather to spend money already authorized for a different purpose.

Dollar items deal with the transfer between votes of funds approved during the current fiscal year. A transfer of this kind permits the funds to be used for a purpose other than that for which they were originally approved. Dollar items cannot be used for a transfer from one Government department to another. Honourable Members will note that in the transfer of funds mentioned earlier, from the Justice Department to the Solicitor General, the specific amount of the transfer is indicated rather than a nominal one dollar figure.

Carry forwards, on the other hand, deal with the transfer of funds from one fiscal year to the next. The money to be carried forward was money approved by Parliament in the original fiscal year, but not spent in that year. Since the approval of the funds lapses at the end of the original fiscal year, Parliament must authorize the carry forward in order to reapprove the spending authority. There is no change in the purpose for which the funds are requested.

As carry forwards are done on a program basis, the Justice operating budget carry forward is properly listed under SOLICITOR GENERAL. As I mentioned earlier, the Program, Canadian Firearms Centre, was transferred on April 14, 2003. Therefore, it would no longer be permissible to have the

carry forward listed under Justice, because the Justice Minister no longer has authority for the Program.

The situation before the House can be summarized as follows. In the preceding fiscal year, 2002-03, the Government sought and received spending authority to finance the Canadian Firearms Centre. Over the course of that fiscal year, it apparently made use of only a part of the funds that Parliament had granted for that purpose. The unused funds lapsed at the end of the fiscal year. The money remains in the Consolidated Revenue Fund, but the Government now lacks the authority to spend it.

Through the Supplementary Estimates (A), 2003-04, the Government is seeking new authority to spend a part of the previous fiscal year's allocation, which it did not use during that year.

In a manner of speaking, therefore, the House is indeed being asked to vote on the same thing twice. Authority was sought and granted to spend the $10 million on the Firearms Centre during fiscal year 2002-03. However, the money was not spent and that authority has lapsed.

The Government is now seeking fresh authorization to spend that sum on the Firearms Centre during fiscal year 2003-04. The decision as to whether that authority should be granted is obviously one that the House itself must make. As with any request in the estimates, the House has the right to reduce the amount requested or to refuse it entirely.

In light of these facts, I cannot agree that the remarks of the hon. Solicitor General are misleading. As is true of any large and diverse organization, the Government of Canada makes use of many technical accounting devices that may be unfamiliar to those of us who are not specialists in the field of public finance. However, the fact that the $10 million is a carry forward is set out in the Supplementary Estimates (A), while the wording is not as clear as it might be. While it is true that this represents a new appropriation in the current fiscal year, there is no evidence to suggest that the hon. Solicitor General is incorrect when he asserts that it does not represent over the two fiscal years any increase in the overall funding for this Program.

It should be noted that the actual amount of funds which have lapsed will only be known when the *Public Accounts* are tabled. It is only then that Members will be able to determine if the carry forward respects Treasury Board guidelines. This ruling should not be taken as passing judgment on the availability of the $10 million amount in the carry forward. I am sure the hon. Member for Yorkton–Melville will follow the *Public Accounts* with great care on this point.

I wish to thank all hon. Members for their patience in dealing with this matter, which has touched on some relatively technical explanations of the workings of our financial procedures. The issue underscores the need for Parliament to be presented with clear and complete information in order to fulfill its responsibilities. And once again, I wish to commend the hon. Member for Yorkton–Melville for raising this important question, and I trust that the matter has been clarified to everyone's satisfaction.

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1. *Debates*, September 24, 2003, pp. 7750-2.
2. *Debates*, September 23, 2003, p. 7705.
3. *Debates*, September 25, 2003, pp. 7781-2.

Financial Procedures

Business of Supply

Legislative phase: main estimates; content brought into question

March 22, 2004 *Debates*, pp. 1512-4

Context: On March 10, 2004, Loyola Hearn (St. John's West) rose on a question of privilege with respect to the content of the Main Estimates for 2004-05. Mr. Hearn argued that the Main Estimates which had been tabled by the Government were fraudulent and misled the House because they did not reflect the restructuring of certain departments and agencies announced in December 2003 nor the Government's real spending plans for the coming year. Mr. Hearn stated that committees would therefore be unable to assess accurately the Government's request for funds. He added that Reg Alcock (President of the Treasury Board and Minister responsible for the Canadian Wheat Board) had announced in a press release that those changes would be reflected in revised Estimates to be tabled later. He emphasized that the business of supply was at the very core of responsible Government and that the House was entitled to take the Estimates at face value. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: The Speaker delivered his ruling on March 22, 2004. He began by setting out two requirements placed on the Government with respect to the estimates: to table the main estimates by March 1 each year; and to request funds only for programs and activities that have already received parliamentary approval. Pointing out that the legislation required to implement the Government reorganization announced in December was not yet before the House, the Speaker stated that it would be unacceptable for those potential changes to be anticipated in the main estimates. He reminded the House that the main estimates were just that, estimates reflecting the existing structure of the Government at the time they are presented. He affirmed, however, that any changes to the amounts or destinations of funds which may be required over the course of a fiscal year must be submitted to the House for approval. He concluded that the Main Estimates 2004-05 respected the requirements of the Standing Orders and that they conformed to what had been the practice of the House during previous reorganization exercises. Accordingly, he ruled there was no breach of privilege.

Decision of the Chair

The Speaker: I am ready to rule on the question of privilege raised on March 10 by the hon. Member for St. John's West concerning the format of the Main Estimates for 2004-05.

I would like to thank the hon. Member for St. John's West for having raised this important matter and I would also like to thank the hon. President of the Treasury Board, the hon. Member for Pictou–Antigonish–Guysborough and the hon. Member for Yorkton–Melville for their contributions on this point.

In raising the form in which the Main Estimates 2004-05 were tabled in the House, the hon. Member for St. John's West asserted that by its own [admission][2] the Government had tabled estimates which did not represent its real spending plans for the coming fiscal year. He made reference to a media release issued on February 24, 2004 which stated:

> Due to the extent of the machinery of government changes announced in December 2003, it is the intention of the government to table a revised set of main estimates later during the 2004-05 fiscal year. This will allow new and restructured organizations sufficient time to finalize resource discussions as well as to develop their plans and priorities in time for Parliament to consider appropriation bills to authorize final spending. At the same time, it will allow the government to seek additional spending authority for expenditures that were not sufficiently known in time for the main estimates and which are normally sought from Parliament through supplementary estimates later during the fiscal year.

In the view of the Member for St. John's West, these statements represent an admission by the Government that the Main Estimates, tabled on February 24, 2004, do not reflect the Government's real spending plans and hence are invalid. He claimed, therefore, that committees to which the Estimates have been referred will be unable accurately to assess the Government's request for funds and cannot properly carry out what all Members recognize as one of their most fundamental duties.

The President of [the] Treasury Board pointed out that the Government has an obligation under the Standing Orders to present the main estimates

to the House by no later than March 1 each year. This obligation is set out in Standing Order 81(4) which reads:

> In every session the main estimates to cover the incoming fiscal year for every department of government shall be deemed referred to standing committees on or before March 1 of the then expiring fiscal year. Each such committee shall consider and shall report, or shall be deemed to have reported, the same back to the House not later than May 31 of the then current fiscal year.

He indicated that the Main Estimates were tabled in their current form in order to comply with that requirement in the Standing Orders. He also stated that, in addition to presenting the Main Estimates in their current form, the Government had also provided additional information concerning its reorganization plans and its intention to present revised spending Estimates following legislative approval of that reorganization.

The hon. Member for Yorkton–Melville pointed out that Standing Orders 81(4)(*a*) and (*b*) give the Leader of the Official Opposition the responsibility both for selecting a set of estimates to receive extended study in committee and, in consultation with the other opposition Leaders, to designate two sets of estimates for consideration in Committee of the Whole. He indicated that it would be difficult for the Leader of the Opposition to carry out these responsibilities if he were forced to base his decisions on estimates that are only provisional.

When this matter was raised, I undertook to examine the records of the House in order to ascertain what our practice had been during previous Government reorganizations. I have done that and will outline for the House the results of my inquiries. First, however, I think it may be useful to set out two facts concerning our procedures with respect to the study of estimates.

First, as the President of the Treasury Board has pointed out, the requirement that the main estimates be tabled by March 1 each year is an obligation placed on the Government by the House. There is an additional requirement that the Government may request funds only for programs and activities that have already received parliamentary approval. It may not present in the estimates, requests for departments, agencies or activities which

have not yet been granted the appropriate legislative authority by Parliament. Mr. Speaker Jerome, in a ruling given on this point, stated, and I quote from the *Journals* of March 22, 1977, page 607:

> —(I)t is my view that the government receives from Parliament the authority to act through the passage of legislation and receives the money to finance such authorized action through the passage by Parliament of an appropriation act. A supply item in my opinion ought not, therefore, to be used to obtain authority which is the proper subject of legislation;…

The President of [the] Treasury Board has indicated that the Government intends to introduce legislation related to the division of assets and responsibilities among departments. No such legislation is yet before the House and the House has therefore not had the opportunity either to approve or reject the Government's proposals. It would be unacceptable for those potential charges to be anticipated in the main estimates now before committees of the House.

The second point I wish to make is perhaps elementary, but it is pertinent to the issue before us. The main spending estimates for a given fiscal year are just that: estimates. Our rules recognize this fact by explicitly providing for the tabling and consideration of supplementary estimates throughout the fiscal year.

All hon. Members understand that it is impossible to predict months in advance the exact amounts and destination of all Government expenditures during the year to come. Nor would the House wish to deprive the Government of the flexibility it may require to respond in the best interests of Canadians to emerging circumstances. At the same time, any changes to the amounts or the destination of funds which may be required over the course of the fiscal year must be submitted to the House for its approval.

I would now like to turn briefly to past practice with respect to changes to Government organization. In 1983 the Government introduced legislation, the *Government Organization Act, 1983*, which had as part of its purpose to replace the Department of Industry, Trade and Commerce with the Department of Regional Industrial Expansion.

The Main Estimates tabled on February 22, 1983, and I refer to the *Journals* of that same date, at page 5628, contained votes under the DEPARTMENT OF INDUSTRY, TRADE AND COMMERCE. Although the Government introduced legislation to replace that department on May 5, and that was Bill C-152, the *Government Organization Act, 1983*, the House nevertheless approved the Main Estimates without reference to the new department on June 14, 1983. I refer the hon. Member to the *Journals* for that same date, at pages 6008 to 6028.

In another case, in 1978, as part of its reorganization, the Government sought legislative approval for the creation of the Department of Fisheries and Oceans. In that instance, the Government presented legislation to reorganize Government departments on December 20, 1978, and that was Bill C-35, the *Government Organization Act, 1979*. I refer to the *Journals* of that same date, at page 274. I think hon. Members will agree that the tabling of such a bill represents a clear intention to modify the administrative structure of the Government.

Nevertheless, the Main Estimates for 1979-80, tabled two months later on February 19, 1979, contained no reference to a Department of Fisheries and Oceans. The Estimates for fisheries programs remained under the Department of the Environment, which continued to be responsible for them until the *Government Reorganization Act, 1979* came into force.

My examination of the records of the House found no deviation from this practice. The main estimates reflect the existing structure of Government at the time that they are presented to the House.

I must conclude then, that the form of the Main Estimates 2004-05 not only respects the requirement of the Standing Orders and the principles set out by Mr. Speaker Jerome, but also conforms with what has been the practice of the House during previous reorganization exercises.

I therefore rule that there does not exist a *prima facie* breach of privilege in the present case.

I would like once again to thank the hon. Member for St. John's West for raising this matter. Given the renewed importance that the scrutiny of the

estimates has taken on both sides of the House, his close attention to questions of this kind is of benefit to all hon. Members.

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1. *Debates*, March 10, 2004, pp. 1310-2.
2. The published *Debates* read "omission" instead of "admission".

Financial Procedures

Business of Ways and Means

Budget: announcements made outside the House

March 18, 2003 *Debates*, pp. 4368-9

Context: On February 26, 2003, Loyola Hearn (St. John's West) rose on a point of order. He charged John Manley (Minister of Finance) with failing to inform the House of changes to the Government's budgetary policy since the presentation of the budget on February 18, 2003.[1] Mr. Hearn argued that Jean Chrétien (Prime Minister) had made a statement outside the House that contradicted the budget statement with respect to Olympic funding and policy, and that if the Government had decided to alter the budget, the Minister should have informed the House. Mr. Hearn asked that any vote on the budget motion be preceded by a statement by a Minister which would inform the House of the Government's changes to its budgetary policy.[2] After hearing from another Member, the Speaker took the matter under advisement.

Resolution: On March 18, 2003, the Speaker delivered his ruling. He explained that there was no procedural requirement for the Minister of Finance to make a budget speech, or that such a speech be accompanied by supporting documentation. He added that, although the rules impose strict obligations with respect to financial legislation, these do not relate to how the Government sets its policy objectives. He concluded that the fact that the supporting documents were no longer completely accurate did not provide sufficient grounds on which to challenge the right of the House to continue considering the budget motion.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Member for St. John's West on February 26, 2003, concerning a change in the budgetary policy of the Government. I would like to thank the hon. Member for St. John's West for having drawn this matter to the attention of the Chair, as well as the hon. Government House Leader for his comments.

The hon. Member for St. John's West referred to media reports of a statement made by the Prime Minister. The hon. Member asserted that the quotes attributed to the Prime Minister contradict the budgetary position of the Government as set out by the hon. Minister of Finance on February 18, 2003. The hon. Member points out that no formal notice of any alteration to the budget had been made in the House and, on this basis, he maintains that the Government cannot ask hon. Members to vote on the motion "That this House approves in general the budgetary policy of the Government", which stands as Ways and Means Item No. 2 on the *Order Paper*. The hon. Member claims that the House cannot be asked to reach any decision on this motion until the Government has clarified its position and taken the appropriate steps formally to amend the budget.

The Chair appreciates the great seriousness surrounding any charge concerning budgetary matters. The Speaker has a special responsibility to ensure that the procedures and practices relating to financial procedures are respected and that the traditional privileges of the House in these matters are not violated.

It is perhaps useful to put in context House of Commons practice with regard to the budget. I should say that the Chair is well aware of the current controversy surrounding this question in the Ontario Legislative Assembly and I would not want these remarks to be construed as a comment on the situation at Queen's Park. The Chair has no wish to embroil itself in matters arising in another jurisdiction.

Our rules here at the House of Commons make provision for the Minister of Finance to give a budget presentation, and the practices with regard to the presentation of the budget are well anchored in parliamentary practice. Still, our rules do not, strictly speaking, require that the Minister make a budget speech nor is there any procedural necessity for such a speech to be accompanied by supporting documentation. Both the budget speech and the tabling of background documents are, in that way, voluntary actions of the Government.

In the case before us, the hon. Member for St. John's West takes issue with the apparent contradiction between a statement in the document entitled, "The Budget Plan 2003", tabled by the hon. Minister of Finance on February 18, and statements made outside the House by the Prime Minister.

Specifically the document stated that:

> —this budget will invest $10 million in the next two years for additional support to Canada's elite athletes in the event that the 2010 Vancouver Winter Olympic bid is successful.

Media reports indicate that this condition would be lifted but no statement to that effect has been made in the House itself.

Neither the hon. Member for St. John's West nor the media reports themselves suggest that this discrepancy represents an instance of the House being deliberately misled. The question is whether or not our procedure requires a statement in the House to correct or explain the discrepancy.

House of Commons Procedure and Practice, at page 379, states:

> A Minister is under no obligation to make a statement in the House. The decision of a Minister to make an announcement outside of the House instead of making a statement in the House during Routine Proceedings has been raised as a question of privilege, but the Chair has consistently found there to be no grounds to support a claim that any privilege has been breached.

The Government can alter its policies as it sees fit at any time. The obligations that our rules impose concerning financial legislation, while they are strict, do not relate to how the Government sets its policy objectives. That the supporting documents are no longer completely accurate is not sufficient grounds on which to challenge the right of the House to continue considering the budget motion. I must therefore rule that there has not been any breach of our rules or practices in this case.

I would also add a word with regard to the notices of ways and means tabled by the Minister of Finance on budget day. Standing Order 83(4) requires that any enabling budget legislation to be brought before the House must be based on the provisions set out in those motions as adopted. If the Government, as a result of a change in policy, wishes to propose legislation different from that which it had earlier intended, then it will have to file a new notice of ways and

means. At present, however, the House does not appear to be faced with a need to insist on a new ways and means notice.

What the hon. Member for St. John's West has drawn to the attention of the House is an apparent change in policy with regard to the terms under which the Government will invest in elite athletes.

Members who wish to seek clarification of the Government's position on the funding of amateur athletes have a number of avenues open to them, notably, the budget debate and of course the oral question period. Meanwhile, I am ruling that there is no procedural requirement for the Government to table revised documents in the House reflecting its change in position.

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1. *Journals*, February 18, 2003, pp. 431-2.
2. *Debates*, February 26, 2003, pp. 4041-2.

Financial Procedures

Business of Ways and Means

Legislative phase: admissibility; motion to implement certain provisions of the budget

March 13, 2008 *Debates*, pp. 4109-10

Context: On March 11, 2008, Jim Flaherty (Minister of Finance) tabled notice of Ways and Means Motion No. 10 to implement certain provisions of the budget presented on February 26, 2008, and to enact provisions to preserve the fiscal plan set out in that budget. The Minister stated that the Motion contained language which would protect Canada's fiscal framework from the effects of Bill C-253, *An Act to amend the Income Tax Act (deductibility of RESP contributions)*, passed by the House on March 5, 2008. Dan McTeague (Pickering–Scarborough East) rose immediately on a point of order to challenge the admissibility of the ways and means motion, arguing that it sought to have the House decide upon a matter on which it had already voted. The following day, March 12, 2008, Mr. McTeague and other Members argued that the Motion was inadmissible in that it sought to implement a measure that did not flow from the budget and that permitting the Government to use a ways and means motion to void a private Member's bill would compromise the rights of all Members. The Speaker took the matter under advisement.[1]

Resolution: On March 13, 2008, the Speaker delivered his ruling. With respect to the objection that the Motion included provisions regarding Bill C-253, which were not contained in the budget, he cited several authorities to the effect that the budget speech and bills based on ways and means motions tabled at a later date are not necessarily linked. Thus, he concluded that the motion was not procedurally flawed in this regard. He also found that the House was not being asked to pronounce itself again in the same session on the same subject, citing other cases in which a bill had repealed sections of an act already amended by another bill adopted by the House in the same session. With respect to the point that the process affects Private Members' Business as a category of business, or the rights of individual Members to propose initiatives, the Speaker declared that it is not the Speaker but the House which ultimately decides such matters. The Speaker concluded that for those reasons Ways and Means Motion No. 10 could proceed in its current form.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Member for Pickering–Scarborough East on March 11 concerning the admissibility of the ways and means motion to implement certain provisions of the budget tabled in Parliament on February 26 and to enact provisions to preserve the fiscal plan set out in that budget for which the hon. Minister of Finance gave notice on that day.

I would like to thank the hon. Member for Pickering–Scarborough East for initially bringing this matter to the attention of the House, as well as for his subsequent intervention, and I would also like to thank the hon. Member for Markham–Unionville, the hon. Government House Leader, and the hon. House Leader for the Bloc Québécois for their submissions.

The Member for Pickering–Scarborough East, in raising the matter, claimed that Ways and Means Motion No. 10, standing on the *Order Paper* in the name of the Minister of Finance, seeks to have the House decide upon a matter which it had already voted on.

That vote took place on March 5, 2008, when Bill C-253, *An Act to amend the Income Tax Act (deductibility of RESP contributions)* was adopted at third reading. To this issue, the Member for Markham–Unionville has added the contention that Ways and Means Motion No. 10, by including provisions related to Bill C-253, seeks to implement a measure that does not flow from the most recent budget, thus, he alleges, enlarging the usual parameters of budget implementation ways and means motions.

He further contended that this was a backdoor attempt to circumvent the rights of private Members as provided for in the rules governing this category of business.

For the sake of clarity, I should state that sections 45 to 48 of Ways and Means Motion No. 10 are the subject of this point of order. They are conditional amendments that seek to amend or repeal the amendments to the *Income Tax Act* contained in Bill C-253 should the latter receive Royal Assent. The stated objective of these ways and means measures is, to quote the Minister of Finance at page 3971 of the *Debates*, "—to protect Canada's fiscal framework".

The Government House Leader asserted that the broad scope of Ways and Means Motion No. 10, and the wide range of taxation and fiscal measures it seeks to implement are clear evidence that the Motion is fundamentally a different matter than was Bill C-253, and therefore, that it should be allowed to proceed.

In support of his arguments a number of procedural authorities were cited, some of which I will return to later in this ruling.

Let me first deal with the argument that the inclusion of provisions regarding Bill C-253 in Ways and Means Motion No. 10 does not respect our conventions regarding the content of such motions.

The Chair wishes to remind the House that the budget speech and bills based on ways and means motions tabled at a later date are not necessarily linked. *House of Commons Procedure and Practice* states at page 748:

> While a Budget is normally followed by the introduction of Ways and Means bills, such bills do not have to be preceded by a Budget presentation. Generally, taxation legislation can be introduced at any time during a session; the only prerequisite being prior concurrence in a Ways and Means motion.

At page 759, *Marleau and Montpetit* goes on to state:

> The adoption of a Ways and Means motion stands as an order of the House either to bring in a bill or bills based on the provisions of that motion or to propose an amendment or amendments to a bill then before the House.

That text footnotes examples from 1971, 1973, and 1997.

Furthermore, in the case before us, it must be noted that the title of Ways and Means Motion No. 10 states clearly that it not only implements certain provisions of the February 26, 2008 budget, but that it also aims to:

> —enact provisions to preserve the fiscal plan set out in that budget.

On this point, namely the objection that the Motion includes provisions that were not contained in the budget, the Chair must conclude that Ways and Means Motion No. 10 is not procedurally flawed.

Let us now turn to the argument that the decision of the House to adopt Bill C-253 at third reading must stand since the House cannot be asked to pronounce itself again in the same session on the same subject.

The Chair wishes to remind hon. Members that while a part of Ways and Means Motion No. 10 touches on Bill C-253, the question that the House will actually be asked to vote on today, assuming it is called today, is not the same as the question it agreed to on March 5, 2008, when it adopted the Bill at third reading.

In this regard the Chair has found a number of examples where a bill repeals sections of an act already amended by another bill adopted by the House in the same session.

For example, in the First Session of the Thirty-Eighth Parliament, Bill C-18, *An Act to amend the Telefilm Canada Act and another Act*, and Bill C-43, *An Act to implement certain provisions of the budget tabled in Parliament on February 23, 2005*, both proposed to amend subsection 85(1) of the *Financial Administration Act*.

In addition, there are also examples of bills proceeding concurrently even though some of their provisions are dependent upon one another.

As mentioned by the Government House Leader, Mr. Speaker Lamoureux ruled on February 24, 1971, on such a situation at page 3712 of the *Debates*. He stated:

> There is, therefore, in my view, nothing procedurally wrong in having before the House at the same time concurrent or related bills which might be in contradiction with one another either because of the terms of the proposed legislation itself or in relation to proposed amendments.

This is further supported by the 23rd edition of *Erskine May* at page 580, which affirms that:

> There is no rule against the amendment or the repeal of an act of the same session.

Most compelling are the rulings of Mr. Speaker Fraser from June 8, 1988, and I refer to the *Debates* at pages 16252 to 16258, and on November 28, 1991, pages 5513 to 5514, both of which were quoted by the Government House Leader. These rulings clearly support the view that the progress of any bill flowing from Ways and Means Motion No. 10 rests with the House.

As Mr. Speaker Fraser put it on November 28, 1991:

> The legislative process affords ample opportunity for amending proposed legislation during the detailed clause-by-clause study in committee and again at the report stage in the House.

Insofar as this process affects Private Members' Business as a category of business or indeed the rights of individual Members to propose initiatives, I must point out that it is not the Speaker but the House which ultimately decides such matters.

For the reasons stated above, the Chair finds that Ways and Means Motion No. 10, as tabled by the Minister of Finance, may proceed in its current form.

Once again, I would like to thank the hon. Member for Pickering–Scarborough East for having raised this matter.

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1. *Debates*, March 12, 2008, pp. 4050-5.

Financial Procedures

Business of Ways and Means

Budget: Economic and Fiscal Statement; amendment to a motion for a take-note debate on the Statement

December 1, 2008 *Debates*, p. 439

Context: On November 27, 2008, Jim Flaherty (Minister of Finance) delivered his Economic and Fiscal Statement in the House during "Statements by Ministers". The following day, Gordon O'Connor (Minister of State and Chief Government Whip) moved that the House take note of the Economic and Fiscal Statement. On December 1, 2008, during debate on the motion, Scott Reid (Lanark–Frontenac–Lennox and Addington) rose on a point of order shortly after Pierre Paquette (Joliette) proposed an amendment to replace the words "take note of" with the word "condemns". Mr. Reid argued the amendment was out of order as it exceeded the scope of the main motion. The Acting Speaker (Barry Devolin) allowed debate on the main motion to proceed while he took the matter under advisement.

Resolution: The Speaker delivered his ruling later in the sitting. Referring to *House of Commons Procedure and Practice*, 2000 and citing a ruling he gave as Deputy Speaker in 1999, he stated that the proposed amendment was not relevant to and contradicted the main motion. Accordingly, he ruled the amendment out of order.

Decision of the Chair

The Speaker: Before continuing, I would like to inform the House of the Speaker's opinion of the amendment proposed by the hon. Member for Joliette. I must indicate that I have given consideration to the amendment and I have an opinion to express to the Chamber regarding its admissibility.

First, I must mention the quote from *Marleau and Montpetit* to which the hon. Member for Lanark–Frontenac–Lennox and Addington referred previously in the House. I will again quote the text from page 453:

> An amendment must be relevant to the main motion. It must not stray from the main motion but aim to further refine its meaning and intent. An amendment should take the form of a motion to:

A list of what may be proposed by an amendment follows.

I must also cite a ruling I gave in 1999, when I was Deputy Speaker:

> I am sure the hon. Member is aware that virtually any motion, except I believe an adjournment motion, put to the House is amendable. There may be a few others that are listed in the Standing Orders that are not but there are not many.

A motion, even on a take-note debate, it seems to me is an amendable motion. It may be that the question is not put but that is in accordance with the rule adopted by the House in relation to this debate. Accordingly amendments are amendments. As long as they are relevant to the main motion and do not contradict the main motion and as long as they are not repugnant to it generally they are ruled to be in order.

In my opinion, the proposed amendment, which replaces the words "take note of" with the word "condemns" is not relevant to the main motion. In my opinion, this motion contradicts the main motion. Therefore it is not in order at this time.

Postscript: Debate resumed on the main motion and on December 1, 2008, Leon Benoit (Vegreville–Wainwright) moved that the question be now put.[1] Debate then arose on the motion of Mr. Benoit and continued until December 4, 2008 when Rob Nicholson (Minister of Justice and Attorney General of Canada) rose on a point of order to read the proclamation proroguing the First Session of the Fortieth Parliament.[2]

1. *Journals*, December 1, 2008, p. 55.
2. *Debates*, December 4, 2008, p. 621, *Journals*, p. 101.

Financial Procedures

Governor General's Special Warrants

Operating expenditures

June 12, 2003 *Debates*, pp. 7220-1

Context: On June 5, 2003, John Williams (St. Albert) rose on a point of order to argue that the Government no longer had the authority to make *ex gratia* payments for the Heating Fuel Rebates Program as it had done in January 2001, when it had paid out more than $1.4 billion.[1] He declared that the payments were still being made although spending authority provided by Governor General's Warrant had lapsed at the end of March 2001, pursuant to section 30(2) of the *Financial Administration Act*. Accordingly, he asked the Speaker to reduce the relevant vote of the Main Estimates. On June 11, 2003, Elinor Caplan (Minister of National Revenue) responded that the funds for the Program had been appropriated by Parliament and placed in the Canada Customs and Revenue Agency Vote 1—OPERATING EXPENDITURES through two Governor General's Special Warrants. She argued that there was no need to reduce the Vote as the authority to carry forward unused Vote 1 appropriations into the following fiscal year was provided for under subsection 60(1) of the *Canada Customs and Revenue Agency Act* and these carry-forward funds were the first to be used in any subsequent fiscal year, as long as they were used for operating purposes. She also noted that these were *ex gratia* payments charged to Vote 1 and as such did not require specific parliamentary approval or authority.[2]

Resolution: On June 12, 2003, the Speaker delivered his ruling. He explained that Special Warrants must be approved by Parliament and that the funds obtained apply only to the year in which they are granted. He noted an exception to this practice in that appropriations for the Canada Customs and Revenue Agency are for two years, pursuant to the *Canada Customs and Revenue Agency Act*. He also pointed out that it was these carry-forward provisions that provided the Agency with the authority to make payments in both the 2000-01 and 2001-02 fiscal years. The Speaker also accepted the Minister's explanation that payments made during 2002-03 and subsequent fiscal years would be *ex gratia* payments, which did not require specific parliamentary authority as these would be paid out using funds authorized as part of the Canada Customs and Revenue Agency Vote 1—OPERATING EXPENDITURES.

The Speaker ruled that the point of order was not well founded. He also expressed concern about the persistent problem experienced by Members of Parliament in obtaining complete and accurate information on spending through the estimates documents. Therefore, he suggested that committees with a special responsibility for the estimates process have a closer look at the nature of the information provided to Members by the estimates documents.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on June 5, 2003, by the hon. Member for St. Albert concerning multi-year funding of the heating fuel rebate. I would like to thank the hon. Member for St. Albert for having raised this matter. I would also like to thank the hon. Minister of National Revenue for the information she provided to assist the Chair on June 11.

In raising this matter, the hon. Member for St. Albert pointed out that the Government paid out more than $1.4 billion in heating fuel rebates during January 2001. As this is a somewhat complicated case, it will be helpful to provide the House with a fairly detailed chronology of the events that have led to the raising of the procedural point before us.

The Government's intention to make rebate payments was first announced in the budget speech made in the House on October 18, 2000. As a result of the general election held during November 2000, the Government initially funded these rebates by the use of Governor General's Special Warrants. These Special Warrants are used exclusively to fund Government operations on an urgent basis when Parliament is dissolved. During periods of dissolution, it is impossible for the Government to apply to Parliament for the approval of funding, and Governor General's Special Warrants provide a temporary means of overcoming this difficulty.

Members will find a more detailed account of the use of Special Warrants in *House of Commons Procedure and Practice*, pages 747-8.

Once Parliament meets following a general election, any Special Warrants that have been issued must be submitted to Parliament for approval. The Special Warrants in the present case were tabled in the House on February 12, 2001.

It is not necessary to enter into every detail of the procedures concerning the use of Governor General Special Warrants, but I would draw the attention of hon. Members to two points in particular. First, any funds obtained by the Government through the use of such warrants must subsequently be approved by the House as part of the normal estimates process. The funds authorized by the Special Warrants on December 13, 2000 and January 9 and 23, 2001, were included in the *Appropriation Act* approved by the House on March 20, 2001.

Second, and this point was underlined by the hon. Member for St. Albert, the funds approved in this way apply only to the fiscal year for which they are granted. The fact that funds are provided by a Special Warrant does not exempt them from the key principle of our financial procedure that funds are allocated on an annual basis and may not be expended after the end of the fiscal year for which they are approved.

Although the initial funds were approved for the fiscal year ending on March 31, 2001, the hon. Member for St. Albert pointed out that in 2001-02, $42.2 million were disbursed for heating fuel rebates and a further $13 million during 2002-03.

At their meeting of May 12, 2003, an official of the Treasury Board indicated to the Public Accounts Committee that further payments would be made during 2003-04. The hon. Member for St. Albert noted that no legislative authority exists for the Heating Fuel Rebate Program and that the House has not been asked to approve any appropriation for that purpose since supply was passed for the fiscal year 2000-01.

An appropriation act gives authority only for a single year and is therefore not appropriate for expenditure that is meant to continue for a longer period or indefinitely. Ongoing programs must be established by particular legislative measures. Once Parliament has approved a program in this way, it then may be asked to appropriate funds on an annual basis.

At this point I would like to point out that an exception to this rule exists in the case of the Canada Customs and Revenue Agency. Section 60(1) of the *Canada Customs and Revenue Agency Act* reads:

> Subject to subsection (4), the balance of money appropriated by Parliament for the use of the Agency that remains unexpended at the end of the fiscal year, after the adjustments referred to in section 37 of the *Financial Administration Act* are made, lapses at the end of the following fiscal year.

Accordingly, with respect to the Canada Customs and Revenue Agency, subject to the reservations in the Act, appropriations are for two years rather than one as is usually the case. The hon. Member for St. Albert drew … the Chair's attention to the fact that $42.2 million was paid out in heating fuel rebates during 2001-02. Given the carry-forward provision just cited, there seems to be no reason to question the Agency's authority to make these payments using funds originally appropriated for 2000-01.

However, the hon. Member also pointed out that in testimony before the Public Accounts Committee it was revealed that a further $13 million in rebates were made during 2002-03. Clearly, no authority existed for the carry-forward of funds from the moneys provided by the Special Warrants. Any unused funds from that appropriation lapsed on March 31, 2002. It was also indicated to the Public Accounts Committee that further payments relating to heating fuel are expected during the current fiscal year.

The hon. Minister of National Revenue indicated to the House in her statement on this issue that all of the payments made relative to heating fuel rebates were made as *ex gratia* payments. The *Public Accounts*, 2002, Vol. II, Part II at page 10.14 describe an *ex gratia* payment as "a discretionary payment, made as an act of benevolence in the public interest, free of any legal obligation, whether or not any value or service has been received".

As the hon. Minister indicated, payments of this type do not require specific parliamentary authority. That is to say, they are not made as part of a

legislated program, nor are they the object of a specific funding request made to Parliament. At the same time, it is quite clear that even with respect to *ex gratia* payments, the funds used must be properly authorized by Parliament. In the present case, the Minister has told the House that the heating fuel rebates were paid using funds authorized as part of the Canada Customs and Revenue Agency Vote 1—OPERATING EXPENDITURES.

The Chair concluded that in both 2001-02 and 2002-03, the rebates were simply paid out of the Vote 1 funds, all of which had been properly authorized. No other authorization is required for payments of this type. It seems reasonable to conclude that any further payments issued during 2003-04 or subsequent years will be made on the same basis. I am therefore satisfied that the point of order of the hon. Member for St. Albert is not well founded.

However the Chair is troubled by the current case which is an example of a persistent problem that I have had occasion to comment on before, that is, the adequacy of information provided to Parliament regarding estimates. Committees have always been dependent on being provided with complete and accurate information concerning proposed public spending. In light of the size and complexity of modern Government, this is all the more true.

The *Reports on Plans and Priorities* and the *Performance Reports* that are now tabled annually were meant to provide such information. Yet difficulties persist and, some might argue, have grown even more acute. In this case, for example, to determine the source of the funds being used for the heating fuel rebate, Members had to rely on the documents tabled before Parliament. If that documentation is inadequate, then Members seeking clarification have no recourse except, as the hon. Member for St. Albert did, to raise a point of order in the House.

The hon. Minister's statement has clarified the situation but I believe all Members would agree with the Chair that it would be preferable if Members had available to them the opportunity to obtain this information without being obliged to take up the time of the House.

It may well be that those House committees that have special responsibility for the estimates process will want to have a closer look at the nature of the

information provided to Members by the estimates documents. It is, after all, hon. Members who must take a large share of the responsibility for seeing to it that they receive the information they require.

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1. *Debates*, June 5, 2003, pp. 6908-10.
2. *Debates*, June 11, 2003, pp. 7142-3.

Financial Procedures

The Accounts of Canada

Public Accounts of Canada: Officers of Parliament; funds spent without the authorization of Parliament

October 24, 2003 — *Debates*, pp. 8723-4

Context: On October 2, 2003, John Williams (St. Albert) rose on a point of order regarding certain funds identified by the Auditor General which had reportedly been spent by the Office of the Privacy Commissioner for the fiscal year 2002-03 without the authorization of Parliament.[1] Mr. Williams cited a report of the Auditor General to the effect that despite the requirement for organizations in the federal Government to make financial statements that are complete, accurate and fair, the Office of the Privacy Commissioner had failed to do so. He asked how this overspending could have occurred, since the *Financial Administration Act* prohibits any payments to be made out of the Consolidated Revenue Fund without the authorization of Parliament. Mr. Williams argued that the Government would have to solve the problem of obtaining Parliament's approval for funds that were spent in 2002-03. On October 6, 2003, Don Boudria (Leader of the Government in the House of Commons) rose in response to Mr. Williams' point of order. He declared that the overspending in question would be corrected by the Government through a clear authorization process set out in the *Financial Administration Act* and Treasury Board policies. The Speaker took the matter under advisement.[2]

Resolution: On October 24, 2003, the Speaker delivered his ruling. He affirmed that his role in the matter was limited to determining whether the rules and practices of the House had been infringed. He stated that he could find no evidence of a direct attempt to mislead Members, noting that Mr. Boudria had assured the House that the item would be correctly set out in the *Public Accounts* to be tabled later that year. He noted with dismay that Members had once again found it difficult to obtain the information they required from the estimates documents. However, he concluded that no breach of the House's rules had occurred.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on October 2, 2003, by the hon. Member for St. Albert, concerning his claim that the Office of the Privacy Commissioner had overspent funds appropriated by the House. I would like to thank the hon. Member for St. Albert for raising this issue, as well as the hon. Government House Leader for his comments.

In support of his charge, the hon. Member for St. Albert cited the Auditor General's "Report on the Office of the Privacy Commissioner of Canada". The Report notes that despite the requirement for organizations in the federal Government to make financial statements that are complete, accurate and fair, the Office of the Privacy Commissioner had failed to do so.

Paragraph 111 of the Report states:

> We found that despite these requirements, the preparers of the Office of the Privacy Commissioner's financial statements for the fiscal year ending 31 March 2003—the Director, Financial Services, the Chief of Staff, and the Executive Director—knowingly omitted about $234,000 of accounts payable at year end.

The Report concludes in paragraph 112 that:

> The effect of the omission was to mislead Parliament by creating the impression that the Office of the Privacy Commissioner had spent only the amounts authorized by Parliament for the 2002-03 fiscal year.

On October 2, the hon. Government House Leader indicated that he would endeavour to verify that information communicated to the House had been accurate. On October 6, the hon. Minister returned to the House to clarify the procedure the Government uses in cases such as this. In his remarks, the hon. Government House Leader pointed out that the procedure for dealing with the overspending of an appropriation is well established both in Treasury Board guidelines and in the *Financial Administration Act*.

Subsection 37.1(4) of the *Financial Administration Act* states:

> Where… a payment is made that results in an expenditure that is in excess of an appropriation, (a) the amount by which the expenditure exceeds the balance then remaining in the appropriation constitutes a first charge against the next appropriation of the immediately subsequent fiscal year;

The hon. Government House Leader stated:

> Therefore, the $234,000 will be recorded in the *Public Accounts* for 2002-03 since that is the year in which the expenses were incurred.
>
> This will result in reporting in the *Public Accounts 2002-03* an over expenditure on that vote, in this case Vote 45 of the Office of the Privacy Commissioner, by approximately $234,000—

As hon. Members are aware, funds requested in the estimates must be approved by Parliament. The Government can only spend funds in the amount that Parliament has appropriated and only for the purpose for which the funds are appropriated. With respect to the oversight of Government expenditure, *House of Commons Procedure and Practice* at page 698 states:

> First, Parliament must assent to all legislative measures which implement public policy and the House of Commons authorizes both the amounts and objects or destination of all public expenditures. Second, through its review of the annual departmental performance reports, the Public Accounts and the reports of the Auditor General, the House ascertains that no expenditure was made other than those it had authorized.

Both the hon. Member for St. Albert and the hon. Government House Leader agree that the Office of the Privacy Commissioner overspent the appropriation in Vote 45 for 2002-03 by some $234,000. That point is not disputed.

The hon. Member for St. Albert contends that this will pose difficulties for the President of the Treasury Board. The Government House Leader counters that the situation will be dealt with in due course when the *Public Accounts* for

2002-03 are published in accordance with existing Treasury Board guidelines and the provisions of the *Financial Administration Act*.

As hon. Members know, the role of the Speaker is a restricted one. *House of Commons Procedure and Practice*, p. 261, states:

> Despite the considerable authority the Speaker holds, he or she may exercise only those powers conferred by the House, within the limits established by the House itself. In ruling on matters of procedure, the Speaker adheres strictly to this principle—

The question that I must address as Speaker is whether the rules or practices of the House have been infringed in any way. The timing of this complaint is somewhat problematic for the Chair since it anticipates potential difficulties. Thus, for example, the Auditor General has suggested that the House will be misled while the Government House Leader has assured the House that the item in question will be correctly set out in the *Public Accounts*. Even the hon. Member for St. Albert seemed satisfied that the Interim Privacy Commissioner is taking the necessary steps to ensure that this will be so.

On June 12, 2003, as part of its approval of the Main Estimates for 2003-04, the House granted the Office of the Privacy Commissioner $9.8 million as the appropriation for Vote 45. Members will no doubt want to inquire as to whether the $234,000 has been charged against that appropriation, as required by the *Financial Administration Act*.

While the Chair can find no evidence of a direct attempt to mislead hon. Members, I find it regrettable that once again Members have found it difficult to obtain the information they require from the estimates documents. Although the over expenditure will be set out in the *Public Accounts* for 2002-03, those *Public Accounts* are usually not available to hon. Members when they consider the main estimates for the subsequent year. I know that many Members would find it useful to be informed of cases such as this before they have completed their consideration of the main estimates.

I congratulate the hon. Member for St. Albert for his continued vigilance in these matters, which is a credit both to him and to the House. At the present

time, however, I can find no grounds on which to find that any breach of our rules has occurred.

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1. *Debates*, October 2, 2003, pp. 8115-6.
2. *Debates*, October 6, 2003, pp. 8212-3.

Financial Procedures

Royal Recommendation

Financial initiative of the Crown: Senate bill argued to require the expenditure of funds; right of the House to grant supply

October 29, 2003 *Debates*, pp. 8899-8900

Context: On October 22, 2003, Jim Abbott (Kootenay–Columbia) rose on a point of order at the commencement of debate on Bill S-7, *An Act to protect heritage lighthouses*, standing on the *Order Paper* in the name of Gerald Keddy (South Shore), to challenge the propriety of the Bill.[1] Mr. Abbott stated that, because the Bill could require the owners of heritage lighthouses to spend funds to maintain them, the financial prerogative of the Crown and the precedence of the House of Commons in financial matters did not allow such a bill to originate in the Senate. After hearing from Don Boudria (Minister of State and Leader of the Government in the House of Commons), the Acting Speaker (Réginald Bélair) took the matter under advisement.[2]

Resolution: The Speaker delivered his ruling on October 29, 2003. He stated that the Bill did not require a royal recommendation and that since there was no obligation for public expenditure, the Bill could, therefore, originate in the Senate. He also reminded Members that the rules of the House require that all bills providing for the expenditure of public funds, including items of Private Members' Business, originate in the House and not in the Senate.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Member for Kootenay–Columbia concerning whether Bill S-7, the Heritage Lighthouses Preservation Bill, violates the financial prerogative of the Crown and the precedence of the House of Commons with respect to financial legislation.

I would like to thank the hon. Member for Kootenay–Columbia for having raised this important matter. I would like also to thank the hon. Government House Leader for his remarks on the issue.

I would remind hon. Members that the hon. Member for Kootenay–Columbia indicated at the beginning of his intervention that he is a supporter of this Bill. The question that has been raised is of a procedural nature only and does not deal with the desirability of the Bill as public policy.

The hon. Member for Kootenay–Columbia pointed out that the *Constitution Act, 1867* requires that a bill requiring the expenditure of funds be introduced first in the House of Commons and that it be accompanied by a royal recommendation. Bill S-7, as its number indicates, originated in the Senate.

He also cited the following passage from page 711 of *House of Commons Procedure and Practice*:

> —private Members' bills involving the spending of public money have been allowed to be introduced and to proceed through the legislative process on the assumption that a royal recommendation would be submitted by a Minister of the Crown before the bill was read a third time and passed.

The hon. Member also drew the attention of the House to clause 17 of the Bill which reads:

> The owner of a heritage lighthouse shall maintain it in a reasonable state of repair and in a manner that is in keeping with its heritage character.

He went on to indicate that, while the Bill contains no provision directly requiring that money be spent, it seemed unreasonable in his view that the maintenance of lighthouses would be possible without the expenditure of funds.

The hon. Government House Leader in his intervention underlined the fact that the Bill does not expend any public money. He also pointed out that this House has previously approved similar legislation, the *Heritage Railway Stations Protection Act*, adopted in 1988. He noted that the *Heritage Railway Stations Protection Act*, which operates in a way similar to that proposed in Bill S-7, had not required a royal recommendation.

I will remind the House at the outset that it is outside the responsibilities of the Speaker to pronounce on questions of constitutional law. However, the requirement that bills expending public funds be accompanied by a royal recommendation is also found in Standing Order 79, which states:

> This House shall not adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or any tax or impost, to any purpose that has not been first recommended to the House by a message from the Governor General in the session in which such vote, resolution, address or bill is proposed.

As Speaker, it is my obligation to ensure that the provisions of the Standing Orders are followed. It is important to remember, however, that the requirement for a royal recommendation relates to the expenditure of public funds and not simply to the fact that someone, somehow or other, may be required to make an expenditure as a result of a provision in the Bill.

In the present case the question is, I think, straightforward. Both the hon. Member for Kootenay–Columbia and the Government House Leader are in agreement that the Bill does not immediately require the expenditure of public funds. Any funds that may be required to comply with clause 17 of the Bill will be required of the owners of lighthouses only once those lighthouses have been designated as heritage lighthouses.

After examining the Bill, I can find no obligation for the spending of public funds either by the Historic Sites and Monuments Board or by the Minister of Canadian Heritage. As there is no obligation for public expenditure created by the passage of Bill S-7, there is no need for a royal recommendation.

I would also like to take this opportunity to correct a possible misapprehension that hon. Members may have concerning the royal recommendation and private Members' bills.

The passage cited by the hon. Member for Kootenay–Columbia from page 711 of… *House of Commons Procedure and Practice* indicates that a royal recommendation must be forthcoming before a private Member's bill, which requires the expenditure of public funds, can be given third reading. This

provision only applies to private Members' bills in the narrow sense, that is, bills which originate with private Members in the House of Commons.

While Bill S-7 is being dealt with under the provisions of Private Members' Business, it is a bill originating in the Senate. Standing Order 80(1) states:

> All aids and supplies granted to the Sovereign by the Parliament of Canada are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit, and appoint in all such bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate.

Although in the present case there are no grounds for invoking this Standing Order, hon. Members should be mindful of the fact that our rules do not permit Senate bills which require the expenditure of public funds. Items of Private Members' Business which require a royal recommendation must originate in the House of Commons.

I would like to thank the hon. Member for Kootenay–Columbia for having raised this issue. The precedence of the House of Commons in financial matters and the need to safeguard the financial prerogative of the Crown are fundamental elements of our system of parliamentary Government. As Speaker, I share the concern of all Members that our financial rules be strictly respected.

Editor's note: See *Debates*, June 20, 2005 for a similar ruling concerning Bill S-14, *An Act to protect heritage lighthouses*.

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1. *Debates*, October 22, 2003, pp. 8620-1.
2. *Debates*, October 22, 2003, p. 8621.

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Chapter 7 — Rules of Debate

Introduction

One of the fundamental principles of parliamentary procedure is that debate and other proceedings in the House of Commons be conducted in terms of a free and civil discourse. Accordingly, the House has adopted rules of order and decorum governing the conduct of Members towards each other and towards the institution as a whole. Members are expected to show respect for one another and for viewpoints differing from their own; offensive or rude behaviour or language is not tolerated; and opinions are to be expressed with civility.

The Speaker is charged with maintaining order in the Chamber by ensuring that the House's rules and practices are respected. These rules govern proper attire, the quoting and tabling of documents in debate, the application of the *sub judice* convention to debates and questioning in the House, and the civility of remarks directed towards both Houses, Members and Senators, representatives of the Crown, judges and courts. In addition, it is the duty of the Speaker to safeguard the orderly conduct of debate by curbing disorder when it arises either on the floor of the Chamber or in the galleries, and by ruling on points of order raised by Members. The Speaker's disciplinary powers are intended to ensure that debate remains focussed and that order and decorum are maintained.

Another fundamental principle of parliamentary procedure is that debate in the House of Commons must lead to a decision within a reasonable period of time. Although what seems reasonable to one party may arguably appear unfair to another, few parliamentarians contest the idea that, at some point, debate must end. While much House business is concluded without recourse to special procedures intended to limit or end debate, certain rules exist to curtail debate in cases where it is felt a decision would otherwise not be taken within a reasonable time frame or not taken at all. When asked to determine the acceptability of a motion to limit debate, the Speaker does not judge the importance of the issue in question or whether a reasonable time has been allowed for debate, but strictly addresses the acceptability of the procedure followed.

During his tenure, Mr. Speaker Milliken made a number of decisions with respect to debate in the House. Indeed, this chapter includes 26 rulings that touch on various aspects of debate. Mr. Speaker Milliken made a number of decisions regarding the use of unparliamentary language. On February 3, 2009, for example, he ruled on a point of order raised for a second time—it was first raised in the previous session, but the Speaker could not issue his decision to the House because that session had been prorogued—pertaining to excerpts from e-mails from members of the public quoted in the House which allegedly contained unparliamentary language.

Mr. Speaker Milliken also dealt with points of order raised on the content of Statements by Members. For example, on June 14, 2005, the Speaker ruled on whether a Member had made disrespectful comments with respect to a Senator and a Minister during Question Period. In addition, on February 1, 2007, Mr. Speaker Milliken ruled on a point of order raised by a Member after a Minister had implied during Question Period that the Member had misled the House.

On February 23, 2007, Mr. Speaker Milliken ruled on the admissibility of a motion introduced by the Government House Leader to suspend certain Standing Orders in order to accelerate consideration of a bill that had not yet been introduced in the House, without seeking or obtaining unanimous consent. Then on February 15, 2008, he ruled on the admissibility of a motion, placed on the *Notice Paper* in the name of the Government House Leader, after a Member raised a point of order arguing that it should not be admissible because it contained an argumentative preamble, was too long and contained conditions beyond the control of the House.

Mr. Speaker Milliken also ruled on measures intended to limit debate. On December 3, 2009, he delivered a decision on the admissibility of a time allocation motion for a bill not yet introduced in the House. Also in this chapter is a decision made by Deputy Speaker Bob Kilger on March 1, 2001, on a question of privilege raised by the Leader of the Opposition in the House with regard to the Government's use of time allocation to limit debate on bills.

The decisions collected in this chapter reflect Mr. Speaker Milliken's respect for the traditions and practices of the House of Commons related to the rules of debate. They are grouped into three main themes: the process of debate; order and decorum; and the curtailment of debate. Mr. Speaker Milliken was often required to exercise his authority in a tense environment, a by-product of the minority governments that marked his tenure, but his decisions show his commitment to maintaining order and decorum in the House and to enforcing the rules of debate while respecting the rights and privileges of Members.

Rules of Debate

Process of Debate

Motions: admissibility; suspension of certain Standing Orders

February 23, 2007 *Debates*, pp. 7242-3

Context: On February 23, 2007, Joe Comartin (Windsor–Tecumseh) rose on a point of order, contending that a motion (Government Business No. 15) that had been moved by Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform) was out of order. The motion sought to suspend certain Standing Orders for the duration of the consideration a bill entitled *An Act to provide for the resumption and continuation of railway operations*, which had yet to be introduced in the House.[1] Mr. Comartin argued that the House was being asked to accept a piece of legislation which it had not yet seen, that the motion effectively precluded the possibility of the House passing informed amendments to the Bill, that the motion was effectively an attempt to circumvent the Standing Orders and that the consent of a majority of the parties should precede any restriction of debate. He maintained that, since unanimous consent had neither been sought nor obtained to suspend the Standing Orders, the Government could use either Standing Order 57 or 78(3) to limit debate on the Bill. Jay Hill (Secretary of State and Chief Government Whip) argued in reply that the same kind of procedure had been used in the past and had been ruled in order.

Resolution: The Speaker ruled immediately. He also cited a previous ruling by Mr. Speaker Fraser to the effect that the House may dispense with the application of the rules by unanimous consent or by motion and that the Standing Orders may be suspended by motion for which appropriate notice has been given. He noted that in the case of the disputed motion, notice had been duly given and the motion moved in accordance with the Standing Orders. He stated that the House decides matters by the majority of the Members voting in favour or against them and not by party. He ruled, accordingly, that the motion currently before the House was in order.

Decision of the Chair

The Speaker: The Chair has heard the very able arguments put forward by the hon. Member for Windsor–Tecumseh in respect of this motion and I must say that I greet his arguments with some skepticism.

I am concerned about his reference to the fact that a majority of the parties in the House have not agreed to something and therefore that something may not be in order. The House decides matters, not by party but by votes, by the number of Members supporting or rejecting a motion. In my view, that is the way the House operates and will continue to operate.

I point out that this motion, which has been moved today and which is now the subject of debate, if acceptable, is one that will be voted on by the Members of the House. Members are free to vote for or against the motion as they see fit and the decision of the House will be taken by the majority of the Members voting either for or against. If the majority vote against, the motion is defeated and we will not proceed in this way. If the majority favour proceeding in this way, then that is exactly what will happen.

I would refer the hon. Member to a ruling made by Mr. Speaker Fraser on December 15, 1988, when a motion for certain changes to the Standing Orders was moved in the House. Mr. Speaker Fraser, quoting an earlier ruling of his which he had made in June 1988, said:

> The most fundamental privilege of the House as a whole is to establish rules of procedure for itself and to enforce them. A few rules are laid down in the *British North America Act*, but the vast majority are resolutions of the House which may be added to, amended, or repealed at the discretion of the House. It follows, therefore, that the House may dispense with the application of any of these rules by unanimous consent on any occasion, or, by motion, may suspend their operation for a specified length of time.

He went on to say:

> Standing Orders may be suspended for a particular case without prejudice to their continued validity, for the House possesses the

> inherent power to destroy the self-imposed barriers and fetters of its own regulations. It may even pass an Order prescribing a course of procedure inconsistent with the Standing Orders.

He continues to say:

> Furthermore, there are several precedents for such occurrences in the Canadian House found in the *Journals* for March 16, 1883, June 1, 1898, April 8, 1948, April 24, 1961, and May 14, 1964. Clearly then both the authorities and our practices allow for our Standing Orders to be suspended or amended by motion on notice.

I note that there has been notice given of this motion. It has been moved in accordance with the Standing Orders and will propose to suspend certain operations of those Standing Orders.

Finally:

> Standing Orders are not safeguarded by any special procedure against amendment, repeal or suspension, whether explicitly or by Order contrary to their purport. Ordinary notice only is requisite for the necessary motion: and some Standing Orders have included arrangements for the suspension of their own provisions by a bare vote, without amendment or debate.

In the circumstances, having regard to the motion that has been proposed by the Government House Leader, I must say that it appears to me to suspend the operation of the Standing Orders in relation to a bill that is to be introduced at some future time with a specific title, and that when that bill is introduced, this Special Order will kick in, in relation to that bill.

It seems to me that it is a matter for the House to decide if it wishes to proceed in this way.

I think that the motion is receivable in its present form and is consistent with the authorities I have cited. It is up to the House and not me to decide if the motion is acceptable or not.

In my view, the motion is receivable right now and the House can decide after the debate if it wants to adopt it or not. We will now hear the hon. Minister of Labour for the beginning of the debate.

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1. *Debates*, February 23, 2007, pp. 7241-2.

Rules of Debate

Process of Debate

Motions: admissibility due to length and content of preamble

February 15, 2008 *Debates*, pp. 3173-4

Context: On February 11, 2008, Libby Davies (Vancouver East) rose on a point of order with regard to Government Motion No. 4 on the *Notice Paper* which concerned the Canadian mission in Afghanistan. Ms. Davies argued that the motion was not a proper motion as it contained a lengthy and argumentative preamble and conditions that were beyond the control of the House. She asked that the Government rewrite it as per the usual standards and practices and, failing that, that the Speaker rule it out of order. After hearing from other Members, the Speaker took the matter under advisement.[1]

Resolution: On February 15, 2008, the Speaker delivered his ruling. Referring to several precedents and to a ruling by Mr. Speaker Michener, he declared that the motion could not be ruled out of order based on its length, the presence of a preamble, or the inclusion of conditions. He concluded by suggesting that the issue of preambles in motions was one that the Standing Committee on Procedure and House Affairs might wish to consider.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on Monday, February 11, 2008 by the hon. House Leader for the New Democratic Party concerning the admissibility of Government Motion No. 4 standing on the *Order Paper* in the name of the Leader of the Government in the House of Commons and Minister for Democratic Reform.

I would like to thank the House Leader for the New Democratic Party for raising this matter, as well as the hon. Member for Mississauga South and the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons for their contributions on the issue.

The House Leader of the New Democratic Party argued that the preamble of Government Motion No. 4 amounted to a series of arguments that are really debating points. This, she said, is contrary to the practices of this House, which do not allow for motions to be in the form of a speech or to include argumentative clauses.

In support of her argument, she quoted *Beauchesne*, 6th edition, citation 565, as well as *House of Commons Procedure and Practice*, p. 449, which states:

> A motion should not contain any objectionable or irregular wording. It should not be argumentative or written in the style of a speech.

In addition, she expressed concern about the procedural viability of the motion due to its length and the fact that it includes conditions that are outside the House's control.

For these reasons, the House Leader for the New Democratic Party requested that the Government either withdraw Motion No. 4 and replace it with a motion reworded such that the offending parts are removed, or failing any indication on the part of the Government that it would do so, that the Chair rule this motion inadmissible and allow the Government to present a new one.

The Member for Mississauga South agreed that the preamble to the motion was tantamount to argument which, instead, should be raised during the course of debate. He added that in his experience preambles are discouraged and contended that allowing debate to proceed on this motion in its current form would set a precedent that could lead to some degree of confusion with respect to the procedural acceptability of motions placed on notice in future. In his submission, the Parliamentary Secretary to the Leader of the Government in the House pointed out that in fact there have been examples of motions that were very broad in scope and that on that basis, the motion in question is procedurally appropriate.

In some respects, the House is not unfamiliar with the arguments raised in this case as the whole notion of the procedural acceptability of motions which contain preambles has been raised several times in the past. A survey of

relevant precedents, as well as of relevant rulings, reveals that the House has debated numerous motions that were accompanied by a preamble.

While the precedents reach far back into our parliamentary history—the Parliamentary Secretary correctly referred to a fairly recent example regarding distinct society which occurred on December 6, 1995—in the last session alone there were two supply day motions that are especially pertinent to the present discussion. The first, standing in the name of the hon. Member for Bourassa, dealt with Canada's involvement in Afghanistan and was debated on April 19, 2007. The second, on the same subject, was, as the hon. Parliamentary Secretary pointed out on Thursday, February 14, 2008, sponsored by the hon. Member for Toronto–Danforth and was debated on April 26, 2007. Both these motions contained a preamble of considerable length made up of several clauses not unlike those contained in Government Motion No. 4. Their procedural acceptability was not contested. This is consistent with the ruling given by Mr. Speaker Michener on January 16, 1961, on page 1074 of *Debates* where he indicated that "it is amply established that a preamble is in accordance with our practice".

In that same ruling, Mr. Speaker Michener also dealt conclusively, although with some reluctance, with the issue of length when he went on to say:

> The use of the preamble can lead to absurd lengths. By way of example I have only to cite one instance which I found in 1899 of a motion the preamble of which covers 21 pages of the *Journals*. It is, I might say, a procedural monstrosity, but there it is as a precedent.

Clearly, the procedural acceptability of motions is not gauged by their length.

> With regard to the inclusion of conditions in motions, it is perhaps useful for the Chair to remind the House that it is not the Speaker's role to judge the effectiveness of proposals brought forward for debate.

As *House of Commons Procedure and Practice* states at page 448:

> A resolution of the House makes a declaration of opinion or purpose; it does not have the effect of requiring that any action be taken—nor is

> it binding. The House has frequently brought forth resolutions in order to show support for some action.

The Chair is therefore not in a position to conclude that the inclusion of conditions in the motion currently in question renders it inadmissible. Rather, they are simply an additional aspect of the issue contained in the motion that hon. Members will need to consider as they debate and, ultimately, decide.

Under the circumstances, I must conclude, therefore, that Government Motion No. 4 is admissible and may be proposed to the House in its current form.

That being said, the point raised by the hon. Member for Mississauga South regarding his experience that preambles in motions are discouraged is one into which I will enquire further. In the meantime, this is certainly an issue the Standing Committee on Procedure and House Affairs may wish to look into with a view, ultimately, to making recommendations.

I thank the House Leader of the New Democratic Party for bringing this matter forward and to the attention of the House.

Postscript: There was no subsequent report from the Standing Committee on Procedure and House Affairs on the question of preambles in motions.

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1. *Debates*, February 11, 2008, pp. 2891-2.

Rules of Debate

Process of Debate

Motions: admissibility; suspension of certain Standing Orders; timetabling passage of a bill

December 3, 2009 *Debates*, pp. 7580-1

Context: On December 3, 2009, Bill Siksay (Burnaby–Douglas) rose on a point of order with respect to the admissibility of Government Motion No. 8. The motion provided for the disposition at all stages of a bill entitled *An Act to Amend the Excise Tax* and, since the Bill had not yet been introduced, Mr. Siksay argued that it was impossible for Members to determine whether such a motion was necessary and that the motion should therefore be ruled out of order. Jay Hill (Leader of the Government in the House of Commons) contended that the motion was in order as all the necessary procedures had been followed, and alleged that Mr. Siksay's point of order had been a dilatory tactic. For his part, Joe Comartin (Windsor–Tecumseh) argued that the motion was also an end run around Standing Order 28(3) and a way to undermine the authority of the Speaker to recall the House. The Speaker decided to allow the motion to be moved and then to make a ruling on its admissibility.[1]

Resolution: The Speaker delivered his ruling immediately after the motion was moved. He reminded Members that they were masters of their own proceedings and that the rules allowed for changes to the Standing Orders, both temporarily and permanently. He stated that he could not find the motion out of order simply because it ran contrary to the usual manner in which the business of the House was conducted. He concluded that the Members would judge the value of the motion by voting for or against it.

Decision of the Chair

The Speaker: With respect to the point of order that was raised, it has been suggested that the motion that I just read is out of order because it is not in conformity with the practices of the House.

The House is master of its own procedure. The Standing Orders of the House, which are our rules, are adopted by the House and are used by it and

the Chair as the rules of the House. However, the House is free to adopt a Special Order on any occasion that it wishes to do so, which can change those rules either permanently or on a temporary basis, or in respect of a single bill, or in respect of a special committee, or any other purpose.

Members of the House are free to agree upon and make changes in the rules of our practice, which we do frequently, often by unanimous consent, but sometimes without unanimous consent, because a motion is introduced and changes are made.

On February 23, 2007 the Government introduced a motion. It read in part, "That, notwithstanding any Standing Order or usual practices of the House, a bill in the name of the Minister of Labour" [had][2] special provisions set out that dealt with the disposition of that bill in the House.

The hon. Member for Windsor–Tecumseh raised a point of order on that occasion, arguing that the motion was not in order, that it was contrary to our practice. He made a very able argument, but he ran into difficulty because the ruling from the Chair said that his argument was not a good one. I will quote my ruling if I may. I do not like quoting myself, but I am happy to do so in this case. I said:

> I am concerned about his reference to the fact that a majority of the parties in the House have not agreed to something and therefore that something may not be in order. The House decides matters, not by party but by votes, by the number of Members supporting or rejecting a motion. In my view, that is the way the House operates and will continue to operate.

What we have here is a motion that has been put forward to the House to make changes in the rules in respect of one bill. If the House decides that it wants to do that after a vote by the Members of this House, it seems to me that it is entirely within the jurisdiction of the House to do it. It is not for the Speaker to say that the motion is out of order because it does something that the rules do not allow for.

The rules do allow us to make changes to the rules whenever we want, and we do it on a fairly regular basis. We had a rule change today to allow

Statements by Ministers at 3 o'clock instead of this morning at 10 o'clock. That was not a problem; Members agreed to it and it happened.

We now have a proposal to make changes to the rules that apply to a particular bill that has been introduced in the House and is now going to be the subject of debate under different rules perhaps than other bills are. I have just read the long thing. It is tedious, but there it is.

In my view, it is a matter that can be brought to the House for debate and it should be discussed by the House and then ultimately voted upon by the House, as I am sure it will be when the debate concludes.

Thus in my view, the motion before us is in order. I now call upon the Parliamentary Secretary to the Minister of Finance who wishes to make a speech on this matter.

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1. *Debates*, December 3, 2009, pp. 7578-80.
2. The word "had" is missing from the published *Debates*.

Rules of Debate

Process of Debate

Motions: amendment; beyond the scope

September 29, 2005 *Debates*, p. 8230

Context: On September 29, 2005, Mauril Bélanger (Minister for International Trade, Deputy Leader of the Government in the House of Commons, Minister responsible for Official Languages and Associate Minister of National Defence) rose on a point of order with respect to an amendment moved by Pierre Paquette (Joliette) to Motion M-164 standing in the name of Paul Crête (Montmagny–L'Islet–Kamouraska–Rivière-du-Loup), regarding assistance to the textile and clothing industries. The Minister argued that the amendment was out of order because it expanded the scope of the Motion, inasmuch as it placed before the House a new proposition which should have been the subject of a separate motion, rather than restricting the field of debate, as an amendment is intended to do. The amendment, the Minister argued, included a whole series of issues which required more analysis and consultation, and which went beyond the scope of the original Motion. Another Member also spoke to the matter.[1]

Resolution: The Speaker ruled immediately. He agreed that the amendment exceeded the scope of the Motion by introducing propositions that were broader than and different from the original proposition. Thus, it was a new proposition which should properly have been the subject of a separate substantive motion with notice. Consequently, he ruled the amendment out of order.

Decision of the Chair

The Speaker: I have listened to the arguments presented by the Deputy Leader of the Government in the House of Commons and the Bloc Québécois House Leader. I greatly appreciate their assistance on this matter. It was a bit tricky but I believe that there is another quote that may be significant on page 453 of *House of Commons Procedure and Practice*.

An amendment is out of order procedurally, if:

> it is not relevant to the main motion—

That is not at issue here.

> —(i.e., it deals with a matter foreign to the main motion or exceeds the scope of the motion, or introduces a new proposition which should properly be the subject of a substantive motion with notice).

What is at issue here is that the motion makes the following proposition:

> That… the government should establish, in compliance with international agreements, a policy of assistance to the textile and clothing industries in order to enable the industries to compete throughout the world, particularly by—

That was one proposition. Now, we have an amendment that introduces 11 other propositions and eliminates the only proposition contained in the main motion. As a result, I have some reservations, particularly when we consider the propositions that are being made. As I mentioned, there are 11 of them, and they are much broader than and very different from the initial proposition, which was to broaden the Technology Partnerships Canada Program to include these two sectors. I am concerned about that aspect.

Consequently, I am inclined to rule in favour of the argument presented by the hon. Deputy Leader of the Government in the House of Commons. In my opinion, the amendment is out of order. Perhaps another amendment will be made. However, it is my belief, to quote once again from *House of Commons Procedure and Practice*, it is because the amendment "introduces a new proposition which should properly be the subject of a substantive motion with notice".

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1. *Debates*, September 29, 2005, p. 8229.

Rules of Debate

Process of Debate

Motions: amendment; relevance; within the scope

October 6, 2005 *Debates*, pp. 8515-6

Context: On September 27, 2005, Paul Szabo (Mississauga South) rose on a point of order with regard to the admissibility of an amendment moved by Scott Reid (Lanark–Frontenac–Lennox and Addington) to Motion M-135 standing in the name of Pierre Poilievre (Nepean–Carleton), concerning the Queensway-Carleton Hospital. Mr. Szabo argued that the amendment, which would have replaced the original motion's proposal to sell land to the Queensway-Carleton Hospital for a nominal sum with a proposal to lease the same land for a nominal sum, made a substantial change to the original intent of the motion and was therefore out of order. Mr. Reid replied that his amendment was consistent with the original intent of the motion which had been to allow the hospital to continue functioning. The Acting Speaker (Marcel Proulx) took the matter under advisement.[1] On September 29, 2005, Mr. Szabo raised the issue again, this time raising a legal consideration. The Speaker again took the matter under advisement.[2]

Resolution: On October 6, 2005, the Speaker delivered his ruling. After declaring that he could not rule on questions of law, he stated that the amendment was relevant, that it was in keeping with the intent of the main motion and that it did not exceed its scope. He concluded that it was therefore in order and could be put to the House.

Decision of the Chair

The Speaker: Order, please. I am now prepared to rule on the point of order raised on Tuesday, September 27 by the hon. Member for Mississauga South concerning the admissibility of an amendment to Motion No. 135.

I would like to thank the hon. Member for raising this matter, as well as the mover of the amendment, the hon. Member for Lanark–Frontenac–Lennox and Addington, for his comments.

Motion No. 135 currently reads as follows:

> That, in the opinion of this House, the government should consider transferring the land currently leased by the Queensway-Carleton Hospital from the National Capital Commission to the Hospital at a cost of one dollar.

The proposed amendment is:

> That Motion No. 135 be amended by:
>
> (*a*) deleting the word "transferring" and replacing it with the words "continuing to lease"; and
>
> (*b*) by adding after the word "dollar", the following: "per annum, starting at the end of the current lease in the year 2013".

The hon. Member for Mississauga South argued that the proposed amendment is inadmissible as it would represent a substantial change to the original intent of the motion. In particular, he said that there was a substantial difference between permanently transferring land to the hospital at a cost of $1.00 and leasing the land to the hospital at a cost of $1.00 per year.

In response, the hon. Member for Lanark–Frontenac–Lennox and Addington claimed that the original intent of the motion was to allow the hospital to continue functioning and that his amendment was consistent with that objective.

On September 29, following a ruling on an amendment to another private Member's motion, the hon. Member for Mississauga South added further arguments as to why he felt the amendment to Motion No. 135 was inadmissible. He asked the Chair to consider whether the amendment went beyond the scope of the main motion or [if][3] it introduced new concepts which would more properly be the subject of a separate debate. The hon. Member also alluded to possible legal difficulties with the amendment due to the laws governing the custodianship of National Capital Commission properties.

On this last point, let me say quite clearly that the Chair does not rule on questions of law. My only concern is the procedural acceptability of the amendment, and with respect to this, *House of Commons Procedure and Practice*, at page 452, states that:

> A motion in amendment arises out of debate and is proposed either to modify the original motion in order to make it more acceptable to the House or to present a different proposition as an alternative to the original.

At page 453 of the same work, it also states:

> An amendment must be relevant to the main motion. It must not stray from the main motion but aim to further refine its meaning and intent.

I have had time to review the amendment carefully. While acknowledging that there is a difference between selling a property and continuing to lease it, I am satisfied that the amendment is relevant, that it is in keeping with the intent of the main motion and that it does not exceed the scope of the main motion. I therefore rule that the amendment is in order and can be put to the House.

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1. *Debates*, September 27, 2005, p. 8126.
2. *Debates*, September 29, 2005, pp. 8231-2.
3. The published *Debates* read "of" instead of "if".

Rules of Debate

Process of Debate

Moving a motion: seconder no longer a Member of Parliament

January 29, 2002 *Debates*, p. 8471

Context: On January 29, 2002, John Williams (St. Albert) rose on a point of order to ask that the Chair rule the motion approving the budgetary policy of the Government out of order because it had been seconded by Herb Gray, the former Member for Windsor West. Geoff Regan (Halifax West) argued that, at the time the motion had been moved, Mr. Gray had been a Member of the House and that, therefore, the motion remained valid. The Deputy Speaker (Bob Kilger) replied that he believed that, since the former Member had seconded the motion while he was still a Member, the motion was valid. With a view to reflecting on the matter before ruling, he suspended the House briefly.

Resolution: At the resumption of the sitting, the Deputy Speaker delivered his ruling. He stated that the motion introduced was in order since the Member seconding the motion had been a Member in good standing at the time the motion was moved.

Decision of the Chair

The Deputy Speaker: I know this will not meet the satisfaction of the House on either side but my instincts tell me that the former hon. Member for Windsor West, of course, when his name appeared as the seconder for budgetary Motion No. 10 was a Member. However that being said, given the seriousness of the question, I would like to suspend the House momentarily to reflect on the matter to be sure that in fact I give the correct ruling to the House.

Editor's Note: The sitting of the House was suspended at 6:18 p.m. and resumed at 6:21 p.m.

The Deputy Speaker: After some consultation I can confirm to the House that in fact my gut instincts were correct. The motion was introduced in order, the Member seconding the motion was in good standing. Today we are simply confirming the process.

Rules of Debate

Process of Debate

Unanimous consent: splitting speaking time in the first round

October 21, 2003 *Debates*, p. 8525

Context: On October 21, 2003, Don Boudria (Minister of State and Leader of the Government in the House of Commons) advised the House at the beginning of his 20-minute speech leading off debate at third reading of Bill C-49, *Electoral Boundaries Readjustment Act,* of his intention to split his speaking time with another Member.[1] Following the Government House Leader's speech and the questions and comments period, Yvon Godin (Acadie–Bathurst) rose on a point of order to ask the Speaker to explain how the time allotted for the speech could be split without the unanimous consent of the House.

Resolution: The Deputy Speaker (Bob Kilger) ruled immediately. He acknowledged that when the House had adopted the recommendations of the Fourth Report of the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons, including changing the time allotted for speeches at third reading from 40-minutes to 20-minutes, no provision had been made for the splitting of this time. He concluded that the Chair did not have the ability to allow Members to split 20-minute speeches, and that unanimous consent was therefore required for Members to do this.

Decision of the Chair

The Deputy Speaker: I should keep in mind of course that I chaired the Committee on Modernization.

The Committee, in effect, changed the 40-minute speeches that were originally set aside for the Government and the two next opposition parties, being the Alliance and the Bloc Québécois. There was a discussion at that time among the House Leaders and others who participated in this Committee to go to 20-minute speeches for a more equitable distribution of time.

Originally, there was an ability, through unanimous consent, to change the 40-minutes and split it. It would appear that in our Committee we did not go as far as we might have intended to, but we certainly did not make the provision to split the 20-minutes.

Therefore, in this case I will continue the debate. I will now go to the Official Opposition and the intended speaker.

I would want to hear from the Government House Leader if he wanted to speak longer because maybe it was his intent to speak less, and probably in this case the Parliamentary Secretary was going to split the time. However, in accordance with the rules we have presently—and it may be something that the House Leaders and others would want to review as to whether the intent might have been otherwise—clearly the Chair does not have the ability to allow for the splitting of the 20-minute speeches.

Of course, as is the practice in the House, we can do most anything with consent.

I will go back to the Minister or his Parliamentary Secretary and ask if they wish to seek consent to split the time. I see a positive nod from the Parliamentary Secretary.

The Government side is asking for consent to split its 20-minute slot. Of course, the Minister has already spoken, so in fact the next 10 minutes would go to the Parliamentary Secretary.

Postscript: Consent was denied.

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1. *Debates*, October 21, 2003, p. 8523.

Rules of Debate

Order and Decorum

References to Members

February 19, 2001 *Debates*, pp. 881-2

Context: On February 14, 2001, Benoît Sauvageau (Repentigny) rose on a point of order with regard to a question addressed by Dominic LeBlanc (Beauséjour–Petitcodiac) and the answer given by Don Boudria (Leader of the Government in the House of Commons) during that day's Oral Questions.[1] Mr. Sauvageau alleged that remarks he had made during Statements by Members on February 13, 2001, concerning the IVth Games of La Francophonie,[2] had been knowingly misinterpreted by both Members. He argued that the House had been misled by the Members who attributed to him comments that he had never made and claimed that what was said in the House by the Members was inaccurate and impugned his integrity and honesty. Mr. Sauvageau asked that the offending remarks be removed from Hansard and that the Members concerned be obliged to withdraw their remarks and apologize. The Speaker replied that he did not consider the matter to be a point of order but rather a disagreement as to facts. After another Member spoke, the Speaker declared that he would look into the matter and return to the House, if warranted.[3]

Resolution: On February 19, 2001, the Speaker delivered his ruling. He stated that, after reviewing the videotape of the exchange in question and the transcript of the *Debates*, it was clear to him that what had been said was neither a personal attack nor a direct quotation. The Speaker concluded that the matter was a disagreement as to facts.

Decision of the Chair

The Speaker: Order, please. I wish to rule today on a point of order raised by the hon. Member for Repentigny on February 14, 2001. This point of order concerns comments made by the hon. Member for Beauséjour–Petitcodiac during Question Period.

The point of order raised by the hon. Member for Repentigny concerns a question put by the hon. Member for Beauséjour–Petitcodiac to the Government House Leader. In phrasing his question, the hon. Member for Beauséjour–Petitcodiac referred to a statement by "The Bloc Québécois".

When the hon. Member for Repentigny raised the point of order, he claimed to have been targeted by that comment and quoted the statement he had made during the time allotted to Statements by Members on Tuesday, February 13, 2001.

The hon. Member for Repentigny argues that the hon. Member for Beauséjour–Petitcodiac attributed to him comments that he never made. He objects to the interpretation given to his statement by the hon. Member for Beauséjour–Petitcodiac and claims that what was said in the House was inaccurate and impugned his integrity and honesty. He also asks that the comments be withdrawn and that an apology be offered.

I checked the videotape of the exchange that took place on February 14 and the transcript of the *Debates*, and I can confirm that what was said was not a personal attack or a quotation.

The comments made did not refer to a specific individual and constituted, at most, a partisan remark by one party about another.

Speaker Fraser, who had to rule on a similar question on May 15, 1991, stated the following at page 100 of *Debates*:

> The hon. Member has raised an issue which is not an unusual kind of issue to raise. The difficulty that is always with the Chair in these cases is that there are often very great differences of interpretation on answers that are given. It is not a question of privilege, it is a question of disagreement over certain facts and answers that were given.

I finish the quotation from Speaker Fraser and I say we have witnessed exactly the same thing today.

In this case involving the hon. Member for Repentigny, the exchange also constitutes a disagreement.

I repeat what I said when the point of order was raised, that "there is a disagreement concerning the facts in this case" and that "it is not up to the Speaker to rule that this is a point of order".

I would like to thank the hon. Members who intervened in this matter.

Postscript: Following the Speaker's ruling, Mr. Sauvageau rose to ask whether it implied that henceforth Members of the Bloc Québécois would be entitled to attribute "outrageous remarks" to Members of the Liberal Party. The Speaker answered that it was not his role for the moment to interpret his ruling for Members, that the ruling was clear, and that Mr. Sauvageau might read it and decide for himself whether it was "clear" and "wise".[4]

1. *Debates*, February 14, 2001, p. 695.
2. *Debates*, February 13, 2001, p. 598.
3. *Debates*, February 14, 2001, pp. 699-700.
4. *Debates*, February 19, 2001, p. 882.

Rules of Debate

Order and Decorum

References to Members: dispute as to facts

May 3, 2005 *Debates*, pp. 5583-4

Context: On April 12, 2005, Gurmant Grewal (Newton–North Delta) rose on a point of order with respect to a statement made by Joseph Volpe (Minister of Citizenship and Immigration) during Oral Questions earlier that day.[1] Mr. Grewal claimed that the Minister had accused him of having constituents post bonds payable to him. The Minister responded immediately that he had simply read Mr. Grewal's testimony during a committee meeting in which he admitted to having done so.[2] He addressed the matter again in a statement on April 21, 2005, in which he stood by his decision to refer the matter to two outside authorities, but withdrew the suggestion that Mr. Grewal had profited personally from such activity.[3] The Speaker declared that he would look into the matter and return to the House in due course.

Resolution: On May 3, 2005, the Speaker delivered his ruling. In declaring the matter a dispute as to the facts and not a point of order, he stated that Mr. Grewal had had the opportunity to set the record straight, and that it was not for the Speaker to judge the accuracy of statements that were in dispute. He added that, since further comment on the matter would be inappropriate while the Ethics Commissioner was looking into the issue, the matter be put aside until the completion of the process established by the *Conflict of Interest Code*.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on Tuesday, April 12 by the hon. Member for Newton–North Delta concerning an accusation made by the hon. Minister of Citizenship and Immigration during that day's Question Period that the hon. Member was having constituents post bonds payable to him in exchange for his aid in seeking temporary visitor visas for family members.

I would like to thank the hon. Member for raising this matter as well as providing additional information in the form of a letter dated April 20. I would

also like to thank the hon. Minister of Citizenship and Immigration and the hon. Leader of the Official Opposition for their interventions.

In presenting his case, the hon. Member for Newton–North Delta stated that the Minister of Citizenship and Immigration had accused him of having constituents post bonds payable to him for his intervention on their behalf to acquire visitor visas. This, the hon. Member claimed, was absolutely false, and neither he nor his staff had ever done so. The hon. Member pointed out that the issue had been erroneously reported in the media and had been corrected. He then asked the hon. Minister for an apology.

The remarks referred to had been made by the Minister in reply to a question posed by the hon. Member for Ajax–Pickering during Question Period. The hon. Member had referred to allegations that $50,000 cheques for bonds were being taken by a Member of the House. He asked if the Minister was looking into the matter and what he intended to do about it.

In his answer, the Minister stated that those were not allegations, but admissions by the Member for Newton-North Delta, that it was is a very serious misrepresentation of the immigration system, and that he had asked the Ethics Commissioner to look into the matter.

During his intervention on the point of order, the hon. Minister stated that he had simply read from the transcript of the meeting of the Standing Committee on Citizenship and Immigration of March 24, wherein the hon. Member for Newton–North Delta had admitted to the actions.

As I promised, I have reviewed the transcript of the Committee meeting referred to. In his remarks in the Committee during consideration of Bill C-283, *An Act to Amend the Immigration and Refugee Protection Act and the Immigration and Refugee Protection Regulations*, of which he is the sponsor, the hon. Member for Newton–North Delta stated categorically that he took no money from anyone, and that in asking constituents to sign a guarantee bond document he was testing the genuineness of their promise to ensure that the visitor for whom they were seeking a visa would leave Canada as required.

Further to this, on April 21 the hon. Minister rose in the House to speak to the matter. Noting the importance of conducting its affairs with civility, the Minister said he wished to take the opportunity to respond to the point of order. He advised the House that while he felt his initial intervention was worthwhile and stood by his decision to refer the matter to the Ethics Commissioner, he was withdrawing remarks he had made during Question Period on April 13 in reply to a question from the hon. Member for Edmonton–Strathcona suggesting that the hon. Member had profited personally from this type of action. I would like to thank the Minister for doing so.

In raising this matter, the hon. Member has had the opportunity to set the record straight. It seems to the Chair that this is not a point of order but a dispute as to facts. It is not for your Speaker to judge the accuracy of statements that are under dispute. Indeed, it would be inappropriate for me to do so even if I were to want to pronounce further on this case, since I am now in receipt of a communication from the Ethics Commissioner informing me that an inquiry into the matter has been requested.

May I remind the House of section 27(5) of the *Conflict of Interest Code*, which forms part of our Standing Orders as Appendix 1. It reads as follows:

> (5) Once a request for an inquiry has been made to the Ethics Commissioner, Members should respect the process established by this Code and permit it to take place without commenting further on the matter.

Accordingly, further consideration of this matter will be put aside until such time as the process established by our *Conflict of Interest Code* has run its course.

Once again, I wish to thank the hon. Member for bringing this matter to the attention of the House.

Postscript: The Report of the Ethics Commissioner was tabled in the House on June 22, 2005.[4] The Report cleared Mr. Grewal of the charges against him, although it criticized him for making an error in judgement.

1. *Debates*, April 12, 2005, p. 4947.
2. *Debates*, April 12, 2005, pp. 4952-3.
3. *Debates*, April 21, 2005, p. 5412.
4. *Journals*, June 22, 2005, p. 957.

Rules of Debate

Order and Decorum

References to Members: dispute as to facts; impugning motives; personal attacks

June 14, 2005 *Debates*, pp. 7095-7

Context: On June 3, 2005, Paul Szabo (Mississauga South) rose on a point of order charging Pierre Poilievre (Nepean–Carleton) with making inappropriate allegations, during Oral Questions earlier in the sitting, against a Senator and against Scott Brison (Minister of Public Works and Government Services) in connection with their alleged involvement in the awarding of Government contracts. After hearing from other Members, the Deputy Speaker (Chuck Strahl) stated that it was improper to impugn motives or question the integrity of parliamentarians and that he would review the transcripts of that day's Oral Questions and report back to the House if necessary.[1] On June 6, 2005, Paul Szabo (Mississauga South) rose on another point of order with regard to similar remarks made during that day's Oral Questions by Mr. Poilievre.[2] When Mr. Poilievre had alluded to "Liberals caught breaking the law", which elicited a strong reaction from some other Members, the Speaker had intervened to point out that the question was not out of order since it did not accuse any Member of breaking the law, but he had cautioned against creating a disturbance.[3] Mr. Szabo argued in both of his points of order that Mr. Poilievre had brought a Member of the Senate and the Minister into disrepute, and that consequently the questions had been out of order. After hearing from other Members, the Speaker informed the House that he did not think Mr. Poilievre had contravened any Standing Order in his question and urged the Members to meet and discuss the matter that seemed to be a dispute over words that were used in committee. The Speaker also stated that he would look into the matter and return to the House if necessary.[4]

Resolution: On June 14, 2005, the Speaker delivered his ruling. He stated that the House was faced with two different interpretations of the same events connected to the awarding of certain Government contracts, and that it was not up to the Chair to determine which interpretation was the correct one. However, after reviewing the supplementary question asked on June 3, 2005 by Mr. Poilievre, he did feel that the suggestion that the contract in question was a "dirty deal" did indeed impugn motives and had therefore been out of order. He reminded Members

that Standing Order 18 prohibits disrespectful reflections on parliamentarians of either House. In addition, while the remarks made on June 6, 2005 had not contravened the Standing Orders, he noted that they had caused disorder and this was unacceptable. Noting Mr. Poilievre's allusions to his consultations with the Clerk concerning his questions, the Speaker cautioned Members against such references to private consultations with the Chair or the clerks at the Table, lest this compromise the reciprocal atmosphere of trust and confidentiality. In closing, the Speaker commented on the importance of Oral Questions and urged all Members to remain cognizant of the fine line between holding the Government and its Members to account, and attacking the conduct of individuals, including Senators.

Decision of the Chair

The Speaker: I am now prepared to rule on the points of order raised by the hon. Member for Mississauga South concerning remarks made during the Question Period of Friday, June 3, 2005, and Monday, June 6, 2005, by the hon. Member for Nepean–Carleton about the awarding of Government contracts involving a Member of the other place.

I would like to thank the hon. Member for raising this matter. I also wish to thank the hon. Minister for Public Works and Government Services, the hon. Deputy Leader of the Government in the House, the hon. House Leader of the Official Opposition, the hon. Deputy House Leader of the Official Opposition, and the hon. Member for Nepean–Carleton for their comments.

In his initial intervention, the hon. Member for Mississauga South stated that, in the preamble of a question posed by the hon. Member for Nepean–Carleton during Question Period on June 3, 2005, the Member had discredited the reputation of a Member of the other place, made allegations of wrongdoing and attributed incorrect statements to the Minister of Public Works and Government Services.

The hon. Member for Mississauga South suggested that the Member's questions should have been ruled out of order. He also asked that the Deputy Speaker look at the evidence from the Standing Committee on Government Operations and Estimates of June 2, 2005, which he claimed showed that the hon. Member for Nepean–Carleton was fully aware that the statements he made in his preambles were incorrect.

In commenting on this point of order, the hon. Member for Nepean–Carleton stated that the remarks in his preambles had been based on the testimony of the hon. Minister of Public Works and Government Services before the Standing Committee where, he claimed, the Minister had admitted that section 14 of the *Parliament of Canada Act* had been contravened by a Member of the other place.

The Deputy Speaker stated that in his opinion the first question had been in order. However, he expressed concern about the hon. Member's supplementary question in that it may have impugned the motives or questioned the integrity of Members of this House or Members of the other place. He undertook to review the supplementary question and return to the House if necessary.

On June 6, 2005, the hon. Member for Mississauga South rose on a point of order following Question Period to protest that the hon. Member for Nepean–Carleton had again asked questions which directly or indirectly attacked a Member of the other place. He requested once again that I look at the transcripts of the proceedings of the Standing Committee.

Following interventions by the hon. Member for Nepean–Carleton and the hon. Minister of Public Works and Government Services, I informed the House that I did not think the hon. Member for Nepean–Carleton had contravened any Standing Order in his question. I also urged the Members to meet and discuss the matter and I asked all hon. Members to show restraint in phrasing questions and answers. Nonetheless, I also undertook to look into the matter and report back to the House. I am now ready to deal with both complaints.

In examining these points of order, I have reviewed the questions that were asked during both Question Periods and I have reviewed the transcripts of the June 2, 2005 meeting of the Standing Committee on Government Operations and Estimates.

The hon. Member for Mississauga South argued that the questions posed by the hon. Member for Nepean–Carleton contradicted the evidence given in the Committee and that the Member deliberately continued to impugn the motives of a Member of the other place. The Chair has, of course, now looked at the *Debates* and at the Committee *Evidence* in dispute.

As your Speaker, I am mindful that it is a wise and longstanding practice of my predecessors not to be drawn into debate. It appears that a dispute over interpretation of events is indeed what we have here, and that is a matter of debate. I suggested when this objection was raised with me that "if the Members got together and looked at the transcript and figured out what language was used, it might temper the questions and the answers in future which would make it easier for all hon. Members, not just the Speaker".

Having now had an opportunity to review all the evidence, I realize this suggestion can only be helpful when Members' exchanges are made in good faith, in the interests of bringing the facts of the situation to light. The suggestion falls on deaf ears when such exchanges are instead a continual and arguably disingenuous repetition of selected quotations. This sort of exchange does little to raise the level of debate or enlighten the House.

In the circumstances, then, as I have noted in the past, when the House is faced with two different interpretations of events, it is not up to the Speaker to determine which is correct.

However, I have also reviewed the supplementary question put by the hon. Member for Nepean–Carleton on June 3. His suggestion that the contract in question was "a dirty deal" impugns motives and is indeed out of order.

I also want to take this opportunity to remind all hon. Members that Standing Order 18 prohibits disrespectful reflections on Members of this place as well as on Members of the other place. As is stated at page 522 of *Marleau and Montpetit*:

> References to Senate debates and proceedings are discouraged and it is out of order to question a Senator's integrity, honesty or character. This "prevents fruitless arguments between Members of two distinct bodies who are unable to reply to each other, and guards against recrimination and offensive language in the absence of the other party".

In addition, the House will note that while the remarks on June 6 may not have contravened the Standing Orders, they did lead to disorder in the House. That is unacceptable under our practice.

In conclusion, I would like to comment on the remarks made by the hon. Member for Nepean–Carleton, who indicated in his intervention on the point of order that he had prior consultations with the Clerk of the House about his questions. I would like to caution the hon. Member for Nepean–Carleton, and indeed all hon. Members, to refrain from referring to private consultations they may have had with the Chair or the Table.

Ultimately, such consultations are intended to assist Members, not to prejudge a future situation. For example, in judging the language that an hon. Member might use, the Chair must be guided not just by vocabulary. A myriad of factors must be considered: context and tone, circumstances and the reaction of the House. The very same words that will be intended and heard as a witticism in one instance may be seen as a grave insult in other circumstances. The Chair and the Table try to be helpful to all hon. Members, but an atmosphere of trust and confidentiality works both ways.

Finally, let me just say that the right of Members to seek information from the Government and the right to hold the Ministry accountable are recognized as two of the fundamental principles of parliamentary Government, principally exercised through the asking of questions in the House. The importance of Question Period in our system is undeniable. However, all hon. Members must walk a fine line between holding the Government and its Members to account and attacks on the conduct of individuals, including those who are Members of the other place.

Canadians will judge all of us and the House of Commons as a whole on what they see of us on television and how they see us working. I would urge all hon. Members to remember that in all their exchanges in the House but especially in Question Period.

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1. *Debates*, June 3, 2005, pp. 6608, 6612-3.
2. *Debates*, June 6, 2005, pp. 6668-9.
3. *Debates*, June 6, 2005, pp. 6663-4.
4. *Debates*, June 6, 2005, pp. 6668-9.

Rules of Debate

Order and Decorum

References to Members: misleading versus deliberately misleading the House

February 1, 2007 *Debates*, p. 6292

Context: On February 1, 2007, Charlie Angus (Timmins–James Bay) rose on a point of order, alleging that Bev Oda (Minister of Canadian Heritage and the Status of Women) had accused him, during that day's Oral Questions, of misleading the House. Mr. Angus requested that the Minister withdraw her remarks.[1]

Resolution: The Speaker ruled immediately. He stated that it was not out of order to say that a Member had misled the House, contrasting it to stating that a Member had deliberately misled the House. Accordingly, he concluded that the point of order was not valid.

Decision of the Chair

The Speaker: Order, please. The hon. Member may want to put all kinds of facts on the record, but points of order are not opportunities for debate.

The Member has raised a point of order. He has said the Minister used words that were incorrect in her answer by suggesting that the hon. Member had misled the House. Now he is putting another set of facts here, which could go on for some time. I respect the fact that he may be interested in doing that, but there are ways he can do it. He can arrange for a late show, for example, in respect to the question he asked today, and have a much more extended debate on the subject then. In terms of the facts, that is exactly what he should do.

With respect to the statement the Minister made that the hon. Member misled the House, I point out to him that the Chair has never ruled, that I am aware of, that stating that a Member has misled the House is out of order. "Deliberately", yes, but Members mislead the House for various reasons. Members may make a statement that is perfectly correct, but the person hearing it is perhaps not thinking straight, gets things mixed up, is misled, and therefore thinks the House has been misled because the person thinks

everyone thinks like that Member. Misleading the House has never been unparliamentary that I am aware of.

While I respect the hon. Member's objection, I do not believe he has a valid point of order in that the Minister, and I listened very carefully, did not say that he deliberately misled the House, which of course would have invoked all kinds of censure from the Chair. I respect the hon. Member's view, but in the circumstances I do not believe he has a valid point of order.

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1. *Debates*, February 1, 2007, pp. 6291-2.

Rules of Debate

Order and Decorum

Reference to members of the public

April 24, 2007 *Debates*, pp. 8585-6

Context: On April 16, 2007, Maria Minna (Beaches–East York) rose on a point of order with respect to comments made by Mike Lake (Edmonton–Mill Woods–Beaumont) on March 28, 2007.[1] Mr. Lake had, during Statements by Members, spoken critically about a member of the public whom he had named.[2] Ms. Minna contended that Mr. Lake's comments had constituted a personal attack on the person named by him and had therefore been in breach of the rules. Responding to the point of order, Mr. Lake disputed the contention that the remarks at issue constituted a personal attack, maintaining that it had been an organization and not a person which had been the object of his criticism. The Speaker took the matter under advisement.[3]

Resolution: On April 24, 2007, the Speaker delivered his ruling. He declared that Mr. Lake's statement had concerned issues of public policy rather than persons, notwithstanding the fact that a particular individual had been mentioned by name, that the remarks fell within the broad parameters of the freedom of speech enjoyed by Members, and that therefore no breach of the rules had occurred. He concluded by urging Members to exercise great caution when naming members of the public who were not in a position to defend themselves.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on April 16, 2007, by the hon. Member for Beaches–East York concerning remarks made by the hon. Member for Edmonton–Mill Woods–Beaumont.

I would like to thank the hon. Member for Beaches–East York for bringing this matter to the attention of the House. I also wish to thank the hon. Member for Edmonton–Mill Woods–Beaumont for his response.

In raising this matter, the hon. Member for Beaches–East York stated that during Statements by Members on March 28, 2007 the hon. Member for Edmonton–Mill Woods–Beaumont subjected the executive director of the Child Care Advocacy Association of Canada to a personal attack. The remarks in question made particular reference to evidence given before the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities.

I cannot, of course, deal with allegations arising from proceedings in committee. It is at the Committee itself that the hon. Member for Beaches–East York must raise any concerns regarding the questioning of a particular witness.

I have, however, reviewed with considerable care the statement in the House which gave rise to this point of order. In it the hon. Member for Edmonton–Mill Woods–Beaumont commented on evidence given at a public meeting of a standing committee and therefore a matter of public record. He went on to express certain opinions about that evidence.

In the view of the Chair, his statement concerned issues of public policy rather than persons, notwithstanding the fact that a particular witness was mentioned by name. While some hon. Members might dispute the opinions expressed by the hon. Member for Edmonton–Mill Woods–Beaumont or quarrel with his interpretation, his remarks fall clearly within the broad parameters of the freedom of speech enjoyed by all Members of the House.

Having said this, I would encourage hon. Members to exercise great caution before referring to members of the public by name. I quote from page 524 of *House of Commons Procedure and Practice*:

> Members are discouraged from referring by name to persons who are not Members of Parliament and who do not enjoy parliamentary immunity, except in extraordinary circumstances when the national interest calls for the naming of an individual.

Mr. Speaker Fraser elaborated this principle in a ruling delivered on May 26, 1987, in which he said:

> I am sure that all hon. Members would agree that we have a responsibility to protect the innocent, not only from outright slander, but from any slur directly or indirectly implied.

It is incumbent upon all Members to exercise fairness with respect to those who are not in a position to defend themselves. That being said, the Chair finds no grounds for further action in the present case.

I thank the hon. Member for Beaches–East York again for having brought this matter to the attention of the Chair.

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1. *Debates*, April 16, 2007, p. 8237.
2. *Debates*, March 28, 2007, p. 8028.
3. *Debates*, April 16, 2007, p. 8237.

Rules of Debate

Order and Decorum

Unparliamentary language: expression "modern-day Klansmen"

November 27, 2002 *Debates*, p. 1949

Context: On November 19, 2002, Yvon Godin (Acadie–Bathurst) rose on a question of privilege alleging that, during Statements by Members that day, Jim Pankiw (Saskatoon–Humboldt) had used unparliamentary language by referring to certain other Members as "modern-day Klansmen".[1] Mr. Godin asked the Speaker to rule on the admissibility of the remarks and, if he found them inadmissible, to require Mr. Pankiw to withdraw them. The following day, Mr. Pankiw reaffirmed his original statement and stated that Mr. Godin should withdraw his question of privilege and apologize to him and all Canadians. The Speaker undertook to examine the matter and to return to the House if necessary.[2]

Resolution: On November 27, 2002, the Speaker delivered his ruling. He reminded the House that while Members enjoy the privilege of free speech, its exercise implies a great responsibility, and Members must bear in mind the potential impact of their comments. In this instance, the Speaker concluded that Mr. Pankiw's comments were meant to provoke colleagues. He ruled Mr. Pankiw's remarks to be unparliamentary and invited him to withdraw them immediately. In response, Mr. Pankiw claimed that the matter should have been raised as a point of order, and not as a question of privilege, as Mr. Godin had done. The Speaker stated that whether it was raised as a point of order or a question of privilege, he reiterated his request that Mr. Pankiw withdraw the unparliamentary remarks. Mr. Pankiw refused to do so and the Speaker indicated that, while he would not be named, he would not be recognized to speak until he had withdrawn the offensive language.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on Tuesday, November 19 by the hon. Member for Acadie–Bathurst alleging that some remarks made by the hon. Member for Saskatoon–Humboldt during Statements by Members were unparliamentary.

Having had the opportunity to review the *Debates* of November 19, I heard the hon. Member for Saskatoon–Humboldt who rose on November 20 to reply to the allegations of the hon. Member for Acadie–Bathurst.

My predecessors have on many occasions commented on the always difficult issue of determining what language is unparliamentary. They have often characterized this issue as a question of balance and they have been clear in insisting that every hon. Member shares a part of the responsibility for using respectful language and so helping to maintain order in the House.

I refer hon. Members to page 526 of *House of Commons Procedure and Practice* where it states:

> In dealing with unparliamentary language, the Speaker takes into account the tone, manner and intention of the Member speaking; the person to whom the words were directed; the degree of provocation; and most importantly, whether or not the remarks created disorder in the Chamber. Thus, language deemed unparliamentary one day may not necessarily be deemed unparliamentary the following day…. Although an expression may be found to be acceptable, the Speaker has cautioned that any language which leads to disorder in the House should not be used. Expressions which are considered unparliamentary when applied to an individual Member have not always been considered so when applied "in a generic sense" or to a party.

It is only to be expected that we in this Chamber will hear strong language and forceful expressions of opinion where there are strongly held views on contentious issues. The House of Commons is a place where competing ideas are tested and conflicting passions are given expression. Here in the Chamber, Members enjoy the privilege of freedom of speech that permits them to speak freely. This freedom however implies a great responsibility as well. We must bear in mind the potential impact of our comments.

It can have come as no surprise to the hon. Member for Saskatoon–Humboldt that objection has been taken by Members of this House to being characterized as "modern-day Klansmen". This is the phrase he used in his original statement and a phrase he made a point of repeating in replying to the original objections raised.

There can be little doubt that the hon. Member meant to provoke his colleagues, not merely to make a strong statement of his views. Under the circumstances, I find that the language used is unparliamentary and I ask the hon. Member to withdraw his comment immediately.

Mr. Jim Pankiw (Saskatoon–Humboldt, Ind.): Mr. Speaker, in order for me to properly reply to this, I need clarification. You stated that the Member for Acadie–Bathurst rose on a point of order. In fact it was a question of privilege. Mr. Speaker, are you ruling that there is a *prima facie* case of privilege, yes or no?

The Speaker: I have given a ruling in which I have indicated that whether it is a question of privilege or a point of order, the hon. Member will withdraw his words. I ask him to do so at once.

Mr. Jim Pankiw: Mr. Speaker, the 6th edition of Beauchesne's states in section 485(1) that unparliamentary language may be brought to the attention of the House by any Member but when this is done, it must be done as a point of order and not a question of privilege.

In that regard, you will note from Hansard that the Member for Acadie–Bathurst stood on a question of privilege, not a point of order as required—

The Speaker: I have heard argument on this point before. I heard the hon. Member give his reply to the hon. Member for Acadie–Bathurst on a previous occasion. I am not disposed to hear further argument on the point at this time.

I am going to ask the hon. Member to withdraw. If he chooses not to do so, I will deal with the matter in another way.

Mr. Jim Pankiw: Mr. Speaker, according to Erskine May, *Parliamentary Practice,* 22nd edition, chapter 6, "Privilege of freedom of speech", a Member is entitled to explain the sense in which he used the words so as to remove the objection of their being disorderly. I would now like to exercise that entitlement.

The Speaker: I will leave the matter there and deal with the matter in my own way. I have asked the hon. Member to withdraw and he has refused to do so.

Accordingly, I am not going to name the Member, but he will have trouble speaking.

Postscript: The following day, November 28, 2002, Mr. Pankiw apologized for not respecting the authority of the Chair, and withdrew the remarks judged unparliamentary.[3]

1. *Debates*, November 19, 2002, pp. 1611, 1621-2.
2. *Debates*, November 20, 2002, p. 1660.
3. *Debates*, November 28, 2002, p. 2015.

Rules of Debate

Order and Decorum

Unparliamentary language: general accusations

May 31, 2005 *Debates*, p. 6373

Context: On May 31, 2005, as the House was debating an opposition motion calling upon the Government to change the terms of reference of the Gomery Commission, Paul Szabo (Mississauga South) rose on a point of order. He argued that statements asserting wrongdoing by the Government were improper as they had not been proven in court. The Deputy Speaker (Chuck Strahl) replied that he had not heard any accusations against individual Members, which would be unacceptable, but only against political parties. Mr. Szabo rose again to argue that, since all Liberal Party Members had been accused of illegal acts, the Chair should be concerned with this matter.

Resolution: The Deputy Speaker ruled immediately to the effect that because the accusations had been levelled against a political party and not against individual Members, the remarks were acceptable. (**Editor's Note:** The exchange is reproduced *in extenso*.)

Decision of the Chair

The Deputy Speaker: I thank the hon. Member for Mississauga South. In the debate Members will have to be careful of course not to ascribe motives or actions to Members of Parliament that are improper or illegal. However in a debate like this we will probably get into discussions about political parties and their involvement or lack thereof and the innocence and guilt on both sides. In that case we are going to hear it.

However we will not accept accusations against individual Members of Parliament, nor should we. I have not heard anything like that. I have heard talk about parties and so on and that is something different than Members of Parliament. I think we have to accept that.

Mr. Paul Szabo: Mr. Speaker, the Chair has often ruled consistently that the only way this will be a matter of concern to the Chair is if an individual Member is accused of committing a criminal act. What could be worse than accusing all the Liberal Members of being corrupt and of having done illegal acts?

The Deputy Speaker: I thought I was clear but let me repeat it. I have not heard any accusations against Liberal Members of Parliament at all or any other Members of Parliament. We are all hon. Members. What I have heard are accusations about a political party. We are going to accept that because I think those discussions will take place throughout the day.

Again, that is different than someone saying that Members of Parliament have engaged in some illegal or improper activity. No one has said that and we will not get into that but we will hear discussions about activities of political parties and that will be heard on both sides of the House throughout the day.

I urge Members to be careful about the difference between talking about activities of political parties and individual Members of Parliament.

Rules of Debate

Order and Decorum

Unparliamentary language

April 17, 2007 *Debates*, pp. 8307-8

Context: On March 21, 2007, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons and Minister for Democratic Reform) rose on a point of order with respect to language used by Pat Martin (Winnipeg Centre) during the debate on the motion for concurrence in the Eleventh Report of the Standing Committee on Agriculture and Agri-Food on March 2, 2007. During that debate, Mr. Martin had referred to Chuck Strahl (Minister of Agriculture and Agri-Food) as "Il Duce", had compared the Minister to Mussolini and had characterized the Minister's actions with respect to the Canadian Wheat Board as "fascism".[1] On March 27, 2007, Mr. Martin responded that what is acceptable in parliamentary discourse changes over time and that it was the Minister's behaviour and not the Minister himself that he had described. Furthermore, he contended that there had been no reaction or disorder brought on by his remarks, and that timeliness was an issue as the point of order had been raised 19 days after the comments had been made. After hearing from other Members, the Speaker stated that the House had been adjourned from March 2 to 19, and Mr. Lukiwski had informed the Speaker of his intention to raise the matter on an earlier occasion but had postponed doing so in the absence of Mr. Martin. He concluded that the matter had been raised at the earliest reasonable opportunity and then took it under advisement.[2]

Resolution: On April 17, 2007, the Speaker delivered his ruling. He stated that, while the immediate reaction to Mr. Martin's comments had been muted, he needed to take into consideration its lingering effect. He underscored the need for free and civil discourse in the House and appealed to Members to take care in their choice of words. He ruled that the language used by Mr. Martin had been unparliamentary and that its inappropriateness was in no way mitigated by the context in which it was used. He then asked that Mr. Martin withdraw his remarks.

Decision of the Chair

The Speaker: Order. I am now prepared to rule on the point of order raised by the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons concerning the alleged use of unparliamentary language by the hon. Member for Winnipeg Centre on Friday, March 2, 2007.

I would like to thank the hon. Parliamentary Secretary for raising this matter, the hon. Chief Government Whip, the hon. Member for Acadie–Bathurst, and the hon. Member for Winnipeg Centre for their interventions.

On March 2, 2007, during the debate on the motion for concurrence in the Eleventh Report of the Standing Committee on Agriculture and Agri-Food, the hon. Member for Winnipeg Centre referred to the hon. Minister of Agriculture and Agri-Food as "Il Duce", compared the Minister to Mussolini and characterized the Minister's actions relative to the Canadian Wheat Board as "fascism".

March 2 being the sitting day immediately preceding the two-week March break, the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons rose on a point of order on March 21, 2007, to take issue with the language used by the hon. Member for Winnipeg Centre. The hon. Parliamentary Secretary cited page 150 of Beauchesne's 6th edition, which lists the word "fascists" among those considered to be unparliamentary. He continued, and I quote from page 7714 of the *Debates*:

> The fascist regime committed untold atrocities during World War II and for any Member of this House to compare another Member to anyone in the fascist regime is unconscionable.

In his intervention, the hon. Member for Winnipeg Centre stated that it had not been his intention to call the hon. Minister a fascist, but rather to imply that he had acted like one by virtue of decisions he had taken in respect of the Canadian Wheat Board.

Quoting from page 143 of Beauchesne's 6th edition as follows, "An expression which is deemed to be unparliamentary today does not necessarily have to be deemed unparliamentary next week", he maintained that the words

he had used were no longer as "volatile and emotionally charged" as they had once been. He invoked the principles that in these matters the Chair must consider the context in which the disputed remarks were made and whether or not they created disorder in the Chamber.

I undertook to review all of the relevant statements and submissions and to return to the House with a ruling on the matter.

One of the most basic principles of parliamentary procedure is that proceedings in the House be conducted in terms of a free and civil discourse (*Marleau and Montpetit*, pp. 503-4).

The Chair has often reminded hon. Members of their concomitant duty to use their freedom of speech in a responsible fashion and to exercise moderation in their choice of language.

On the occasion in question, in my view there is no doubt that the term "fascism" is unparliamentary when used to refer to the actions of a Member of Parliament, and the corollary references comparing the Member to Il Duce and Mussolini only exacerbate the problem. In making this determination, I looked carefully at both the context in which these expressions were used and at their immediate and potential effects on the ability of this House to conduct free and civil discourse.

In the opinion of the Chair, the inappropriateness of this language was in no way mitigated by the context in which it was used.

Admittedly, the immediate reaction to the comments in question was somewhat muted and the hon. Member for Winnipeg Centre has drawn the attention of the Chair to this circumstance. However, in considering whether or not his remarks created disorder in the Chamber, the Chair cannot look only at the immediate reaction of those present in the Chamber.

In a ruling given on December 11, 1991 found at pages 6141 and 6142 of the *Debates*, Mr. Speaker Fraser reminded Members that offensive remarks can linger and have a suffocating effect on the fair exchange of ideas and points of view. Anything said in this place receives wide and instant dissemination and leaves a lasting impression. Offending words may be withdrawn, denied,

explained away, or apologized for, but the impression created is not always as easily erased. He went on to comment:

> —few things can more embitter the mood of the House than a series of personal attacks, for in their wake, they leave a residue of animosity and unease.

That residue is the soil from which disorder springs and it is incumbent on the Chair to discourage language so provocative in character that it positively nourishes disorder.

So, once again, I appeal to hon. Members on all sides of the House to choose their words with greater care. A reasonable degree of self-discipline is not a luxury; it is indispensable to civilized discourse and to the dignity of this institution.

Whatever the hon. Member's intentions may have been, the Chair is not in doubt that this language is provocative and under the circumstances, I find that it is also unparliamentary and I ask the hon. Member for Winnipeg Centre to withdraw his remarks immediately.

Postscript: Immediately following the ruling, Mr. Martin rose and withdrew the offending remarks.[3]

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1. *Debates*, March 21, 2007, p. 7714; for the remarks at issue, see March 2, 2007, p. 7565.
2. *Debates*, March 27, 2007, pp. 7985-7.
3. *Debates*, April 17, 2007, p. 8308.

Rules of Debate

Order and Decorum

Unparliamentary language

November 19, 2007 — *Debates*, pp. 1042-3

Context: On November 1, 2007, during Oral Questions, John Cannis (Scarborough Centre) referred to Greg Thompson (Minister of Veterans Affairs) as "intellectually dishonest" while the Minister, in response, referred to Mr. Cannis as a "hypocrite".[1] At the end of Oral Questions, the Speaker stated that he had not heard the entire exchange between Mr. Cannis and the Minister, and would review the transcript and return to the House in due course if unparliamentary language had been used.[2]

Resolution: On November 19, 2007, the Speaker delivered his ruling. He stated that the remarks made had clearly created disorder and declared that, upon reviewing the *Debates* from November 1, 2007, he had found that both Mr. Cannis and the Minister had used unparliamentary language. He requested that both of them withdraw their remarks, which they did immediately. He concluded by encouraging Members to refrain from making offensive or disrespectful remarks.

Decision of the Chair

The Speaker: I would like to return to the exchange between the hon. Member for Scarborough Centre and the hon. Minister of Veterans Affairs during Question Period on November 1, 2007. I have had an opportunity to review the *Debates* of that day.

The hon. Member for Scarborough Centre used the words "intellectually dishonest" in reference to the Minister, who in response used the word "hypocrite" in reference to the Member for Scarborough Centre.

It is the duty of the Speaker to ensure that all debates in the House are conducted with a certain degree of civility and mutual respect in keeping with established practice of the House.

Standing Order 18 specifies:

> No Member shall speak disrespectfully of the Sovereign, nor of any of the Royal Family, nor of the Governor General or the person administering the Government of Canada; nor use offensive words against either House, or against any Member thereof.

In addition, *House of Commons Procedure and Practice* states at page 526:

> In dealing with unparliamentary language, the Speaker takes into account the tone, manner and intention of the Member speaking; the person to whom the words were directed; the degree of provocation; and, most importantly,—

I stress "most importantly",

> —whether or not the remarks caused disorder in the Chamber.

In my opinion, the remarks made by the hon. Members quite clearly created disorder in the Chamber.

Therefore, I would ask that the hon. Member for Scarborough Centre and the Minister of Veterans Affairs withdraw their remarks.

Editor's Note: At this point, both the Minister and Mr. Cannis rose to withdraw their remarks.

The Speaker: I would like to take this opportunity to remind all hon. Members that the Canadian public watches the proceedings closely and that I regularly receive communications from members of the public concerned about decorum in the Chamber.

I therefore encourage Members to refrain from making offensive or disrespectful remarks directed at one another. All Members may disagree with one another from time to time, but such disagreement need not be manifested by the use of offensive names or personal insults that can only create disorder and lessen the respect that is due to all hon. Members.

I want to thank the Minister of Veterans Affairs and the hon. Member for Scarborough Centre for withdrawing their remarks today.

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1. *Debates*, November 1, 2007, p. 696.
2. *Debates*, November 1, 2007, p. 698.

Rules of Debate

Order and Decorum

Unparliamentary language: quoting from a document

February 3, 2009 *Debates*, pp. 300-1

Context: On January 27, 2009, shortly after the commencement of a new session, Michel Guimond (Montmorency–Charlevoix–Haute-Côte-Nord) rose on a point of order which he had first raised in the previous session, on December 3, 2008.[1] His point of order concerned e-mails from the public which had been read in the House on December 2 and 3, 2008, by Cheryl Gallant (Renfrew–Nipissing–Pembroke)[2] and by Larry Miller (Bruce–Grey–Owen Sound)[3] which, he alleged, had contained unparliamentary language. He questioned the right of Members to do indirectly what they could not do directly. The Speaker indicated that the Chair did not rule on matters raised in previous sessions or Parliaments but that, now that it had been raised again, he could take it under advisement.[4] On January 29, 2009, Mrs. Gallant and Mr. Miller apologized for the remarks that had been found offensive by other Members.[5]

Resolution: On February 3, 2009, the Speaker delivered his ruling. He stated that Standing Order 18 as well as *House of Commons Procedure and Practice,* 2000 clearly indicated that Members may not use offensive language in the House. Although Members are permitted to quote from private correspondence as long as they identify the sender by name and take full responsibility for its contents, the Speaker reminded Members of Mr. Speaker Parent's ruling to the effect that Members cannot quote words which the Members are not themselves permitted to use and urged Members to use more judicious language in their interventions. Because the Members involved had already expressed regrets about the remarks in question, the Speaker declared the matter closed.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord concerning remarks read in the House by the hon. Member for Renfrew–Nipissing–Pembroke on Tuesday, December 2, 2008.

The Member for Montmorency–Charlevoix–Haute-Côte-Nord raised this point of order for the first time on December 3, 2008, during the previous session, and raised it again on January 27, 2009.

I would like to thank the hon. Member for raising this question, and the hon. Government House Leader and the hon. Parliamentary Secretary to the Government House Leader for their interventions on December 3, 2008.

The Member for Montmorency–Charlevoix–Haute-Côte-Nord was concerned about the remarks that the Member for Renfrew–Nipissing–Pembroke read during the debate on December 2, 2008, on the Government motion on the economic and financial statement.

He asked the Member to withdraw her remarks that he considered unparliamentary and, at the same time, asked the Chair to rule on the right of Members to read extracts from e-mails or letters that contain remarks that would not normally be acceptable in the House.

For his part, the hon. Government House Leader was concerned about the noise and unparliamentary language that we were hearing in the House at that point. The Parliamentary Secretary defended the right of the Member for Renfrew–Nipissing–Pembroke to quote the text contained in the e-mail.

I undertook to review this matter and then inform the House of my decision on this matter, but the session was prorogued the next day.

As the Member for Montmorency–Charlevoix–Haute-Côte-Nord mentioned in his remarks, section 18 of the Standing Orders stipulates that:

> No Member shall speak disrespectfully of the Sovereign, nor of any of the Royal Family, nor of the Governor General or the person administering the Government of Canada; nor use offensive words against either House, or against any Member thereof.

Moreover, as the Member for Montmorency–Charlevoix–Haute-Côte-Nord mentioned, *House of Commons Procedure and Practice* states on page 525 that:

> The proceedings of the House are based on a long-standing tradition of respect for the integrity of all Members. Thus, the use of offensive, provocative or threatening language in the House is strictly forbidden. Personal attacks, insults and obscene language or words are not in order.

This matter has been raised on several occasions in the past. It is true that Members may quote from documents. *House of Commons Procedure and Practice* mentions on page 517 that:

> They—

meaning Members:

> —may quote from private correspondence as long as they identify the sender by name or take full responsibility for its contents.

However, my predecessor, Mr. Speaker Parent, stated on November 18, 1998 (page 10133 of *Debates*) that:

> I would remind all hon. Members that we cannot use words in here which are used by someone else which we ourselves are not permitted to use. I would caution all Members in their statements.

I also indicated on November 8, 2006, that the Chair would not tolerate Members using unparliamentary language when they are quoting somebody. Having reviewed the words that caused the difficulty, words I would not repeat, it is clear to me that they were clearly unparliamentary.

The Member for Montmorency–Charlevoix–Haute-Côte-Nord was entirely right to point out that House practice does not allow someone to do indirectly that which they would not be permitted to do directly.

I want to take this opportunity once again to remind the hon. Members to use more judicious language in their interventions. The political climate in the House was very heated last December, but I trust that a moderate climate

will now become the norm and, to that end, I urge all the Members not to disregard the rules of civility and courtesy.

I want to thank the Member for Renfrew–Nipissing–Pembroke and the Member for Bruce–Grey–Owen Sound for the regrets they expressed about the remarks made on December 2 and 3, 2008. Consequently, I consider this matter resolved. I thank the House for its attention on this matter.

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1. *Debates,* December 3, 2008, pp. 576-7.
2. *Debates*, December 2, 2008, pp. 547-8.
3. *Debates,* December 3, 2008, p. 596.
4. *Debates*, January 27, 2009, p. 23.
5. *Debates*, January 29, 2009, p. 75.

Rules of Debate

Order and Decorum

Unparliamentary language: personal attacks during Statements by Members

March 12, 2009 *Debates*, pp. 1631-2

Context: On February 26, 2009, Michel Guimond (Montmorency–Charlevoix–Haute-Côte-Nord) rose on a point of order with respect to remarks made by Josée Verner (Minister of Intergovernmental Affairs, President of the Queen's Privy Council for Canada and Minister for La Francophonie) during Oral Questions earlier that day.[1] Mr. Guimond claimed that the Minister had accused the Bloc Québécois of supporting threats and acts of violence, and characterized her remarks as offensive and unparliamentary. Pierre Poilievre (Parliamentary Secretary to the Prime Minister and to the Minister of Intergovernmental Affairs) argued that the Minister had been referring to the newspaper *Le Québécois* and noted that the Bloc Québécois had purchased advertisements in the paper. He sought and was denied unanimous consent to table a copy in the House. The Speaker took the matter under advisement.[2] On March 5, 2009, Louis Plamondon (Bas-Richelieu–Nicolet–Bécancour) rose on a similar point of order. He alleged that Shelly Glover (Saint-Boniface) had used similarly offensive language in relation to the Bloc Québécois during Statements by Members[3] and expressed his belief that the use of such language should be condemned. The Speaker stated that he would review the transcript and get back to the House with a ruling on the matter.[4]

Resolution: On March 12, 2009, the Speaker delivered his ruling on the two points of order. He stated that, while the remarks in question were not unparliamentary in a narrow, technical sense because they had been directed at a party rather than at an individual Member, they were undoubtedly intended to be provocative and had clearly created disorder. He also reminded Members that the Standing Orders provide the Speaker with considerable authority to preserve order and decorum and that, particularly in the case of Statements by Members, transgressors risk being cut off by the Chair. The Speaker concluded by urging Members to refrain from using similar language in the future.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord concerning remarks made during Question Period on Thursday, February 26, 2009, by the Minister of Intergovernmental Affairs. Since the hon. Member for Bas-Richelieu–Nicolet–Bécancour raised a point of order on March 5 concerning very similar remarks made that day, I will also rule on that matter in this ruling.

In his submission, the Member for Montmorency–Charlevoix–Haute-Côte-Nord stated that in response to a question he put to the hon. Minister, and following her reply to a question posed by the hon. Member for Québec, the Minister had said that "threats and calls for violence are not part of Quebec's values. That is more like the Bloc's ideology." I am referring to the *House of Commons Debates* at page 1038.

The Member went on to say that these remarks were offensive, that the Bloc Québécois has always denounced all calls for violence of any kind and, consequently, that to accuse the Bloc Québécois of supporting threats and acts of violence was unparliamentary. The Member for Montmorency–Charlevoix–Haute-Côte-Nord felt that the remarks were in contravention of Standing Order 18, and asked the Chair to rule the hon. Minister's remarks unparliamentary and require her to withdraw them.

In replying to the point of order, the hon. Parliamentary Secretary to the Prime Minister said that the Minister's comments were in reference to the newspaper *Le Québécois*, the content of which he found offensive. He noted that Members of the Bloc Québécois had purchased advertisements in the paper.

In raising his point of order on March 5, 2009, the Member for Bas-Richelieu–Nicolet–Bécancour stated that he felt that the use of the terms "extremists" and "promotes violence" in reference to the Bloc Québécois that day by the hon. Member for Saint-Boniface during Statements by Members and by the Parliamentary Secretary to the Prime Minister during Oral Questions were also directed to him as a member of that political party. He expressed his belief that the use of such language should be condemned.

As I have stated in the past, it is the duty of the Speaker to ensure that all debates in the House are conducted with a certain degree of civility and mutual respect in keeping with established practice in this House. *House of Commons Procedure and Practice* states at page 503:

> Members are to show respect for one another and for different viewpoints; offensive or rude behaviour or language is not tolerated. Emotions are to be expressed in words rather than acted out; opinions are to be expressed with civility.

It goes on to mention on page 526:

> Although an expression may be found to be acceptable, the Speaker has cautioned that any language which leads to disorder in the House should not be used. Expressions which are considered unparliamentary when applied to an individual Member have not always been considered so when applied "in a generic sense" or to a party.

At the same time, it should be remembered that proceedings in this House are based on a long-standing tradition of respect for the integrity of all Members. In addition, *House of Commons Procedure and Practice* states at page 526:

> In dealing with unparliamentary language, the Speaker takes into account the tone, manner and intention of the Member speaking; the person to whom the words were directed; the degree of provocation; and, most importantly, whether or not the remarks created disorder in the Chamber.

In the case before us, it may appear that the remarks made by the hon. Minister for Intergovernmental Affairs, the Member for Saint-Boniface and the Parliamentary Secretary to the Prime Minister, because they were directed to a party rather than an individual Member, were not unparliamentary in a narrow, technical sense. However, they were undoubtedly intended to be provocative and they clearly created disorder.

It should be noted that a considerable body of precedents has developed over the years with respect to Statements by Members. Not only are personal attacks prohibited, but *House of Commons Procedure and Practice* states at page 364:

> The Speaker has cut off an individual statement and asked the Member to resume his or her seat when offensive language has been used; a Senator has been attacked; the actions of the Senate have been criticized; a ruling of a court has been denounced; and the character of a judge has been attacked.
>
> The Speaker has also cautioned Members not to use this period to make defamatory comments about non-Members, nor to use the verbatim remarks of a private citizen as a statement, nor to make statements of a commercial nature.

I draw this particular quote to the attention of all hon. Members and urge them to have a look at that before statements today at 2 o'clock.

It is, therefore, in the strongest possible terms that I encourage Members to refrain from these sorts of remarks in the future. The Standing Orders provide the Speaker with considerable authority to preserve order and decorum and the Chair wishes to make it perfectly clear that transgressors risk being cut off by the Chair. All Members must realize that such provocative commentary only invites equally inflammatory responses and contributes greatly to the lowering of the tone of our proceedings. In recent weeks I have been obliged to intervene more than once to remind Members on both sides of the House of the standards of order and decorum which are expected of them both by the traditions of the House and by their constituents. Once again, I reiterate the need for proper decorum and temperate language in the House.

Postscript: Later that day, during Statements by Members, the Speaker interrupted statements by Tim Uppal (Edmonton–Sherwood Park), Sylvie Boucher (Beauport–Limoilou) and Rodney Weston (Saint John) all regarding Michael Ignatieff (Leader of the Opposition).[5] After Oral Questions, Mr. Uppal rose on a point of order to

seek clarification from the Speaker as to what is permitted during Statements by Members. He suggested that his statement and that of Ms. Boucher were no different than statements made by Members of the Liberal Party in recent years attacking the Government. Furthermore, he pointed out that his and Ms. Boucher's statements quoted from the *Edmonton Journal*. The Speaker reiterated his ruling from earlier in the sitting and encouraged Members to avoid personal attacks on one another in the course of debate in the Chamber, and particularly during Statements by Members, as there is no opportunity for reply.[6]

Editor's Note: Rulings regarding the conduct of Statements by Members can be found in Chapter 3, The Daily Program.

1. *Debates*, February 26, 2009, p. 1038.
2. *Debates*, February 26, 2009, p. 1043.
3. *Debates*, March 5, 2009, p. 1354.
4. *Debates*, March 5, 2009, pp. 1363-4.
5. *Debates*, March 12, 2009, pp. 1672-4.
6. *Debates*, March 12, 2009, pp. 1683-4.

Rules of Debate

Order and Decorum

Unparliamentary language

May 26, 2009 *Debates*, pp. 3702-3

Context: On May 14, 2009, Jay Hill (Leader of the Government in the House of Commons) rose on a point of order arising from that day's Oral Questions to accuse Gilles Duceppe (Laurier–Sainte-Marie) of having used derogatory and unparliamentary language when he had suggested that certain Ministers of the Crown were lying. Mr. Duceppe responded by stating that he had simply been echoing remarks made by Christian Paradis (Minister of Public Works and Government Services) during the previous sitting when he had characterized a Bloc Québécois statement as "an untruth". The Speaker, while commenting that the language in question was unacceptable, indicated that he would review the transcripts and get back to the House. Pierre Paquette (Joliette) asked the Speaker for reassurance of fair treatment and encouraged him to review the transcripts. Pierre Poilievre (Parliamentary Secretary to the Prime Minister and to the Minister of Intergovernmental Affairs) denied that the Minister had accused any Member of lying, to which Mr. Duceppe responded that he himself had been addressing an institution and not a particular Member, as the Minister had done. The Speaker took the matter under advisement.[1]

Later in the sitting, Michel Guimond (Montmorency–Charlevoix–Haute-Côte-Nord) also rose on a point of order arising out of Oral Questions, in which he alleged that Gary Goodyear (Minister of State for Science and Technology) had used the term "dishonest" in his response to a question. Mr. Guimond requested that the Speaker determine whether the word "dishonest" constituted unparliamentary language. The Speaker again took the matter under advisement, stating that he would get back to the House if necessary.[2]

Resolution: On May 26, 2009, the Speaker delivered his ruling on both points of order. He declared that while it might be argued in a purely technical sense that the language used by the Minister of Public Works and Government Services had not been directed at a particular individual, a review of the video had led him to the conclusion that the Minister should withdraw the word complained of. In the

case of Mr. Duceppe, the Speaker declared that while some of his remarks had been of a general nature, his comment that the Prime Minister's responses were "full of lies" was unparliamentary and should be withdrawn. In addition, he ruled that the term "dishonest" as used by the Minister of State for Science and Technology cast doubt on the honesty of the Member posing the question and had also been out of order and should be withdrawn. The Speaker reminded Members that certain words, though not aimed specifically at individuals and therefore not technically out of order, could still cause disruption and would be disallowed by the Speaker. He accordingly called upon all three Members to withdraw their remarks.

Decision of the Chair

The Speaker: I am now prepared to rule on the points of order concerning unparliamentary language raised on May 14, 2009 by the Government House Leader with regard to the Member for Laurier–Sainte-Marie and by the Member for Montmorency–Charlevoix–Haute-Côte-Nord concerning remarks made by the Minister of State for Science and Technology.

I would like to thank the hon. Leader of the Government in the House of Commons and the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord for raising these matters. I also thank the hon. Members for Laurier–Sainte-Marie and Joliette as well as the hon. Parliamentary Secretary to the Prime Minister and to the Minister of Intergovernmental Affairs for their interventions.

In raising his point of order, the Government House Leader stated that the Leader of the Bloc Québécois used derogatory and unparliamentary language and accused Ministers of the Crown of lying. He pointed out that the use of such language was unacceptable and asked the Speaker to take disciplinary action.

In his reply, the Leader of the Bloc Québécois stated that he had used the same language as that used by the Minister of Public Works and Government Services the previous day during Question Period.

In his intervention, the Member for Joliette reiterated the remarks of the Leader of the Bloc Québécois, particularly the plea for equitable treatment. The Parliamentary Secretary to the Prime Minister and to the Minister of

Intergovernmental Affairs contended that the Minister of Public Works and Government Services had not aimed his comments at any particular Member, unlike the Leader of the Bloc Québécois.

I would like to remind the Members that on a number of occasions I have quoted page 526 of *House of Commons Procedure and Practice*, which states:

> In dealing with unparliamentary language, the Speaker takes into account the tone, manner and intention of the Member speaking; the person to whom the words were directed; the degree of provocation; and, most importantly, whether or not the remarks created disorder in the Chamber.

I have now reviewed the *Debates* of May 13 and 14. On May 13, at the end of his reply to a question posed by the Member for Laurier–Sainte-Marie, the Minister of Public Works and Government Services had stated: "To say that we are hindering Quebec is an untruth. What we are doing is giving it a boost." (p. 3446 in the *Debates*). It is possible in a purely technical sense to argue, as the Parliamentary Secretary to the Prime Minister has done, that the transcript shows that these remarks are not directed to any specific individual and therefore are not out of order. A review of the video of the exchange in question has given me a better understanding of the context and suggests to me that quite a different impression may well have been left by the Minister when he used the word complained of. This has led me to conclude that the Minister should withdraw the word.

In his comments on the point of order, the Leader of the Bloc Québécois had stated: "Mr. Speaker, when I say the Government is telling lies, I am not addressing the specific individual, but an institution." (*Debates*, p. 3529). However, having reviewed the beginning of the preamble to his question on May 14, this is not entirely the case. The Member for Laurier–Sainte-Marie has made the point that this part of his preamble was of a general nature, similar to that of the Minister of Public Works and Government Services. However, he then added that the Prime Minister's responses were also full of lies and this is where his remarks became clearly unparliamentary. And as the House is aware, I did advise the Member at that time that the remark was unparliamentary and asked him to withdraw it.

After a full review of the remarks made on May 14, I must conclude that the Member for Laurier–Sainte-Marie did indeed use unparliamentary language in reference to the Prime Minister and therefore that he should withdraw the words complained of.

I wish now to address the second point of order, namely the one raised by the Member for Montmorency–Charlevoix–Haute-Côte-Nord on May 14.

In his submission, the Member pointed out that the Minister of State for Science and Technology had used the word "dishonest" in his reply to a question posed by the Member for Shefford. The Whip of the Bloc Québécois asked the Speaker to determine if such a term was acceptable to the House and, if he found it unparliamentary, to ask the Minister to withdraw the word.

Having examined the *Debates*, it appears to me that the remark of the Minister of State casts doubt on the honesty of the Member who posed the question and, as such, is unparliamentary. I would, therefore, request the Minister of State for Science and Technology to withdraw this remark.

The two cases just considered highlight an increasingly common difficulty the Chair has faced of late and, as Members know, they enjoy practically unfettered freedom of speech in the Chamber. It is in this context that the Speaker is obliged by Standing Order 10 to, "… preserve order and decorum… ", while Standing Order 18 obliges Members not to, "… use offensive words against either House or against any Member thereof".

I want to reiterate that certain words, while not always aimed specifically at individuals and, therefore, arguably technically not out of order, can still cause disruption, can still be felt by those on the receiving end as offensive and therefore can and do lead to disorder in the House.

It is that kind of language that I, as Speaker, am bound by our rules not only to discourage but to disallow. That is why I am appealing to all hon. Members to be very judicious in their choice of words and thus avoid creating the kind of disorder that so disrupts our proceedings and so deeply dismays the many citizens who observe our proceedings.

It is in that spirit of cooperation that I now call upon the hon. Member for Laurier–Sainte-Marie, the hon. Minister of Public Works and Government Services and the hon. Minister of State for Science and Technology to withdraw the remarks that gave rise to this ruling.

Postscript: Subsequently, all three Members concerned withdrew their remarks.[3]

1. *Debates*, May 14, 2009, pp. 3528-9.
2. *Debates*, May 14, 2009, p. 3530.
3. *Debates*, May 26, 2009, pp. 3703 and 3725.

Rules of Debate

Order and Decorum

Unparliamentary language: Oral Questions; adequacy of Member's apology called into question

October 1, 2009 *Debates*, p. 5459

Context: On June 10, 2009, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons) rose on a point of order, alleging that Ralph Goodale (Wascana) had, during Oral Questions that day, accused Lisa Raitt (Minister of Natural Resources) of not telling the truth. Mr. Lukiwski contended that this was unparliamentary language and asked for an apology and that the remarks be withdrawn.[1] On September 18, 2009, Mr. Goodale rose in the House and withdrew any "specific word" that "turns out to be unparliamentary".[2] On September 28, 2009, Mr. Lukiwski rose on another point of order acknowledging Mr. Goodale's apology, but characterizing it as evasive and requesting that the Speaker rule on the matter. The Speaker undertook to review the matter and return to the House as necessary.[3]

Resolution: On October 1, 2009, the Speaker delivered his ruling. He declared that it is not unparliamentary to say that a statement is spurious, incorrect, wrong or untrue, if no motives are imputed by the person making such a statement. He then ruled that he found the comments made by Mr. Goodale, that the Minister "cannot tell the truth", to have been unparliamentary because he was challenging the truthfulness of what she was saying. He concluded that he considered the matter closed since Mr. Goodale had already risen in the House to withdraw the offending remarks.

Decision of the Chair

The Speaker: On June 10, 2009, the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons raised a point of order with regard to the use of unparliamentary language by the hon. Member for Wascana. On September 28, 2009, the hon. Parliamentary Secretary reiterated his request for a ruling, noting that he did find the withdrawal of the remarks by the hon. Member for Wascana on September 18 to be sufficient.

I am now prepared to rule on the point of order concerning unparliamentary language.

In first raising his point of order, the Parliamentary Secretary noted that during Question Period the Member for Wascana quite clearly accused the Minister of Natural Resources of not telling the truth, which in his opinion was unparliamentary language.

Making reference to sections of *House of Commons Procedure and Practice* and *Beauchesne's*, concerning unparliamentary language, the Parliamentary Secretary stated that what he found distressing was that the Member for Wascana had used this language in a direct question in a deliberate and premeditated mode. He asked that the Opposition House Leader apologize and withdraw the remarks. He asked that I review the blues of the *Debates*.

In speaking in reply to the point of order, the Member for Wascana also asked me to review the blues and argued that he had chosen his language very carefully and that it was not beyond the rules of parliamentary procedure, a position he maintained when he later rose to withdraw his remarks.

I had the opportunity to review the *Debates* of Wednesday, June 10. In his preamble to a supplementary question to the Minister of Natural Resources concerning medical isotopes, the Member for Wascana made the following remark, "Mr. Speaker, the Minister cannot give the numbers and clearly she cannot tell the truth either". That is on page 4419 of the *Debates*. These comments created disorder in the House and as I pointed out to the Member at the time, such comments were unnecessary.

When the point of order was raised, I reviewed the section on unparliamentary language contained in *Beauchesne*, and I noted that there are a number of expressions that are very close to what was used, but none is precisely the same. I have also looked at other more recent uses of similar language in the House. There are numerous instances where my predecessors and I have had to rule unparliamentary such phrases as the "Member deliberately misled", "the Member lied", "the Member is a liar", or calling on a Member to "stop lying". In these cases, the use of such language is clearly unparliamentary.

Similarly, the use of expressions such as "a Member made an untrue statement", "a Member did not tell the truth", "the Minister did not tell the truth", "a Member was not telling the whole truth", have always been considered unacceptable and met with requests from the Speaker to withdraw the remarks. In one instance, on September 25, 1985, in the *Debates* at pages 6955-6, in his question, a Member had asked the Prime Minister "to tell the truth to the House of Commons". Mr. Speaker Bosley noted that there was an improper implication to the question and asked the Member to rephrase it. Unsatisfied with the rephrasing of the question, the Speaker interrupted the Member and stated that making such accusations with regard to the character of a Member was improper in the House. He asked the Member to withdraw and put a simple question of fact.

As Mr. Speaker Lamoureux stated in a ruling on October 13, 1966, *Debates*, page 8599:

> My limited experience in the house indicates that it is not, *per se*, unparliamentary to say of another Member that the statement he makes is false, untrue, wrong, incorrect or even spurious, unless there is an improper motive imputed or unless the Member making the charge claims the untruth was stated to the knowledge of the person stating any such alleged untruth.…

I do not believe that saying a statement made is spurious is unparliamentary, or that a statement is incorrect, wrong, or untrue, if no motives are imputed by the person making such a statement.

In his comments, the Member for Wascana stated that he had chosen his words very carefully and that it was not beyond the rules of parliamentary procedure. Nevertheless, it appears that in stating that she could not tell the truth, the Member for Wascana was challenging the truthfulness of what the Minister was saying and the Chair can only conclude that the remarks were unparliamentary.

The Chair notes that the Member for Wascana did rise in the House on Friday, September 18 to withdraw the remarks and that the Parliamentary Secretary to the Government House Leader has since pointed out that this still leaves open the question of whether or not the remarks were or were not

unparliamentary. Let me remove all doubt on the matter: the words used were unparliamentary, they have been withdrawn and the Chair considers the matter closed.

I thank the House for its attention.

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1. *Debates*, June 10, 2009, pp. 4423-4.
2. *Debates*, September 18, 2009, p. 5216.
3. *Debates*, September 28, 2009, p. 5258.

Rules of Debate

Order and Decorum

Unparliamentary language: Oral Questions; distinction between calling a Minister a "liar" and using the word "lies"

November 23, 2009 *Debates*, pp. 7082-3

Context: On November 3, 2009, Rick Dykstra (Parliamentary Secretary to the Minister of Citizenship and Immigration) rose on a point of order, alleging that, during Oral Questions that day, Gilles Duceppe (Laurier–Sainte-Marie) had repeatedly accused Jason Kenney (Minister of Citizenship, Immigration and Multiculturalism) of being a liar and asked him to withdraw his remarks. Mr. Duceppe denied calling the Minister a liar but admitted using the word "lies", arguing that this was acceptable according to past practice and refused to withdraw his words. After hearing from another Member, the Speaker cautioned Members against using these words at all and stated that he would review the video recordings and return to the House if necessary.[1]

Resolution: On November 23, 2009, the Speaker delivered his ruling. He stated that, after reviewing Hansard and the video recordings, he had been unable to discern what term had actually been used in reference to the Minister and that, in accordance with long-standing practice, he had to take Mr. Duceppe at his word. He added that he did not, however, want to leave the impression that words could be uttered in strict isolation without taking into account their effect on decorum in the Chamber. In view of this, he declared that he found that the remarks made by Mr. Duceppe had created such disorder that the dignity of the House had been compromised, and that they were therefore unparliamentary. He asked Mr. Duceppe to withdraw his remarks.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Parliamentary Secretary to the Minister of Citizenship and Immigration on November 3, 2009, regarding the language used by the hon. Member

for Laurier–Sainte-Marie during Oral Questions that day. I want to thank the hon. Parliamentary Secretary to the Minister of Citizenship and Immigration for having brought this matter to my attention, as well as the hon. Member for Lévis–Bellechasse and the hon. Member for Montmorency–Charlevoix–Haute-Côte-Nord, for sharing their views.

In his submission the Parliamentary Secretary alleged that the Member for Laurier–Sainte-Marie repeatedly accused the Minister of Citizenship, Immigration and Multiculturalism of being a liar and asked the Member for Laurier–Sainte-Marie to withdraw the remarks.

For his part, the Member for Laurier–Sainte-Marie denied calling the Minister a liar but admitted that he used the word "lies", arguing that this was in fact acceptable as per past practice.

As I committed to do, I have reviewed Hansard and the video tapes of the exchange in question. Unable to discern what term was actually used in reference to the Minister, I must take the Member for Laurier–Sainte-Marie at his word as is the long-standing practice. That being said, I would be remiss in my duties as your Speaker if I left hon. Members with the impression that words can be uttered in strict isolation without taking into account their effect on decorum in the Chamber. As stated in *House of Commons Procedure and Practice*, Second Edition, at page 619:

> In dealing with unparliamentary language, the Speaker takes into account the tone, manner and intention of the Member speaking; the person to whom the words at issue were directed; the degree of provocation; and, most importantly, whether or not the remarks created disorder in the Chamber. Thus, language deemed unparliamentary one day may not necessarily be deemed unparliamentary the following day.

In another ruling concerning unparliamentary language delivered on May 26, 2009, at pages 3702 and 3703 of the *Debates*, I stated:

> … that certain words, while not always aimed specifically at individuals and therefore arguably technically not out of order, can still cause

> disruption, can still be felt by those on the receiving end as offensive and therefore can and do lead to disorder in the House.
>
> It is that kind of language that I as Speaker am bound by our rules not only to discourage but to disallow.

These words ring as true today as they did then and are equally instructive in determining the acceptability of language used by hon. Members.

As I have done in the past, I appeal to all hon. Members on all sides of the House to choose their words with greater care. A reasonable degree of self-discipline is not a luxury. It is indispensable to civilized discourse and to the dignity of this institution. That point has been made in several of the points of order raised earlier this day.

Accordingly, in the matter before us today, I must find that the remarks made by the Member for Laurier–Sainte-Marie did create such disorder that the dignity of this House was compromised, and as such were unparliamentary. I would therefore ask him to withdraw his words.

I thank hon. Members for their attention.

Postscript: Immediately following the Speaker's ruling, Mr. Duceppe withdrew his words.

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1. *Debates*, November 3, 2009, p. 6567.

Rules of Debate

Order and Decorum

Prime Minister alleged to have deliberately misled the House

March 8, 2005 *Debates*, p. 4120

Context: On February 24, 2005, Alexa McDonough (Halifax) rose on a point of order. She alleged that Paul Martin (Prime Minister) had deliberately misled the House by declaring, during Oral Questions on February 23, 2005,[1] that the Government had not yet made a decision on Canada's participation in ballistic missile defence when, in fact, the decision had already been made.[2] On February 25, 2005, Tony Valeri (Leader of the Government in the House of Commons) responded that, while the Prime Minister and certain Ministers had reached a decision earlier concerning the course of action they would recommend to Cabinet, Cabinet itself did not actually make its final decision until after the Prime Minister had answered the question in the House, and the Prime Minister's answer was therefore not misleading. The Speaker took the matter under advisement.[3]

Resolution: On March 8, 2005, the Speaker delivered his ruling. He stated that he could not find any evidence that a decision on ballistic missile defence had been reached prior to the Cabinet meeting of February 24, 2005, nor could he find anything in the *Debates* that would contradict the sequence of events set out by the Government House Leader. He concluded that he was therefore unable to find that there had been an attempt to mislead the House.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on February 24, 2005, by the hon. Member for Halifax, who alleged that the House was deliberately misled by certain remarks made by the Prime Minister in responding to a question during Question Period the previous day.

I would like to thank the hon. Member for Halifax for having raised this question, as well as the hon. Government House Leader for his contribution on the issue.

The hon. Member for Halifax alleged that in answering a question during oral question period on Wednesday, February 23, 2005, the Rt. Hon. Prime Minister deliberately misled the House by declaring that the Government had not yet made a decision on Canada's participation in ballistic missile defence.

In addition, she contended that the Minister of Foreign Affairs, in announcing the Government's decision to the House during debate on February 24, had confirmed that the Government had made its decision prior to the Prime Minister's response during the February 23 Question Period, noting, in fact, that the decision had already been communicated to the United States Secretary of State, Dr. Condoleezza Rice.

The hon. Member for Halifax went on to request that the Prime Minister be asked to rise in the House to correct the record as to when the Government took the decision not to participate in ballistic missile defence and when this decision was communicated to the United States Secretary of State.

The hon. Government House Leader rose on February 25 to speak to the point of order. He argued that in our parliamentary system no decision can be said to have been made until Cabinet has agreed to it. According to him, the decision that Canada would not participate in ballistic missile defence was made at the Cabinet meeting held on the morning of February 24 and the decision was announced to the House by the hon. Minister of Foreign Affairs when he spoke during the budget debate shortly before 12 noon on that day.

As for notifying Dr. Rice, the hon. House Leader explained that the Minister of Foreign Affairs had spoken to his counterpart as a courtesy, knowing, as he did, the conclusion that the Prime Minister and he had reached and were to recommend to Cabinet.

I have consulted the *Debates* for the days in question and find no evidence, either in the remarks of the Minister of Foreign Affairs or in the questions and comments period that followed, that a decision was reached prior to the Cabinet meeting of February 24. Indeed, I find nothing that would contradict the description of the course of events set out by the hon. Government House Leader.

No doubt, Members speaking on behalf of the opposition parties would have preferred that the Minister's announcement be made during the time provided for ministers' statements so they might have been permitted an opportunity to respond. However, in the circumstances, I am unable to find that there has been an attempt to mislead the House.

I hope that the statement by the hon. House Leader has provided the clarification that the hon. Member from Halifax sought when she raised her point of order.

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1. *Debates*, February 23, 2005, p. 3870.
2. *Debates*, February 24, 2005, p. 3942.
3. *Debates*, February 25, 2005, p. 3973.

Rules of Debate

Order and Decorum

Minister alleged to have misled the House regarding commitment to appear before a committee

March 14, 2008 *Debates*, p. 4196

Context: On March 13, 2008, Yvon Godin (Acadie–Bathurst) rose on a question of privilege to accuse Josée Verner (Minister of Canadian Heritage, Status of Women and Official Languages) of misleading the House during Oral Questions on March 12, 2008.[1] Mr. Godin argued that, in responding to a question from Mauril Bélanger (Ottawa–Vanier) regarding her alleged refusal to appear before the Standing Committee on Official Languages, the Minister had misled the House by indicating that she had already appeared before the Committee and was prepared to do so again, despite a letter she had sent to the Chair of the Committee declining an invitation to appear. The Speaker stated that the matter appeared to be a disagreement over facts and not a valid question of privilege.[2]

Resolution: On March 14, 2008, the Speaker returned to the question of privilege. He maintained that at the root of the matter was a disagreement as to facts, but having examined the correspondence from the Minister to the Chair of the Committee, it appeared to him that there may have been a misunderstanding about what the Minister had said during Oral Questions. He requested that the Minister clarify the facts at an early opportunity.

Decision of the Chair

The Speaker: That concludes Question Period for today. With the consent of the House, I would like to go back briefly to the question of privilege raised yesterday by the hon. Member for Acadie–Bathurst and the statements by the hon. Member for Gatineau and the hon. Member for Ottawa–Vanier.

As I mentioned yesterday, when I quoted page 433 of *House of Commons Procedure and Practice*, I still believe that:

> In most instances, when a point of order or a question of privilege has been raised in regard to a response to an oral question, the Speaker has ruled that the matter is a disagreement among Members over the facts surrounding the issue. As such, these matters are more a question of debate and do not constitute a breach of the rules or of privilege.

However, having read a letter sent to the Standing Committee on Official Languages by the Minister of Canadian Heritage, Status of Women and Official Languages, I can see that there may have been a misunderstanding about what the Minister said during oral question period on March 12.

In order to clear up what was likely a misunderstanding, I believe it would be highly appropriate for the hon. Minister to clarify the facts when the opportunity arises in the near future.

I thank the hon. Members for their attention.

Postscript: Immediately following the Speaker's ruling, Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform) rose on behalf of the Minister to table the correspondence with the Chair of the Committee.

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1. *Debates*, March 12, 2008, p. 4050.
2. *Debates*, March 13, 2008, p. 4139.

Rules of Debate

Curtailment of Debate

Time allocation: appropriate use

March 1, 2001 *Debates*, pp. 1415-6

Context: On February 13, 2001, Chuck Strahl (Fraser Valley) rose on a question of privilege with regard to the adoption of a time allocation motion moved by Don Boudria (Leader of the Government in the House of Commons) in relation to Bill C-2, *An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations*. Mr. Strahl argued that this was the second Parliament in a row in which the first bill introduced by the Government had been subjected to time allocation after only a few hours of debate, that it was the 69th time allocation motion moved by the Government and that it was time to declare the measures imposed by the Government to be excessive and unorthodox. He stated that the Speaker could and should intervene when a Government abuses its power and the rules of the House and added that by allocating only the minimum amount of time to debate each stage of a bill, the Government prevented the opposition from the exercise of its right to dissent. He also suggested that the Chair should intervene to protect the collective rights of parliamentarians against the Government's use of time allocation motions to limit debate on bills. Mr. Strahl concluded by stating that he believed that the Chair possessed the authority to intervene to protect the rights of the minority, and to ensure reasonable debate, and he urged the Speaker to refuse or to delay premature attempts to curtail debate to prevent it becoming a pattern. After hearing from other Members, the Deputy Speaker (Bob Kilger) took the matter under advisement.[1]

Resolution: On March 1, 2001, the Deputy Speaker delivered his ruling. Noting that the Speaker has no discretionary authority to refuse to put a motion of time allocation if all of the procedural exigencies have been observed, he stated that there had been no suggestion that, by moving the time allocation motion, the Government had in any way deviated from the procedure laid out in the Standing Orders. He emphasized that the House protects itself against abuses not by the authority of the Speaker, but by means of the rules it imposes on itself. The Deputy Speaker pointed out that if the existing rules concerning time allocation were no longer considered satisfactory or acceptable by Members, then they should amend the

rules, but that it would be inappropriate for the Chair to intervene unilaterally where the Standing Orders provide him with no discretionary authority to do so. He also reminded the Members that the Standing Order with respect to time allocation had been invoked only once in the Thirty-Seventh Parliament and that the Chair does not rule on hypothetical cases or on questions raised only in the abstract. Accordingly, he concluded that the matter did not constitute *prima facie* a question of privilege.

Decision of the Chair

The Deputy Speaker: I am now ready to rule on the question of privilege raised by the Opposition House Leader, the hon. Member for Fraser Valley, on February 13, 2001.

Subsequent to the adoption of a time allocation motion in relation to Bill C-2, *An Act to amend the Employment Insurance Act and employment insurance regulations*, the hon. Member rose on a question of privilege to express his concern and dismay about the frequency with which the Government had resorted to time allocation to cut off debate prematurely on legislation during the Thirty-Fifth and Thirty-Sixth Parliaments, a trend he believes is to continue in the present Parliament.

The hon. Member claimed that the Government's use of time allocation was a misuse of its authority and that the time had come "to declare the measures imposed by the Government today as excessive and unorthodox".

The hon. Member argued that the Speaker has the authority to refuse to put a time allocation motion if, in his judgment, the Government is abusing its powers and the rules of the House by not allowing a sufficient amount of time for debate. He concluded his argument by suggesting that the Speaker consider the amount of authority and discretion available to the Chair to decide not to propose to the House a motion of time allocation if there has not been a sufficient period of time for debate.

I wish to thank the hon. Government House Leader, the House Leader of the Bloc Québécois, the hon. Member for Roberval, the House Leader of the New Democratic Party, the hon. Member for Winnipeg–Transcona, the House Leader of the Progressive Conservative Party, the hon. Member for

Pictou–Antigonish–Guysborough, and the hon. Member for St. Albert for their interventions.

The request that is being made of the Chair in this instance is one which places me in a position of some delicacy. It is, of course, true that the Chair uses its discretion on every occasion on which it intervenes. That is not to say, however, that rulings are made simply on the Speaker's personal authority. Nothing could be further from the truth.

House of Commons Procedure and Practice states, at page 570, and I quote:

> —the Speaker has ruled that the Chair possesses no discretionary authority to refuse to put a motion of time allocation if all the procedural exigencies have been observed.

In a ruling on a similar case, Speaker Fraser said, at *Debates*, March 31, 1993, page 17860:

> —it is not always understood that the Chair is constrained in what the Chair can do by the rules which this House has passed. It is not surprising that sometimes some hon. Members, or even members of the public, feel that the rules we have set for ourselves may in some cases be unreasonable or even worse. However, it is extremely important I think that the Chair be bound by those rules until the House decides to change them.

In the case which gave rise to the point which I am addressing, there has been no suggestion that the Government in any way deviated from the procedure laid out in the Standing Orders. I do not feel, under those circumstances, that there are any grounds whatsoever which would lead the Chair to intervene. The Chair wishes to be very clear on this point. The rules and practices established by this House with respect to time allocation leave the Speaker with no alternative in this matter. Speaker Fraser said in the case to which I have already referred, at *Debates*, March 31, 1993, page 17861:

> I have to advise the House that the rule is clear. It is within the government's discretion to use it. I cannot find any lawful way that I can exercise a discretion which would unilaterally break a very specific rule.

In making this ruling, Speaker Fraser was faced with arguments very close to those before us in the present case.

The question of the extent of the Speaker's authority has been raised and reference has been made to the practice in the United Kingdom. The Government House Leader indicated in his comments on this question that in other jurisdictions greater use is made of the scheduling of work both in the House and in committee. It may be that the House is no longer satisfied with the manner in which the time allocation rule works. If that is so, it is for the House to consider and, ultimately, to determine what procedure will best suit its current circumstances. Planning done on the basis of consensus could be a significant benefit, not only for the business of the House but also in promoting an atmosphere of decorum and respect in which that business is conducted.

Our system has always been one which functions on the basis of rules established by the House itself. However, under our current Standing Orders, it would be highly inappropriate for the Chair to take unilateral action on issues already provided for in the Standing Orders. Where the Standing Orders give the Speaker some discretion, then it is the Speaker's responsibility to be guided accordingly; where no such guidance is provided, no such action can be taken. It is certainly not up to the Chair to establish a timetable for the business of the House.

It is by its rules and not by the authority of the Speaker that the House protects itself from excesses, both on the Government side and on that of the opposition. The Speaker's role is to judge each case as it arises, fairly and objectively, and in so doing, to ensure that those rules are applied as the House intended.

Speaker Lamoureux, when faced with a similar situation stated in *Journals* July 24, 1969, page 1398:

> The Speaker is the servant of the House. Honourable Members may want me to be the master of the House today but tomorrow, when, perhaps in other circumstances I might claim this privilege, they might have a different opinion—I am not prepared at this time to take this responsibility on my shoulders. I think it is my duty to rule on such

> matters in accordance with the rules, regulations and Standing Orders which honourable Members themselves have turned over to the Speaker to administer.

I would also like to remind the House that the Standing Order with respect to time allocation has been invoked only once in this, the Thirty-Seventh Parliament. I have indicated clearly that this use of the Standing Order does not represent a matter of privilege. If further cases arise, the Chair will deal with them individually, on their merits. I remind the House that the Chair will not rule on hypothetical cases or on questions raised only in the abstract.

Once again, I would like to thank hon. Members for their carefully considered arguments on this question. The Chair is conscious of the importance which Members on both sides of the House attach to it.

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1. *Debates*, February 13, 2001, pp. 569-76.

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Chapter 8 — Special Debates

Introduction

The Standing Orders and established practices of the House provide Members with opportunities to engage, from time to time, in debates which require the House to put aside its normal proceedings in response to emergencies, national or international issues, or pivotal moments in the life of a Parliament. These special debates include the debate on the Address in Reply to the Speech from the Throne, the once-per-Parliament debate on the Standing Orders and procedure of the House and its committees, emergency debates, debates to suspend certain Standing Orders in order to consider urgent matters, and take-note debates. The decisions included in this chapter relate to three of these types of special debates: debates on the Address in reply to the Speech from the Throne; emergency debates; and take-note debates.

Each new session of Parliament begins with a Speech from the Throne. By convention, until the Speech is delivered, no public business may be transacted either by the Senate or by the House of Commons. It is customary for the House to adopt a motion to consider the Throne Speech and, on the day specified for this, for a Government backbencher to move that an Address be presented to the Governor General to offer thanks for the Speech. The debate on this motion for an Address in Reply to the Speech from the Throne permits Members to engage in a wide-ranging debate of the policies set out in the Speech.

The single decision included in this chapter which relates to the debate on the motion for an Address in Reply to the Speech from the Throne is noteworthy in that it arises from the first instance in our history of the House adopting an amendment to the motion. In it, a Member argues that his privileges have been violated by the failure of the Government to act in accordance with the provisions of the amended motion. The Speaker, while dismissing the question of privilege as a dispute as to facts, takes note of the unprecedented character of the adoption by the House of an amended motion for an Address in Reply to the Speech from the Throne.

A number of the decisions which follow are concerned with requests for emergency debates. While debates on matters of urgent concern have been held since Confederation in the context of motions to adjourn the House, there

has been a gradual evolution of the rules governing these debates. Under the current rule, motions in respect of emergency debates are typically taken up at the ordinary hour of daily adjournment (Fridays being the exception).

The Speaker is not obliged to indicate the reasons for a decision with respect to a request for an emergency debate, and this is reflected in some of the decisions included in this chapter. In others, however, the Speaker is more forthcoming, pointing out, for example, that other opportunities to address the matter had not been taken advantage of by the Member making the request or by his or her party. The reader will note that of the 13 decisions on requests for emergency debates included in this chapter, only four met with an affirmative response from the Chair. This is actually not representative of the ratio of requests granted to requests refused—the proportion of refusals is much higher. However, the decisions included here well reflect the range of possible responses and the manner in which such routine requests are dealt with by a seasoned Chair Occupant.

Another group of decisions concerns take-note debates. These debates have been held since the early 1990s. They originated as an alternative to emergency debates, which can take place only if the Speaker is satisfied that a number of specific criteria have been met. In 2001, the House adopted a new Standing Order governing the holding of take-note debates in Committees of the Whole. Any Minister may, after consultation with the parties in opposition, propose a motion (which is not debatable nor amendable) setting out the terms of an upcoming take-note debate. The question on the motion is put immediately. If it is adopted, the debate is held at the ordinary hour of adjournment on the day designated in the motion. The House resolves itself into a Committee of the Whole and the debate is governed by the Standing Orders applicable to this type of committee. The debate ends when no Member rises to speak or after four hours of debate—whichever comes first.

The decisions included in this chapter which concern take-note debates are statements by the Speaker on the manner in which such debates are to be conducted. They reflect the desire of the Speaker to ensure that all participants in the debates were fully acquainted with the *modus operandi* associated with these debates. They serve as useful precedents for the interpretation of Standing Order 53.1 governing such take-note debates.

Special Debates

Address in Reply to the Speech from the Throne

Alleged contempt of the House: Prime Minister accused of not respecting the amendment to the Address

March 22, 2005 *Debates*, pp. 4452-3

Context: On March 8, 2005, Jay Hill (Prince George–Peace River) rose on a question of privilege, charging Paul Martin (Prime Minister) with contempt of the House. He claimed that the amendment to the Address in Reply to the Speech from the Throne, agreed to on October 18, 2004, provided that Parliament would have the opportunity to debate and to vote prior to an agreement on ballistic missile defence with the United States.[1] Mr. Hill argued that the Prime Minister had failed to respect this commitment. Tony Valeri (Leader of the Government in the House of Commons) countered that, since the decision had been not to participate, there was no agreement and thus nothing to debate or to vote on.[2] After hearing from other Members, the Speaker took the matter under advisement.[3]

Resolution: The Speaker delivered his ruling on March 22, 2005. He noted that he was being asked to pronounce on a case virtually unprecedented in Canadian or Commonwealth practice involving an amendment to the Address. He added that the dispute centred on different interpretations of the text of the amendment and was thus a matter of debate. Noting that it was not for the Speaker to impose his own interpretation of the Address in Reply to the Speech from the Throne, he ruled that it was not a *prima facie* case of contempt.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on March 8, 2005 by the hon. Opposition House Leader concerning the alleged failure of the Prime Minister to allow Parliament to debate the decision of the Government regarding ballistic missile defence.

I would like to thank the hon. Opposition House Leader for raising this matter, as well as the hon. Leader of the Government in the House and the

hon. Members for Calgary–Nose Hill and Sackville–Eastern Shore for their contributions.

In his submission, the hon. Opposition House Leader argued that the Prime Minister was in contempt of the House for failing to keep his promise to consult Parliament and to hold a vote before the Government made its decision not to participate in the United States ballistic missile defence plan.

He argued that when the House adopted the amended Address in Reply to the Speech from the Throne on October 8, 2004, it had agreed to debate the participation of Canada in missile defence and that the House had been given no opportunity to consider the matter before the Government announced that Canada would not participate. He quoted paragraph 5 of the Address in Reply to the Speech from the Throne which states:

> With respect to an agreement on ballistic missile defence, the assurance that Parliament will have an opportunity to consider all public information pertaining to the agreement and to vote prior to a government decision.

The hon. Opposition House Leader likened the Throne Speech to a promissory note to Parliament. He maintained that the Address in Reply contained a promise to debate ballistic missile defence prior to a Government decision being made and that the Government had reneged on this promise.

In presenting his argument, the hon. Member cited a Speaker's ruling from November 21, 2001 concerning the failure of the Government to comply with a statutory requirement to table certain information in the House. In that case, the Speaker stated that, had there been a legislative deadline for tabling the required information, the Speaker would not have hesitated to have found the matter a *prima facie* breach of privilege.

The hon. Opposition House Leader argued that in the current situation, the adoption of the amended Address in Reply contained a conditional deadline that was tied to a decision of the Government. The Government ignored this time commitment and made its decision without providing Parliament with information pertaining to the proposed missile defence agreement as required in the amendment to the Address in Reply.

In his intervention, the hon. Leader of the Government in the House indicated that, in the view of the Government, a debate on participation in ballistic missile defence was contingent on reaching an agreement with the United States. As the hon. Minister stated:

> Since there was no agreement, there was in fact nothing to debate and therefore nothing to vote on.

I have examined the November 21, 2001 ruling referred to by the hon. Opposition House Leader. In that decision, the Speaker stated at page 7381 of Hansard, that given the lack of a specified deadline in the statute for the tabling of the regulations concerned, Parliament had provided the Minister with some latitude in fulfilling the tabling requirement. As the Opposition House Leader pointed out, the Speaker would not have hesitated to find a *prima facie* question of privilege had a deadline existed. However, in the absence of such a deadline, the Speaker felt it would not be appropriate for the Speaker to impose a deadline to table the information and so substitute his judgment for the decision of Parliament.

In the current case, the dispute centres on conflicting readings of the text of the amendment to the Address in Reply to the Speech from the Throne, so let us begin by a careful review of that text.

I draw to hon. Members' attention the wording of the lead in to the text of the amendment proposed by the Official Opposition and eventually incorporated into the Address. It reads as follows:

> That Your Excellency's advisors consider the advisability of the following:

A five paragraph text is then inserted into the Address, the fifth paragraph being what concerns us today. Taken together, the full text reads thus:

> That Your Excellency's advisors consider the advisability of the following:…
>
> 5. with respect to an agreement on ballistic missile defence, the assurance that Parliament will have an opportunity to consider all

> public information pertaining to the agreement and to vote prior to a government decision;

I remind the House that the Speaker is being asked to pronounce on a case that is virtually unprecedented in our practice, or in any other Canadian or Commonwealth practice for that matter, namely, a case where an amendment to the Address in Reply to the Speech from the Throne has been adopted. Since the actions of the Government further to the adoption of the Address are under dispute, the meaning of the amendment is of primary importance so that we are left to fall back on an exegesis of that text.

I see three features in the text that must be noted. First, the text asks only that Her Excellency's advisors, that is the Government, consider various courses of action; second, the text refers to "an agreement on ballistic missile defence" and seeks "the assurance that Parliament will have an opportunity to consider all public information pertaining to the agreement"; and three, the text requests that Parliament be given an opportunity "to vote prior to a Government decision".

Let us consider these points *seriatim*.

On the first point, the language is not prescriptive. Indeed, were the motion worded so as to enjoin Her Excellency, it would likely not be ruled in order since it would infringe on the prerogatives of the Crown.

On the second point, as the hon. Government House Leader points out, there is no agreement on ballistic missile defence so the action requested in the event of an agreement becomes moot.

The third point is an inherent contradiction. The text asks for "a vote prior to a Government decision", presumably a decision for or a decision against, when the rest of the text refers to a case predicated on an agreement, an agreement extant, presumably, only in the case of a decision for.

I trust that the House will see the impossible task before a Speaker rash enough to accept to judge compliance in this case. I am sure, as the hon. Member can see, even this brief analysis of the Address in Reply raises

many more questions than it answers. I believe that these are not questions that the Speaker is bound to answer.

The House saw fit to adopt the amended Address in Reply to the Speech from the Throne in the language I have read out. It is not for your Speaker to impose his interpretation of the Address in Reply on the House. It appears to me that what we have here is a dispute as to interpretation and, consequently, a matter of debate. Therefore, I cannot find that there is a *prima facie* case of contempt.

Postscript: The precedent having been set, the House of Commons on two subsequent occasions adopted amended motions for an Address in Reply to the Speech from the Throne.[4]

1. *Journals*, October 18, 2004, pp. 101-2.
2. *Debates*, March 8, 2005, pp. 4122-4.
3. *Debates*, March 8, 2005, p. 4124.
4. *Journals*, April 10, 2006, p. 41; November 27, 2008, pp. 47-8.

Special Debates

Emergency Debates

Leave granted: softwood lumber

October 4, 2001 — *Debates*, pp. 5945, 5971

Context: On October 4, 2001, John Duncan (Vancouver Island North) rose in the House to request that an emergency debate be held, pursuant to Standing Order 52, on softwood lumber.[1] Mr. Duncan emphasized that tens of thousands of jobs had been lost as a result of trade action by the United States. The Speaker stated that he had carefully considered the matter and was inclined to grant the request, but wished to give it further consideration and would get back to the House before 2:00 p.m. that day.[2]

Resolution: Later that day, the Speaker advised the House that he had decided to grant leave for the debate. He added that it would be held that evening at 8:00 p.m.

Decision of the Chair

The Speaker: The Chair has carefully considered the matter and wishes to take a little more time to consider the request of the hon. Member. I must say that my initial inclination is to grant the request. I am leaning that way but I will consider the matter for a while yet. I will get back to the House before two o'clock with an answer. I will communicate to the hon. Member as to when I will come back to make that decision.

Editor's Note: The Speaker returned to the House with his ruling later that day.

The Speaker: Earlier this day the Chair received submissions from the hon. Member for Vancouver Island North concerning a request for an emergency debate pursuant to Standing Order 52. I wish to advise the House that the Chair has decided to accept that request and grant it. Accordingly, there will be a debate this evening under the terms of Standing Order 52 at eight o'clock on the subject of softwood lumber.

1. *Debates*, October 4, 2001, p. 5945, *Journals*, p. 691.
2. *Debates*, October 4, 2001, p. 5945, *Journals*, p. 691.

Special Debates

Emergency Debates

Leave refused: softwood lumber; other opportunities for debate available

February 18, 2002 *Debates*, p. 8952

Context: On February 18, 2002, Bill Casey (Cumberland–Colchester) rose in the House to request that an emergency debate be held, pursuant to Standing Order 52, on the softwood lumber crisis.[1] He emphasized that different approaches and remedies had been unsuccessful, and that 25,000 jobs had already been lost in Canada. He pointed out that softwood lumber is Canada's fifth largest export. The Speaker took the matter under advisement.[2]

Resolution: Later that day, the Speaker delivered his ruling. He noted that various debates had been held on the subject and that, since there were five allotted days remaining in the supply period ending March 26, 2002 (excluding the allotted day scheduled for February 19, 2002), there would be ample opportunity for the matter to be discussed. He concluded that he had not been satisfied as to the urgency of the matter, and therefore declined the request.

Decision of the Chair

The Speaker: I indicated to the House earlier today that I would return on the subject of the request for an emergency debate by the hon. Member for Cumberland–Colchester respecting softwood lumber.

An emergency debate took place on this issue on October 4 last year and again on November 6. I note that it was the subject of debate of an opposition motion on March 15 last year on a supply day. In fact a motion was adopted on March 15, 2001.

The hon. Member for Cumberland–Colchester indicated in his remarks that there was a deadline approaching on March 15. In the circumstances I have doubts about whether in fact there is a real emergency in this case, given the time frames involved.

I note the various debates that have been held on the subject. I also note that there are five allotted days remaining in the supply period after tomorrow's allotted day, and the supply period ends on March 26.

Accordingly I feel there is ample opportunity for this matter to be discussed and not being satisfied of the urgency of the matter I am inclined therefore to disallow his request for an emergency debate at this time.

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1. *Debates*, February 18, 2002, p. 8927.
2. *Debates*, February 18, 2002, p. 8927.

Special Debates

Emergency Debates

Leave refused: human embryo research; matter deemed not of sufficient urgency and another opportunity for debate available

March 11, 2002 *Debates*, p. 9472

Context: On March 11, 2002, Rob Merrifield (Yellowhead) rose in the House to request that an emergency debate be held, pursuant to Standing Order 52, on human embryo research.[1] Mr. Merrifield made reference to the decision by the Canadian Institutes of Health Research (CIHR) to approve both research on and the destruction of human embryos, and to encourage such research by providing federal funding for it. He argued that the matter was urgent in that the CIHR had effectively pre-empted debate by allowing research on human embryos to begin before legislation was in place.

Resolution: The Speaker ruled immediately, stating that, although he believed this was a matter of considerable importance, it did not appear, as required by the Standing Order, to be one of urgency. Noting that Thursday, March 14, 2002, would be an opposition day for the Member's party and so an opportunity to raise the issue, the Speaker declined the request.

Decision of the Chair

The Speaker: The Chair has heard the submissions of the hon. Member and I had the advantage of course of reading the letter that he sent to me indicating his intention to raise this very important matter this afternoon.

I have no doubt that the matter is of considerable importance. The question that concerns the Chair is the one of urgency, and under the Standing Order I believe that in this case there does not appear to be urgency as required by the Standing Order.

I note also, without making any further comment on it, that there is an opposition day tomorrow and there is going to be another one on Thursday. It is the hon. Member's party's chance on Thursday and I know that he might

want to see that the issue is brought forward at that time. Certainly he could do more on an opposition day with a motion than he could at an adjournment debate that I am allowed to grant under the Standing Order. Accordingly I must decline his request at this time.

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1. *Debates*, March 11, 2002, p. 9471.

Special Debates

Emergency Debates

Leave refused: decision by the Minister of Fisheries and Oceans to deny a fisheries quota; matter deemed to be of an exclusively local or regional interest related to a specific community

March 18, 2002 *Debates*, p. 9762

Context: On March 18, 2002, Peter MacKay (Pictou–Antigonish–Guysborough) rose in the House to request that an emergency debate be held, pursuant to Standing Order 52, on a decision of the Minister of Fisheries and Oceans to deny a fisheries quota to the town of Canso, Nova Scotia.[1] Mr. MacKay emphasized that the rejection of the fishing application had had a devastating impact on the citizens of Canso and the surrounding communities, and on their ability to reopen a fish plant.

Resolution: The Speaker ruled immediately. He pointed out that, since the matter was of an exclusively local interest and related to a specific community, the request did not meet the requirements of Standing Order 52. He concluded that he was not prepared to allow an emergency debate on the matter at that time.

Decision of the Chair

The Speaker: I thank the hon. Member for Pictou–Antigonish–Guysborough for his submissions both today and on Friday on this matter. I note that he raised the matter of Friday and then suggested at the end that in light of possible events over the weekend he might prefer to have the debate today. I suggested he defer his application until today. He was willingly compliant with that request and for that I thank him.

Notwithstanding his forbearance I am afraid the Chair has reason to feel the particular application is one that does not warrant the intervention of the Chair under the provisions of Standing Order 52.

The Chair does not normally give reasons for its opinion in these matters, but I would draw to the attention of the hon. Member for Pictou–Antigonish–

Guysborough, who I know is an enthusiastic reader of *Marleau and Montpetit*, a particular citation on page 588 of that book which states as follows:

> Chair occupants have established that the subject matter proposed should not normally be of an exclusively local or regional interest nor be related to only one specific group or industry, and should not involve the administration of a government department.

The last words are not appropriate but all the rest apply. His letter frames this in the sense that it is a matter of dealing with a situation in the community of Canso.

I am sure all hon. Members share his concern about the economic impacts of the recent decision in respect of that community, but not withstanding I am not sure it is one that fits the parameters of Standing Order 52. Accordingly I am not prepared to allow the debate at this time.

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1. *Debates*, March 18, 2002, p. 9761.

Special Debates

Emergency Debates

Leave refused: fisheries; emergency debate already granted on the same subject a few months earlier

June 12, 2002 *Debates*, p. 12616

Context: On June 12, 2002, Loyola Hearn (St. John's West) rose in the House to request that an emergency debate be held, pursuant to Standing Order 52, on overfishing on the nose and tail of the Grand Banks and the Flemish Cap.[1] Mr. Hearn noted that the Standing Committee on Fisheries and Oceans had presented its Tenth Report (with respect to foreign overfishing) the day before, and argued that "without any consultation with his colleagues or the House… the Minister rejected the Report." He added that his request for an emergency debate, should it be granted, would represent the last chance for all Members of the House to discuss the direction the Government should take at the Northwest Atlantic Fisheries Organization's autumn meeting.

Resolution: The Speaker ruled immediately. He stated that he had granted a request for an emergency debate on the subject a few months earlier and added that Mr. Hearn had not convinced him that the matter had become any more urgent since that time. Accordingly, he ruled that the request had not met the exigencies of the Standing Orders.

Decision of the Chair

The Speaker: I thank the hon. Member for St. John's West for his submission.

As I said, I did grant an emergency debate on this very subject a few months ago because I believed there was some urgency to the matter. However I must say that nothing he has said today has convinced me that the matter has become more urgent today than it was when I granted the previous debate.

Accordingly, I am of the view that his request does not meet the exigencies of the Standing Orders at this time.

1. *Debates*, June 12, 2002, pp. 12615-6.

Special Debates

Emergency Debates

Leave refused: softwood lumber: matter deemed not of sufficient urgency and another opportunity for debate available

February 9, 2004 *Debates*, p. 322

Context: On February 9, 2004, Peter Stoffer (Sackville–Musquodoboit Valley–Eastern Shore) rose in the House to request that an emergency debate be held, pursuant to Standing Order 52, on softwood lumber. He noted that the crisis had been ongoing for some time, that many workers had been adversely affected and that it was important that the current Government clarify its position in the matter.[1]

Resolution: The Speaker ruled immediately to the effect that there was no new development on that issue that might be considered an additional concern or emergency at that time. He noted that the House was then involved in the debate on the Address in Reply to the Speech from the Throne and that the matter could be raised in the course of that debate. He concluded that, in the circumstances, he was not disposed to grant the request.

Decision of the Chair

The Speaker: The Chair has listened carefully to the comments of the hon. Member for Sackville–Musquodoboit Valley–Eastern Shore. I note that this issue is one that has continued for some many months and is not new. I am concerned about allowing an emergency debate when there is no new development that might have prompted an additional concern or emergency at this particular time.

While I have no doubt that the subject is one of considerable interest and importance, I note that the House is involved at the moment in the debate on the Address in Reply to the Speech from the Throne, which allows great latitude to all hon. Members in their speeches. I am sure the hon. Member will want to participate in that debate and possibly raise this subject then, with other hon. Members responding. I would encourage him to pursue that avenue at this time.

Of course we will continue to monitor the situation. Should circumstances change once the debate on all subjects in regard to the Speech from the Throne is over, perhaps the hon. Member will want to renew his request, or something else may have transpired which will make it one that in the view of the Chair would be worthy of an emergency debate. In the circumstances, I am not disposed to grant the request at this time.

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1. *Debates*, February 9, 2004, p. 322.

Special Debates

Emergency Debates

Leave granted: Devils Lake diversion project; timing of the debate determined by unanimous consent

June 21, 2005 *Debates*, p. 7544

Context: On June 21, 2005, Joy Smith (Kildonan–St. Paul) rose in the House to request that an emergency debate be held, pursuant to Standing Order 52, on North Dakota's decision to proceed with the Devils Lake diversion project.[1] She spoke of widespread concern that the diversion would have significant adverse environmental effects on water in Lake Winnipeg. The Acting Speaker (Jean Augustine) took the matter under advisement.[2]

Resolution: Later that day, the Speaker delivered his ruling. He advised the House that he had decided to grant Mrs. Smith's request. He added that he was, however, faced with a difficulty in the wording of the Standing Orders as they did not specify what to do when the House was already sitting until midnight as it had been doing pursuant to an Order adopted on June 13, 2005, in accordance with the provisions of Standing Order 27(1).[3] It was agreed by unanimous consent to start the debate after scheduled votes had been taken and to continue it until midnight.

Decision of the Chair

The Speaker: This morning the hon. Member for Kildonan–St. Paul requested an emergency debate pursuant to Standing Order 52 for the purpose of discussing North Dakota's intention to proceed with the Devils Lake diversion. I have considered the hon. Member's request and decided to grant it.

The difficulty the Chair is facing at the moment is the wording of the Standing Orders in respect of this because they do not contemplate what we do when we are sitting until midnight.

(**Editor's Note:** Following the Speaker's decision, the House adopted a motion regarding the proceedings and divisions on a Government bill then before the

House. Jay Hill (House Leader of the Official Opposition) then rose to address the Chair.)

Mr. Jay Hill: Mr. Speaker, would it be your intent then to immediately follow the vote with the emergency debate which would then be between the hours of 7:30 p.m. and 11:30 p.m. approximately?

The Speaker: If that is the agreement of the House, certainly it would make it possible because if we consider that the House then reaches its adjournment hour the emergency debate would proceed until 12 o'clock, which is what the Standing Orders provide for.

If this motion is agreeable, I would be quite delighted if the emergency debate could be held then rather than after midnight which I think would be highly inconvenient.

Let me put it to Members this way. It is understood that if this motion is agreed to, we would start the emergency debate after the votes have been taken and that would go until midnight as provided in the Standing Orders. Is that agreeable?

Some hon. Members: Agreed.

The Speaker: Does the hon. Chief Government Whip have the unanimous consent to move the motion on the understanding I have outlined?

Some hon. Members: Agreed.

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1. *Debates*, June 21, 2005, p. 7512.
2. *Debates*, June 21, 2005, p. 7512.
3. *Journals*, June 13, 2005, pp. 874-5.

Special Debates

Emergency Debates

Leave refused: gasoline prices; debate held by unanimous consent

September 26, 2005 *Debates*, pp. 8023-4

Context: On September 26, 2005, Randy White (Abbotsford) rose in the House to request that an emergency debate be held, pursuant to Standing Order 52, on the fluctuations and unpredictability of gasoline prices. Mr. White argued that recent price increases had affected the costs of goods, transportation and home heating. He maintained that the debate was necessary to provide Canadians with information on a number of related issues, including who was profiting from the price increases and what the role of the House of Commons should be in this regard. Paul Crête (Montmagny–L'Islet–Kamouraska–Rivière-du-Loup) then spoke in support of Mr. White's request.

Resolution: The Speaker ruled immediately that, while the matter was one of some interest, it did not appear to meet the exigencies of the Standing Order and that he would not, therefore, grant leave for an emergency debate.

Decision of the Chair

The Speaker: The Chair has considered this matter, and while I am sure the matter is of some interest, whether it is a matter that meets the exigencies of the Standing Order at this time the Chair has some doubts. Accordingly, I am inclined to disallow the application at this time.

Postscript: Immediately after the Speaker had delivered his ruling, Mr. Crête sought the unanimous consent of the House for a motion that an emergency debate on gasoline prices be held that evening in accordance with the provisions of Standing Order 52. Consent was given and the debate took place later that day.

Special Debates

Emergency Debates

Leave refused: Maher Arar inquiry: matter deemed not an emergency

September 20, 2006 *Debates*, p. 3029

Context: On September 20, 2006, further to the tabling two days earlier of the Report of the O'Connor Commission on the results of the Maher Arar inquiry, Joe Comartin (Windsor–Tecumseh) rose in the House to request that an emergency debate be held in that regard, pursuant to Standing Order 52.[1] Mr. Comartin argued that it was the responsibility of individual Members and the House of Commons to speak out on this issue as the treatment of Mr. Arar and his family by the police had generated outrage. He maintained that an emergency debate would allow the House to give advice to the Government and to express its opinion with regard to the three other individuals mentioned in the Report who were not included in the mandate of the Commission when it was established. He stressed the urgency of the need for an immediate response to the Report.

Resolution: The Speaker ruled immediately. He noted that the Report of the O'Connor Commission had been in preparation for months, if not years, and observed that he was not convinced that the tabling of the Report had created an emergency worthy of debate in the House on that basis. He drew the attention of the Member to the provisions of the Standing Orders in respect of take-note debates and invited him to attempt to arrange a debate through that mechanism.

Decision of the Chair

The Speaker: I thank the hon. Member for Windsor–Tecumseh for his very able argument in respect of this matter. Certainly I am not in any way suggesting that the matter is not a serious one and something that is worthy of discussion. Of course we have witnessed considerable discussion on the matter in the House during Question Period for the last couple of days since that tabling of the Report, and I am sure there will be more, but the difficulty the hon. Member faces, I think, in making his argument is whether this is an emergency.

The Report has been in preparation for a number of months, if not years. We have now received it and I am not convinced by the hon. Member's argument that the tabling of the Report has created an emergency that is worthy of being a subject of debate in the House on that basis. I would stress to him, as I did the other day in my ruling on the earlier request this week, that there are provisions in the Standing Orders for the House Leaders to agree on a take-note debate, which in my view would permit discussion on the subjects outlined by the hon. Member. That is a matter that can be agreed to by the House Leaders of the parties and carried on in this House at a time they choose.

I would invite the hon. Member, rather than asking the Chair to declare this an emergency, to raise the matter there and see if he cannot arrange a debate through that medium rather than this one, which in my view is inappropriate in the circumstances, given, as I have said, my view that this Report has not created an emergency in the country that ought to be dealt with in this way. I must therefore decline the hon. Member's request and wish him well in raising the matter elsewhere.

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1. *Debates,* September 20, 2006, p. 3028.

Special Debates

Emergency Debates

Leave granted: livestock industry; concurrence in a report by a committee on the same matter prevented due to a request for a Government response pursuant to Standing Order 109

February 13, 2008 *Debates*, p. 3012

Context: On February 13, 2008, André Bellavance (Richmond–Arthabaska) rose to request that an emergency debate be held, pursuant to Standing Order 52, on the subject of the crisis being experienced by hog and beef producers because of the rising dollar and the rising cost of inputs, combined with a major drop in the price of pork. Making reference to the lack of a response from the Prime Minister and the Minister of Agriculture and Agri-food to letters from livestock producers and to the unanimous Report of the Standing Committee on Agriculture and Agri-food that recommended that transitional measures be put into place to alleviate the crisis, along with longer-term measures to improve the competitiveness of the industry, Mr. Bellavance argued that an emergency debate was necessary.[1]

Resolution: The Speaker ruled immediately. He noted that, since the Committee had requested a Government response to its Report and, accordingly, a concurrence motion could not be moved until the response was received, he would allow an emergency debate to take place that evening.

Decision of the Chair

The Speaker: Obviously, I have received the letter from the hon. Member for Richmond–Arthabaska and I have also heard his arguments today concerning the urgency of this matter.

Normally, because there is a committee report on this subject and therefore there will be a debate on the concurrence motion, I would disregard a request of this nature. However, at this point the Report is in but the Committee has requested a response from the Government, and we are waiting for that response. But it is not necessary to wait until April 10, because that may be a little too far away.

I therefore believe that this is an urgent matter. The hon. Member has explained his arguments clearly today. Accordingly, I will allow the debate this evening, after the time of adjournment.

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1. *Debates*, February 13, 2008, p. 3012.

Special Debates

Emergency Debates

Leave refused: auto industry; other opportunities for debate available

November 26, 2008 *Debates*, p. 293

Context: On November 26, 2008, Judy Sgro (York West) rose to request that an emergency debate be held, pursuant to Standing Order 52, on the auto industry. She argued that the United States would be making a decision the following week as to what kind of stimulus plan would be offered to the auto industry in that country, and that it was important that they know that Canada was working with them to that end. She noted that it had been predicted that 15,000 Canadian jobs would be lost if Canada did not work with the United States and that the industry was looking to Parliament for assistance.[1]

Resolution: The Speaker ruled immediately. He stated that it was unusual for an emergency debate to be granted during the debate on the Address in Reply to the Speech from the Throne since Members are free to raise any subject they want during the course of that debate. He also noted that the Minister of Finance (Jim Flaherty) would be making a special financial statement the following day which might or might not deal with this issue, and that there were negotiations underway for the holding of a debate on the statement. He added that the following Monday would be an opposition day and that the Member's party could raise the issue at that time. Accordingly, the Speaker declined the request.

Decision of the Chair

The Speaker: I thank the hon. Member for her submissions. I note first in response to her suggestions that it is most unusual for an emergency debate to be granted during the debate on the Address in Reply to the Speech from the Throne since Members are free to raise any subject they want in the course of that debate and it is continuing today and tomorrow.

I also note that there will be a special statement from the Minister of Finance tomorrow which may or may not deal with this issue, but will certainly, I am sure, have some impact on it, given the nature of the current

financial situation which the Minister intends to address apparently tomorrow at 4 o'clock. The House has agreed to a Special Order in respect of that.

I understand further there are discussions among the parties about the possibility of having a debate on the statement on Friday. I note that Monday is an opposition day for the party of which the hon. Member is a Member, so obviously the subject of debate on Monday could be chosen to be this one or any other that the party chooses to put forward. Accordingly, in the circumstances, I am not disposed to grant a request at this time, although I recognize that it is a very serious issue and recognize there are some issues on that point.

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1. *Debates*, November 26, 2008, p. 293.

Special Debates

Emergency Debates

Leave granted: events in Sri Lanka

February 4, 2009 *Debates*, p. 346

Context: On February 4, 2009, Jack Layton (Toronto–Danforth) rose to request that an emergency debate be held, pursuant to Standing Order 52, on the crisis in Sri Lanka. He emphasized the urgent, violent, deteriorating situation in the northern part of Sri Lanka with thousands of civilians under threat. He spoke of the need for Canada to call for a ceasefire, to take the lead in providing medical and humanitarian aid and to call for the United Nations to intervene in a direct way. He noted that other countries were already taking action and argued that Canada should be among them.[1]

Resolution: The Speaker ruled immediately. He noted that seven other Members had submitted similar requests. Having decided to grant the request, he said that he would not hear from the other applicants at that time since they would have the opportunity to speak in debate later that evening.

Decision of the Chair

The Speaker: I want to thank the hon. Member for Toronto–Danforth for his submission, which I am inclined to grant at this time.

I want to indicate that the Chair has received similar requests from seven other Members in the following order: the hon. Member [for][2] Toronto Centre, the hon. Member for York West, the hon. Member for Scarborough–Agincourt, the hon. Member for Beaches–East York, the hon. Member for Don Valley West, the hon. Member for Scarborough Southwest and the hon. Member for Etobicoke North.

Rather than hear submissions from them at this time, since I will grant the debate anyway, I suggest they control their enthusiasm for debate until later this evening when they will have an opportunity to speak on debate, if that is satisfactory.

1. *Debates*, February 4, 2009, p. 346.
2. The word "for" is missing from the published *Debates*.

Special Debates

Emergency Debates

Leave refused: mandatory long form census; matter deemed not of sufficient urgency and another opportunity for debate available

September 20, 2010 *Debates*, p. 4132

Context: On September 20, 2010, Jack Layton (Toronto–Danforth) rose to request that an emergency debate be held, pursuant to Standing Order 52, on the long form census. Mr. Layton argued that the Government's decision to dispense with the long form census had been decried by expert panels, academics, business leaders, statisticians, health care providers, social agencies and many other organizations. He contended that the House of Commons itself, as well as Government departments, rely on census data in order to discharge their responsibilities to Canadians, and that the Government's decision had been unilateral. He concluded that failure to act immediately would cause irreversible damage to Canada's vital statistical resources.

Resolution: The Speaker ruled immediately. He pointed out that he had received Mr. Layton's letter on this matter some time earlier and that the amount of time that had passed since then would suggest that some of the urgency for an emergency debate had dissipated. He noted that there would be an opposition day in the near future and concluded that the request did not meet the exigencies of Standing Order 52 at that time. Accordingly, he declined the request.

Decision of the Chair

The Speaker: I thank the hon. Member for Toronto–Danforth for raising this matter. His letter on this subject came in, as I recall, on August 16. While I might have had considerable sympathy at that time, had the House been sitting, given the length of time we have had without the House in session, I feel that some of the urgency has gone out of this issue, at least with respect to the need for an emergency debate in the House.

I note that there will be an opposition day within the next 10 days. When that happens, if Members feel it is an urgent priority, it could be moved as a

subject matter for debate on that day or on a subsequent opposition day. That might be a more suitable forum for discussion on a topic that has been around for quite some time.

I do not underestimate the importance of the matter. I simply say that at this stage it is not something that meets the exigencies of the Standing Order relating to emergency debates. Accordingly I deny the request at this time.

Special Debates

Take-note Debates

Chair's statement: guidelines for the conduct of take-note debates

April 24, 2001 *Debates*, p. 3089

Context: On April 24, 2001, pursuant to an Order made on Monday, April 23, 2001,[1] the House resolved itself into a Committee of the Whole to consider a motion standing on the *Order Paper* in the name of Don Boudria (Leader of the Government in the House of Commons) on the state of Canada's resource industries (Government Business No. 5).[2] Since this was the first time the House had undertaken a take-note debate under the rules governing Committees of the Whole, the Chair of Committees of the Whole (Bob Kilger) opened the debate with brief remarks as to how it would be conducted.

Statement of the Chair

The Chairman: Order, please. The House in Committee of the Whole on Government Business No. 5.

Before I call the debate and because we are endeavouring into uncharted waters, I will make a few opening remarks as to how this debate will be conducted.

While there have been take-note debates in the House on many previous occasions, tonight we are dealing with a slightly different situation.

The motion under which we are meeting provides that the debate will be conducted under our Standing Orders for Committees of the Whole, namely, that no Member shall speak for more than 20 minutes with no period of questions and comments. Second, that Members may speak more than once. Third, that Members need not to be in their own seat to be recognized. That is why we see our hon. friend from Brandon–Souris so close to the Chair this evening.

That being said, I understand this format has been chosen to create a more informal atmosphere that will promote genuine dialogue among Members on this issue. In that sense I believe we are embarking on something of an experiment.

As your Chair, I must be guided by the rules of the Committee of the Whole. However, if Members, and only if Members agree, I would be prepared to exercise discretion and flexibility in the application of these rules. That way I hope all participants can make good use of their time and take full advantage of the availability and accessibility of Ministers.

With the cooperation of all Members, I hope we may all learn some valuable lessons tonight about how this type of debate can best be conducted, so as to be a productive forum for exploring issues of public policy.

I look forward to your cooperation. Myself and other occupants during the debate will demonstrate the flexibility that hopefully will allow us to create a forum of discussion on public policy that will be attractive to Members on both sides of the House and if not more important to all Canadians.

Postscript: On June 1, 2001, the Special Committee on the Modernization and Improvement of the Procedures of the House presented its Report recommending, in part, the adoption of a Standing Order governing take-note debates.[3] The Report also recommended that the new Standing Order provide for take-note debates to be held in a Committee of the Whole format. The new Standing Order (53.1), which encompassed many of the provisions usually adopted by Special Order prior to a take-note debate, such as limits on the length of speeches and of the debate, and allowing the Speaker to preside over the Committee, came into effect with the adoption by the House of the Report of the Special Committee on October 4, 2001.[4]

1. *Debates*, April 23, 2001, pp. 2973-4, *Journals*, p. 308.
2. *Debates*, April 24, 2001, p. 3087.
3. *Journals*, June 1, 2001, p. 465.
4. *Journals*, October 4, 2001, pp. 691-3.

Special Debates

Take-note Debates

Chair's statement: guidelines for the conduct of take-note debates

April 6, 2006 *Debates*, p. 125

Context: On April 6, 2006, pursuant to an Order made on April 5, 2006,[1] the House resolved itself into a Committee of the Whole to consider a motion of Rob Nicholson (Leader of the Government in the House of Commons and Minister for Democratic Reform) on agricultural issues. Before proceeding with the debate, the Chair of Committees of the Whole (Bill Blaikie) made a statement explaining the rules governing take-note debates.[2]

Statement of the Chair

The Chair: Honourable Members, I would like to open this session of Committee of the Whole by making a short statement about take-note debates. This may be the first time some Members participated in such a debate so I want to explain how we will proceed.

This evening's debate is a general one on agricultural issues. As is the case for all proceedings of the Committee of the Whole, Members need not be in their own seats to be recognized.

Each Member will be allocated 10 minutes for debate and each speech is subject to a 10-minute question and comment period. Although Members may speak more than once, the Chair will generally try to ensure that all Members wishing to speak are heard before inviting Members to speak again while respecting the proportional party rotations for speakers.

During the 10-minute period for questions and comments there are no set time limits on each intervention. I will work to allow as many Members as possible to participate in this part of the proceedings and ask for the cooperation of all Members in keeping their interventions as succinct as possible.

As Chair, I will be guided by the rules of the Committee of the Whole. However, in the interest of a full exchange, I will exercise discretion and flexibility in the application of these rules.

In turn, I would ask all hon. Members to exercise caution during this evening's debate. It is very important to respect the traditions of the House in terms of decorum. The Members must exercise judgment in their comments and questions so that order is maintained.

May I also remind Members that even in Committee of the Whole Ministers and Members should be referred to by their title or riding name and, of course, all remarks should be addressed through the Chair. I ask for everyone's cooperation in upholding all established standards of decorum, parliamentary language and behaviour.

The first round of speakers will be the usual all party round, namely, the Government, the Official Opposition, the Bloc Québécois and the New Democratic Party. After that, we will follow the usual proportional rotation.

At the end of this evening's debate, the Committee shall rise and the House shall adjourn until tomorrow.

We may now begin this evening's session.

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1. *Debates*, April 5, 2006, p. 47, *Journals*, p. 23.
2. *Debates*, April 6, 2006, p. 125.

Special Debates

Take-note Debates

Chair's statement: guidelines for the conduct of take-note debates

October 3, 2006 — *Debates*, p. 3599

Context: On October 3, 2006, pursuant to an Order made on September 28, 2006,[1] the House resolved itself into a Committee of the Whole to consider a motion with respect to the situation in Sudan. On October 2, 2006, the House had adopted a motion allowing any Member rising to speak during the debate to divide his or her time with another Member.[2] The Chair of Committees of the Whole (Bill Blaikie) made a statement explaining the rules governing take-note debates.[3]

Statement of the Chair

The Chair: The House is now in Committee of the Whole on Government Business No. 10.

I would like to open this session in Committee of the Whole by making a short statement on take note debates.

This is probably the first time some Members are taking part in this type of debate. I will explain how we will proceed.

Tonight's debate is a general one on the situation in Sudan. As is the case in any proceeding in Committee of the Whole, Members need not be in their own seats to be recognized.

Each Member will be allocated 10 minutes at a time for debate. These speeches are subject to a 10-minute question and comment period. Furthermore, according to the motion adopted yesterday, any Member rising to speak during the debate may indicate to the Chair that he or she will be dividing his or her time with another Member.

Although Members may speak more than once, the Chair will generally try to ensure that all Members wishing to speak are heard before inviting

Members to speak again while respecting the proportional party rotations for speakers.

During the 10-minute period for questions and comments, there are no set time limits on each intervention, but I will work to allow as many Members as possible to participate in this part of the proceedings and ask for the cooperation of all Members in keeping their interventions as succinct as possible.

As the Chair, I will follow the rules governing Committee of the Whole. Nonetheless, in order to allow a good exchange, I will use discretion and flexibility in the application of these rules.

May I also remind Members that even in Committee of the Whole, Ministers and Members should be referred to by their title or by their riding name, and of course all remarks should be addressed through the Chair.

The first round of speakers will be the usual all party round, namely the Government, the Official Opposition, the Bloc Québécois and the New Democratic Party. After that we will follow the usual proportional rotation.

At the end of this evening's debate, the Committee of the Whole will rise and the House will adjourn until tomorrow.

We can now begin this evening's session.

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1. *Debates*, September 28, 2006, pp. 3393-4, *Journals*, p. 471.
2. *Debates*, October 2, 2006, p. 3513.
3. *Debates*, October 3, 2006, p. 3599.

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Chapter 9 — Committees

Introduction

As with other deliberative assemblies, the House of Commons has taken advantage of the special characteristics of committees to carry out functions that can be better performed in smaller groups, including the examination of witnesses and detailed consideration of legislation, estimates and technical matters.

Committee work provides detailed information to parliamentarians on issues of concern to the electorate and often generates important public debate. In addition, because committees interact directly with the public, they provide an immediate and visible conduit between elected representatives and Canadians.

During the tenure of Mr. Speaker Milliken, the committee system of the House of Commons underwent some important changes.

In 2002, the House established the Standing Committee on Government Operations and Estimates. In so doing, it implemented some of the recommendations put forward in the report by the Standing Committee on Procedure and House Affairs entitled: "The Business of Supply: Completing the Circle of Control". The report advocated the establishment of a committee to oversee and review the process whereby the estimates are considered by parliamentary committees. The Standing Committee on Government Operations and Estimates was given a broad mandate, including the review of the effectiveness, administration and operations of Government departments and central agencies.

Also in 2002, the Senate having notified the House that it would no longer participate in the Standing Joint Committee on Official Languages, the House established its own Standing Committee on Official Languages. In the same year, the procedure for designating the Chairs and Vice-Chairs of standing and special committees was changed to provide for their election by secret ballot if there is more than one candidate for such positions. Previously, the unanimous consent of committee members had been required to proceed in this manner. At the same time, the House formalized the longstanding practice whereby,

with certain exceptions, the Chairs of standing committees are to be drawn from the ranks of the governing party, and their first and second Vice-Chairs from the Official Opposition and another opposition party, respectively.

In 2007, the House adopted a new Standing Order which requires that committee deliberations be suspended when Members are summoned to the House for a recorded division. Included in this chapter is the decision delivered by the Speaker on March 22, 2007, that prompted this change.

From the Thirty-Eighth Parliament until his retirement, Mr. Speaker Milliken presided over minority parliaments. This reality had a profound effect on the proceedings in committees which necessitated decisions on several interesting matters. Included in this chapter are several rulings with respect to committees exceeding their mandates by undertaking studies and presenting reports that went beyond the parameters outlined for them in the Standing Orders. In a ruling delivered on March 14, 2008, the Speaker stated that the appealing and overturning of procedurally sound rulings made by committee Chairs was of great concern.

Like his predecessors, Mr. Speaker Milliken declined to interfere in the internal affairs of committees unless a report from the committee in question was presented to the House. On two occasions, with regard to the business of the Special Committee on the Canadian Mission in Afghanistan, the Speaker initially declined to interfere, in one instance, due to the absence of a report and, in the second instance, although a report from the Committee was before the House regarding an alleged breach of its privileges, the Speaker ruled it insufficient and outlined clear guidelines for reporting such alleged breaches to the House.

Finally, also included in this chapter, is the finding of a *prima facie* breach of privilege with respect to false testimony by a witness before the Standing Committee on Public Accounts.

Committees

Mandate

Standing committee exceeding its mandate

March 14, 2008 *Debates*, pp. 4181-3

Context: On March 3, 2008, Paul Szabo (Mississauga South) rose on a point of order with respect to the proceedings of the Standing Committee on Access to Information, Privacy and Ethics on February 28, 2008. At that meeting, Mr. Szabo, as Chair of the Committee, had ruled out of order a motion calling for a study on fundraising practices of the Liberal Party of Canada. In his ruling, he had stated that the motion did not include any reference to the *Conflict of Interest Code for Members of the House of Commons* nor did it raise any violation of ethical standards but rather made direct reference to potential violations of the *Canada Elections Act*. He had concluded, accordingly, that the motion proposed a study that was within the mandate of the Standing Committee on Procedure and House Affairs as set out in Standing Order 108. Mr. Szabo's ruling had been appealed and overturned, and the motion subsequently adopted along with another motion to proceed with the study immediately.[1] Mr. Szabo appealed to the Speaker to rule on the matter. Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons and Minister for Democratic Reform) argued that committees were masters of their own proceedings and, since there was no report on the matter before the House, it would be presumptuous to assume the direction the proposed study would take. After hearing from other Members, the Speaker took the matter under advisement.[2]

Resolution: The Speaker delivered his ruling on March 14, 2008. He declared that the House had gone to considerable effort to define the responsibilities of its committees while allowing them the flexibility and power to conduct their studies. He noted that it is a basic principle that committees, in exercising the powers granted to them by the House, will respect their mandates and also took note of Mr. Lukiwski's reminder of the inadvisability of presuming the direction that the Committee's study might take. He stated that it was difficult for the Chair to ascertain whether the Committee had acted appropriately given that the Chair was not in a position to know the interpretation the Committee would give to the motion. In the absence of a report from the Committee and given the long

held practice of Speakers not intervening in the proceedings of committees, he found that there were not sufficient grounds to usurp the role of the members of the Committee. He also advised Members that when the Committee presented its report, any Member with concerns about the Committee respecting its mandate would have the opportunity to raise them in the House. The Speaker concluded his remarks by raising serious concerns over the dysfunction in committees during the Thirty-Ninth Parliament, in particular instances of procedurally sound rulings delivered by Chairs of committees being appealed and overturned, and urged Members to work together.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Member for Mississauga South on March 3, 2008, concerning the proceedings in the Standing Committee on Access to Information, Privacy and Ethics at its meeting of February 28, 2008.

I would like to thank the hon. Member for Mississauga South for having raised this matter, as well as the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons, the hon. Member for Hull–Aylmer, and the hon. Member for Scarborough–Rouge River for their contributions.

In raising his point of order, the Member for Mississauga South expressed concerns about motions adopted by the Access to Information, Privacy and Ethics Committee at its meeting of February 28, 2008. Of particular concern was the motion ordering the Committee, pursuant to Standing Order 108(1)(*a*), to investigate the fundraising practices of the Liberal Party of Canada. The Member for Mississauga South, indicated that, as Chair of the Committee, he had ruled this motion inadmissible as it did not include any reference to the *Conflict of Interest Code for Members* or any ethical standards that may have been violated but rather actually made direct reference to potential violations of the *Canada Elections Act*. His ruling was appealed and overturned, and the motion was adopted.

The Member for Mississauga South contended that the Access to Information, Privacy and Ethics Committee has now embarked on a study which is beyond its mandate as set out in Standing Order 108. Questioning the Committee's authority to disregard the Standing Orders in this way,

he maintained that his Committee was encroaching on the mandate of the Standing Committee on Procedure and House Affairs. The Member for Hull–Aylmer and the Member for Scarborough–Rouge River voiced their support for these arguments.

In his comments, the Parliamentary Secretary to the Leader of the Government in the House of Commons and Minister for Democratic Reform spoke of the well-recognized procedural principle that committees are masters of their own proceedings.

In the absence of a report from the Committee, he suggested that it would be inappropriate for the Speaker to pass judgment on the question raised by the Member for Mississauga South and cautioned against prejudging the direction that the Committee study might take.

After careful review of all the interventions on this point of order, it seems to me that the crux of the matter is determining first, to whom the House has given a mandate in matters related to ethics, and second, what differentiates one mandate from another.

Standing Order 108(3)(*h*) states that the Standing Committee on Access to Information, Privacy and Ethics has responsibility for overseeing the effectiveness, management and operation, together with the operational and expenditure plans, of the Conflict of Interest and Ethics Commissioner, as well the Commissioner's annual reports on activities in relation to public office holders. It is important to note that reports on complaints involving public office holders are provided for in the *Parliament of Canada Act* and are filed with the Prime Minister, with no provisions to have them referred to a committee.

This Committee mandate is not to be confused with that of the Office of the Conflict of Interest and Ethics Commissioner whose remit is twofold: first, to support the House of Commons in governing the conduct of its Members by administering the *Conflict of Interest Code for Members of the House of Commons* which has been in effect since 2004; and second, to administer the *Conflict of Interest Act* for public office holders which came into effect on July 9, 2007.

Oversight of the Conflict of Interest and Ethics Commissioner's work related to Members under the *Parliament of Canada Act* and with respect to the *Conflict of Interest Code for Members* is the responsibility of the Standing Committee on Procedure and House Affairs. This is clearly indicated in Standing Order 108(3)(*a*)(vii) and (viii). The Procedure and House Affairs Committee is also responsible for matters relating to the election of Members as set out in subparagraph (vi) of Standing Order 108(3)(*a*).

As was pointed out in a ruling given by the then Deputy Speaker on June 3, 2003, at page 6775 of the *Debates*, concerning alleged irregularities in the proceedings of the Standing Committee on Transport:

> I have said that committees are granted much liberty by the House but, along with the right to conduct their proceedings in a way that facilitates their deliberations, committees have a concomitant responsibility to see that the necessary rules and procedures are followed—

Similarly, *House of Commons Procedure and Practice*, at page 879 explains that:

> Committees are entitled to report to the House only with respect to matters within their mandate. When reporting to the House, committees must indicate the authority under which the study was done (i.e., the Standing Order or the order of reference). If the committee's report has exceeded or has been outside its order of reference, the Speaker has judged such a report, or the offending section, to be out of order.

Two particularly illustrative examples are included in the footnote to this citation. The first involves a report by the then Standing Committee on Finance, Trade and Economic Affairs regarding the radio and television broadcasting of all committee proceedings, which Mr. Speaker Bosley, in a ruling given on December 14, 1984, *Debates* page 1243, ruled out of order on the grounds that the Committee had exceeded its Order of Reference. The second relates to a report presented by the then Standing Committee on Labour, Manpower and Immigration which likewise was ruled inadmissible by Mr. Speaker Bosley in the *Debates* on February 28, 1985, page 2603, again because the Committee had exceeded its terms of reference.

Even this brief overview serves to remind us all that the House has taken great care to define and differentiate the responsibilities of its committees, particularly where there might at first glance appear to be overlapping jurisdictions. That said, it is also clear that the House has chosen to allow committees great flexibility and considerable powers, including the power to use their own initiative by undertaking studies within their mandates.

Inherent in the power the House grants to its committees is the basic principle that each committee will respect its mandate. Implicit in the flexibility that committees have traditionally enjoyed is the understanding that they will be judicious in the exercise of their powers. Can it be said that the Ethics Committee, measured against these standards, is acting appropriately in this instance? Frankly I find it hard to answer that question for a number of reasons.

First, as the hon. Parliamentary Secretary to the Government House Leader has reminded the Chair, successive Speakers have been reluctant to intervene in the proceedings of committees except in highly exceptional circumstances. The hon. Parliamentary Secretary goes on to caution against presuming on the direction that the Committee's study might take and jumping to conclusions about the nature of any report it might present.

I must acknowledge the validity of that argument. The Chair is not in a position to determine what interpretation the Committee will give to the motions that gave rise to the point of order raised by the hon. Member for Mississauga South. However, I do wish to make clear to the House that the question of committees respecting their mandates is not one which the House should take lightly.

For the present, I cannot find sufficient grounds to usurp the role of committee members in regulating the affairs of the Standing Committee on Access to Information, Privacy and Ethics. However, if and when the Committee presents a report, should Members continue to have concerns about the work of the Committee, they will have an opportunity to raise them in the House and I will revisit the question at that time.

But, if the House will bear with me, I said earlier that I was not comfortable deciding on whether or not what the Ethics Committee had done was

appropriate. I would like to return to that statement and I ask for Members' indulgence in hearing me out.

Any observer of the Thirty-Ninth Parliament will realize that the problem of the Ethics Committee is only one of the recent manifestations of the need for crisis management in committees.

Almost a year ago, in a ruling given on March 29, 2007, I referred to the challenges encountered in this minority Parliament, saying, in part:

> … neither the political realities of the moment nor the sheer force of numbers should force us to set aside the values inherent in the parliamentary conventions and procedures by which we govern our deliberations.

I went on to refer to situations in committee where, because decisions of the Chair are subject to appeal, decisions that were procedurally sound had been overturned by the majority.

Since that time, appeals of decisions by Chairs appear to have proliferated, with the result that having decided to ignore our usual procedure and practices, committees have found themselves in situations that verge on anarchy. Even the prestigious Standing Committee on Procedure and House Affairs, which, as the Striking Committee is the very heartbeat of the committee system, has not escaped the general lawlessness. Last week, I understand that the Committee elected as its Chair a Member who stated unequivocally that he did not want the nomination.

What responsibility does the Speaker bear for quelling this anarchy that appears to be serially afflicting committees in recent weeks? I would refer hon. Members to a comment of Mr. Speaker Lamoureux on July 24, 1969 when he said:

> What hon. Members would like the Chair to do… is to substitute his judgment for the judgment of certain hon. Members. Can I do this in accordance with the traditions of Canada… where the Speaker is not the master of the house…? The Speaker is a servant of the house. Honourable Members may want me to be the master of the house today

> but tomorrow, when, perhaps in other circumstances I might claim this privilege, they might have a different opinion… It would make me a hero, I suppose, if I were to adopt the attitude that I could judge political situations such as this and substitute my judgment for that of certain hon. Members… But I do not believe that this is the role of a Speaker under our system…

The rules that govern our deliberations and the practices that have evolved over time generally serve the House and its committees very well. As your Speaker, I will sometimes suggest that Members take their grievances to the Standing Committee on Procedure and House Affairs and ask them to look at whether changes to our Standing Orders might alleviate such difficulties in the future. But that would not be a helpful suggestion in the present circumstances.

Honourable Members know as well as I do, or even better than I do since they are living with the consequences daily, that it is not by tinkering with the rules that we will solve our current difficulties. Nor do I believe, whatever certain media commentators may say, that our difficulties would be resolved if only I, as your Speaker, agreed to act in *loco parentis* and scolded hon. Members into seeing reason. Frankly speaking, I do not think it is overly dramatic to say that many of our committees are suffering from a dysfunctional virus that, if allowed to propagate unchecked, risks preventing Members from fulfilling the mandate given to them by their constituents.

To quote *House of Commons Procedure and Practice* at page 210:

> … it remains true that parliamentary procedure is intended to ensure that there is a balance between the government's need to get its business through the House, and the opposition's responsibility to debate that business without completely immobilizing the proceedings of the House.

The Speaker must remain ever mindful of the first principles of our parliamentary tradition which *Bourinot* described thus:

> To protect the minority and restrain the improvidence and tyranny of the majority, to secure the transaction of public business in a decent and orderly manner—[3]

It matters not that the minority in the Thirty-Ninth Parliament happens to be the Government, not the opposition, or that the majority is held by the combined opposition parties, not the Government.

The Shakespearean quote, "The fault… is not in our stars, but in ourselves…" seems sadly apt in the circumstances.

Like all Canadians, and indeed all hon. Members, I realize and respect that political exigencies often dictate the strategies adopted by parties in the House. However, as your Speaker, I appeal to those to whom the management of the business of the Parliament has been entrusted—the House Leaders and the Whips of all parties—to take leadership on this matter. I ask that they address themselves to the crisis in the committee system that is teetering dangerously close to the precipice at the moment. I ask them to work together to find a balance that will allow the parties to pursue their political objectives and will permit all Members to carry on their work. I am confident that working together in good faith they can come to an agreement that will return us to the equilibrium that our procedures and practices have been designed to protect. As your Speaker, I stand ready to lend whatever assistance I can.

I would like to thank the hon. Member for Mississauga South for having raised the matters relating to the Standing Committee he chairs and the opportunity to address the larger picture.

I thank the House for its attention.

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1. Standing Committee on Access to Information, Privacy and Ethics, *Minutes of Proceedings*, February 28, 2008, Meeting No. 19.
2. *Debates*, March 3, 2008, pp. 3549-51.
3. Bourinot, J.G., *Parliamentary Procedure and Practice in the Dominion of Canada*, 2nd ed., rev. and enlarged, Montreal, Dawson Brothers, Publishers, 1892, pp. 258-9.

Committees

Mandate

Report: admissibility questioned for committee exceeding mandate

May 15, 2008 *Debates*, pp. 5924-5

Context: On May 14, 2008, Jay Hill (Minister of State and Chief Government Whip) rose on a point of order with regard to the admissibility of the Seventh Report of the Standing Committee on Access to Information, Privacy and Ethics, presented in the House earlier that day. The Report had recommended amendments to the *Conflict of Interest Code of Members of the House of Commons*.[1] Citing Standing Order 108, the Government Whip argued that the Code fell under the mandate of the Standing Committee on Procedure and House Affairs, and that the Report was therefore out of order. He added that at the meeting of the Committee, at which the Report was adopted, the Chair, Paul Szabo (Mississauga South), had initially ruled out of order the motion proposing that the Committee do so but that his ruling had been appealed, overturned and the motion adopted.[2] Mr. Szabo, in turn, argued that the Committee had knowingly adopted a report on a subject matter that fell within the mandate of the Standing Committee on Procedure and House Affairs only because that Committee was not in a position to discharge its duties and because of the urgency of the subject matter of the Report. (**Editor's Note:** The Standing Committee on Procedure and House Affairs did not have a duly elected Chair at the time and, therefore, could not conduct business.) After hearing from other Members, the Speaker stated that the particular circumstances of the Standing Committee on Procedure and House Affairs did not justify a committee's exceeding the scope of its mandate pursuant to the Standing Orders. The Speaker then took the matter under advisement.[3]

Resolution: On May 15, 2008, the Speaker delivered his ruling. He affirmed that, as provided in the Standing Orders, the Standing Committee on Procedure and House Affairs was empowered to review the *Conflict of Interest Code of Members of the House of Commons* and recommend amendments to the relevant Standing Orders whereas the Standing Committee on Access to Information, Privacy and Ethics had a different mandate focussed on the operations of the Office of the Conflict of Interest and Ethics Commissioner. The Speaker emphasized that the fact that the Standing Committee on Procedure and House Affairs was not functioning did

not justify another committee usurping its mandate. Noting that there were other mechanisms available to debate and resolve the matter at hand, he stated that the subject matter of the Seventh Report was not within the mandate of the Standing Committee on Access to Information, Privacy and Ethics and was therefore out of order. For this reason, he ruled that it be deemed withdrawn and that no subsequent proceedings be taken in relation to it. Accordingly, the two notices of motion for concurrence in the Report on the *Notice Paper* were also deemed withdrawn.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on May 14, 2008, by the hon. Secretary of State and Chief Government Whip concerning the admissibility of the Seventh Report of the Standing Committee on Access to Information, Privacy and Ethics, which was presented to the House that day.

I would like to thank the hon. Secretary of State and Chief Government Whip for bringing this matter to the attention of the House. I also wish to thank the hon. Member for Mississauga South, the hon. Member for Acadie–Bathurst, the hon. Member for Scarborough–Rouge River, and the hon. Parliamentary Secretary to the Minister of Intergovernmental Affairs and Minister of Western Economic Diversification for their interventions.

In his detailed remarks on this matter, the hon. Chief Government Whip argued that the recommendations contained in the Seventh Report of the Standing Committee on Access to Information, Privacy and Ethics, which seeks to amend the *Conflict of Interest Code for Members of the House of Commons*, went beyond the mandate of the Committee and therefore should be ruled inadmissible. He pointed out that even the Chair of the Ethics Committee had ruled that the matter was beyond the Committee's mandate, but that this decision was appealed and overturned by Committee members.

In his remarks, the hon. Member for Mississauga South acknowledged that the Standing Committee on Access to Information, Privacy and Ethics was well aware that the matter was outside of its mandate when it adopted its Seventh Report to recommend amendments to the *Conflict of Interest Code*. However, the hon. Member argued that the Committee was justified in doing so because the Standing Committee on Procedure and House Affairs, which

has the responsibility to propose such amendments, was currently unable to discharge its duties in this respect. Furthermore, he stressed the urgency of the subject matter of the Report, contending that any delay in addressing those issues might unfairly restrict Members' rights and privileges. In summary, he argued that there was no other possibility available to Members of the House to deal with this fundamental matter in a timely fashion.

In his comments, the hon. Member for Acadie–Bathurst agreed that this issue needed to be addressed as soon as possible. He also spoke of the well-recognized procedural principle that committees are masters of their own proceedings.

The hon. Member for Scarborough–Rouge River acknowledged that the Standing Committee on Access to Information, Privacy and Ethics exceeded its mandate in this matter, but suggested that it may have had sufficient procedural jurisdiction to render its Report admissible.

As noted by the hon. Secretary of State and Chief Government Whip, Standing Order 108(3)(*a*)(viii), which deals with the mandate of the Standing Committee on Procedure and House Affairs, states, "the review of and report on all matters relating to the *Conflict of Interest Code for Members of the House of Commons*". I may add that pursuant to Standing Order 108(3)(*a*)(iii), the mandate to amend the Standing Orders, to which the *Conflict of Interest Code* is an appendix, also belongs to the Standing Committee on Procedure and House Affairs.

On the other hand, Standing Order 108(3)(*h*), which outlines the mandate of the Standing Committee on Access to Information, Privacy and Ethics, states at subparagraph (iii) that this mandate includes, "the review of and report on the effectiveness, management and operation together with the operational and expenditure plans relating to the Conflict of Interest and Ethics Commissioner", while subparagraph (v) indicates, "in cooperation with other committees, the review of and report on any federal legislation, regulation or Standing Order which impacts upon the access to information or privacy of Canadians or the ethical standards of public office holders".

Honourable Members will recall that the issue of the mandate of the Standing Committee on Access to Information, Privacy and Ethics was raised

just a few weeks ago and was dealt with in a ruling that the Chair gave on March 14, 2008. I wish to quote again, as I did in that ruling, from *House of Commons Procedure and Practice*, at page 879:

> Committees are entitled to report to the House only with respect to matters within their mandate. When reporting to the House, committees must indicate the authority under which the study was done (i.e., the Standing Order or the order of reference). If the committee's report has exceeded or has been outside its order of reference, the Speaker has judged such a report, or the offending section, to be out of order.

As mentioned by the hon. Secretary of State and Chief Government Whip in his remarks, Mr. Speaker Parent offered clear guidance in the matter before us in his ruling given on page 5583 of the *Debates* of June 20, 1994:

> While it is the tradition of this House that committees are masters of their own proceedings, they cannot establish procedures which go beyond the powers conferred upon them by the House.

This is a reality that continues to this day, a reality that cannot be simply set aside because of existing circumstances in another committee, or by invoking the urgent need to address a subject, or by arguing the gravity of that subject.

As hon. Members know, and as explained in *House of Commons Procedure and Practice* at page 857, decisions of committee Chairs may be appealed to the committee. However, as hon. Members may recall, in my ruling of March 14 last, I raised serious concerns about committees overturning procedurally sound decisions by their Chairs and the problems that may arise from such actions. I find it particularly troubling in this instance that the Committee chose to proceed as it did with the clear knowledge that what it was doing was beyond the Committee's mandate.

Some of the arguments presented in this case suggested that the Seventh Report of the Standing Committee on Access to Information, Privacy and Ethics was the only venue possible to deal with this important and urgent matter in an expeditious fashion. In my view, there are other mechanisms available to debate and resolve the matter at hand. Furthermore, as I mentioned on May 14 when this issue was raised, the fact that the Procedure and House

Affairs Committee is not functioning at the moment does not permit other committees to usurp its mandate.

I wish to remind hon. Members that the Chair can apply the rules of the House only as they are written. The subject matter of the Seventh Report of the Standing Committee on Access to Information, Privacy and Ethics is clearly not within the mandate of that Committee, as spelled out in Standing Order 108, and therefore, in my view, it is out of order.

For this reason, I rule that the Seventh Report of the Standing Committee on Access to Information, Privacy and Ethics be deemed withdrawn and that no subsequent proceedings may be taken in relation thereto. Accordingly, the two notices of motions for concurrence in this Report currently on the *Notice Paper* standing in the names of the hon. Member for Moncton–Riverview–Dieppe and the hon. Member for Halifax West will be withdrawn.

I thank the hon. Secretary of State and Chief Government Whip for having brought this matter to the attention of the Chair.

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1. Seventh Report of the Standing Committee on Access to Information, Privacy and Ethics, presented to the House on May 14, 2008 (*Journals*, p. 818).
2. Standing Committee on Access to Information, Privacy and Ethics, *Minutes of Proceedings*, May 13, 2008, Meeting No. 34.
3. *Debates*, May 14, 2008, pp. 5856-60.

Committees

Mandate

Standing committee exceeding its mandate

June 20, 2008 *Debates*, pp. 7209-10

Context: On June 20, 2008, Jay Hill (Secretary of State and Chief Government Whip) rose on a point of order with regard to the actions of the Chair (Paul Szabo (Mississauga South)) of the Standing Committee on Access to Information, Privacy and Ethics and to a decision taken by the Committee the previous day. The Chief Government Whip argued that the Chair had violated the Standing Orders and the practices of the House and its committees by finding a motion proposed to the Committee in order. The motion had proposed that the Committee study the actions of the Conservative Party of Canada during the 2006 federal election in relation to reimbursements requested from Elections Canada.[1] He maintained that such a study fell within the mandate of the Standing Committee on Procedure and House Affairs, pursuant to Standing Order 108, and that it was out of order for the Standing Committee Access to Information, Privacy and Ethic to consider and adopt it. He also charged the Chair of the Committee with going beyond the powers conferred upon him by the House and disregarding Standing Order 116 by cutting off debate on the motion, noting that although the Chair's decision that all questions necessary to dispose of the matter should be put had been appealed, it had been upheld by a majority of the Committee. Other Members also spoke to the point of order, and asked the Speaker to intervene to prevent the Committee from conducting its study until he had ruled on the point of order.[2]

Resolution: The Speaker ruled immediately. He noted that there were no precedents for Speakers suspending the sittings of a committee until a ruling was delivered and that the Speaker did not rule on whether or not committees could meet. He stated that while committees are bound to follow the procedures set out in the Standing Orders, the Speaker could not intervene to determine the correctness of a committee's decision until it was brought to the House in a report. In the absence of such a report, he declared that there was no precedent which would affirm the power of the Speaker to overrule a decision of the Chair or of the committee itself. Making reference to the power of committees to sit when the House was adjourned, he added that it was not for the Speaker to decide the

powers or business of committees. Accordingly, he ruled that the matter raised by the Chief Government Whip was not a point of order. The Speaker concluded his remarks by reminding Members that his role was to apply the Standing Orders as adopted by the House.

Decision of the Chair

The Speaker: The Chair is prepared to rule on this matter. I have heard plenty of arguments, and I am quite prepared to make a ruling and deal with this issue at this moment.

Unfortunately, the Member for Lanark–Frontenac–Lennox and Addington did not come up with any precedents where Speakers had made the ruling he is asking me to make in suspending this Committee from operation until a ruling is made on the point of order. However, I am having no difficulty in making a ruling on the point of order today, and I stress that the past practice in this regard is, in my view, quite clear.

I will read from *Marleau and Montpetit* at page 804:

> Committees, as creations of the House of Commons, only possess the authority, structure and mandates that have been delegated to them by the House. These are found in the standing and special orders which the House has adopted concerning committees. The House has specified that, in relationship to standing, special or legislative committees, "the Standing Orders shall apply so far as may be applicable, except the Standing Orders as to the election of a Speaker, seconding of motions, limiting the number of times of speaking and length of speeches".

With these exceptions, committees are bound to follow the procedures set out in the Standing Orders as well as any specific sessional or special orders that the House has issued to them. Committees are otherwise left free to organize their work. In this sense, committees are said to be "masters of their own proceedings".

What we have in this case is a situation where the Chair of the Committee made a decision, which I understand was appealed to the Committee and the majority of the Committee upheld the Chair's ruling.

It was a decision made by the Committee as a group. If I have an opinion about the Committee's decision, I can do nothing about it until the decision is forwarded to the House in a report. It is only in such cases that the Speaker of the House has the authority to do something about a committee. There is no other precedent in this regard.

I do not make rulings whether committees have to meet or not meet. I have no power to direct a committee to do something until its report has come here and I make a ruling on the report. I have made a ruling on one. The Chief Government Whip, in his argument, pointed out a report that came here. I ruled the report out of order and that a motion to concur in the report would be out of order, and I chucked it. I can do that if the Committee brings in a report, but it has not.

Members are asking me to decide that the decision of the Chair of the Committee or, alternatively, the decision of the Committee itself, because there was a vote in the Committee, is somehow improper, and that therefore, I can overrule it or stop it from proceeding. I do not believe that I have that power.

Indeed, no Speaker previously in any precedent that has been quoted to me has exercised that kind of power.

Accordingly, I do not believe this is a point of order. I do not believe it is well founded. I believe that it is something that has to be resolved in the Committee. Committees are masters of their own procedure. They can proceed as they wish, within limits. It is when they come back to the House that they run into trouble.

I point out for the benefit of hon. Members that in the old days prorogation was a standard feature at the end of a session in June and the House would start a new session in the autumn. That used to be the case all the time until the seventies when that was kind of abandoned.

Second, in the old days, committees could not sit when the House was not sitting. They were only allowed to sit when the House was sitting. Honourable Members, I am sure, are familiar with the rules of the Senate, which are perhaps a little older than ours in this sense, where if the Senate has adjourned for more than a week, a committee needs the consent of the Senate in advance in order to sit during that week. A whole bunch of motions were passed in the Senate the other day permitting sittings of committees between now and next Thursday when the Senate is sitting again because it adjourned for more than a week.

Members can change the rules of the House and make impossible for the House committees to sit when we are adjourned if they want to, but we significantly expanded the powers of committees years ago. It is not for the Speaker, in my view, to sit here and decide what powers committees have.

The House itself decided to grant all kinds of powers to its committees. It may not have happened during this Parliament, but the Members of the House of Commons have decided in the past to act otherwise. Now we have Standing Orders adopted by the House. It is the Speaker's duty to apply these Standing Orders.

In my opinion, the Standing Orders are in place. I have nothing in front of me at this point that I can say regarding the business of this Committee because there is no report upon which to base a decision.

I believe that is the end of that matter.

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1. Standing Committee on Access to Information, Privacy and Ethics, *Minutes of Proceedings*, June 19, 2008, Meeting No. 43.
2. *Debates*, June 20, 2008, pp. 7203-9.

Committees

Mandate

Report: admissibility questioned for committee exceeding mandate

April 2, 2009 *Debates*, pp. 2301-2

Context: On April 1, 2009, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons) rose on a point of order with regard to the admissibility of the Second Report of the Standing Committee on Finance presented in the House earlier that day.[1] He stated that a motion had been moved in the Committee regarding the funding of the Library of Parliament (specifically with respect to the Parliamentary Budget Officer). The Chair of the Committee had ruled the motion out of order on the grounds that it went beyond the mandate of the Committee, but his ruling had been overturned. The House was therefore, Mr. Lukiwski claimed, seized with an invalid report. He added that while the Speaker often declines to interfere with committee proceedings, he is obliged to intervene when these proceedings go beyond the powers conferred upon committees by the House. He argued that the Committee had gone beyond its mandate as set out in Standing Order 108 by recommending an increase in the Parliamentary Budget Officer's budget. After hearing from another Member, the Speaker took the matter under advisement.[2]

Resolution: On April 2, 2009, the Speaker delivered his ruling. He declared that although the mandate of the Parliamentary Budget Officer as set out in the *Parliament of Canada Act* does require that he provide research services to the Standing Committee on Finance, the review of the resources made available to that office was not within the mandate of the Committee, as outlined in Standing Order 108; rather, it was within that of the Standing Joint Committee on the Library of Parliament. He reminded the House that it had taken great care to define and differentiate the responsibilities of its committees and that committees needed to respect their mandates and not to exceed the limits of their authority. He made reference to rulings delivered on March 14, 2008 and May 15, 2008, in which he had made it clear that committees that overturn procedurally sound rulings and present procedurally unacceptable reports will have these declared null and void. He stated that he found it troubling that the Committee had chosen to proceed with the knowledge that what it was doing was beyond its mandate. The Speaker

accordingly declared that the Report was out of order and ordered that it be withdrawn and that no further proceedings take place in relation thereto.

Decision of the Chair

The Speaker: I am now ready to rule on the point of order raised by the Parliamentary Secretary to the Leader of the Government in the House of Commons concerning the procedural admissibility of the Second Report of the Standing Committee on Finance tabled in the House yesterday.

I would like to thank the Parliamentary Secretary for raising this important matter, as well as the hon. Member for Saint-Maurice–Champlain for his remarks.

The Parliamentary Secretary argued that the Report was out of order because it was beyond the mandate of the Committee as laid out in Standing Order 108. In his view, it was clear that the allocation of funds to the Library of Parliament for the Parliamentary Budget Officer was outside the mandate of the Standing Committee on Finance. He pointed out that the Chair had ruled as such in the Committee but that the Committee had overturned the ruling. In concluding, the Parliamentary Secretary quoted from *House of Commons Procedure and Practice* at page 879, as follows:

> Committees are entitled to report to the House only with respect to matters within their mandate. When reporting to the House, committees must indicate the authority under which the study was done, (i.e. the Standing Order or the order of reference). If the committee's report has exceeded or has been outside its order of reference, the Speaker has judged such a report, or the offending section, to be out of order.

The Parliamentary Secretary went on to quote from my ruling of March 14, 2008, the *Debates* on page 4181-3, concerning the proceedings in the Standing Committee on Access to Information, Privacy and Ethics, as well as my ruling of March 29, 2007, in which I stressed the importance of respecting the parliamentary procedures by which we govern our deliberations.

For his part, the Member for Saint-Maurice–Champlain argued that the intent of the Report was to give the Parliamentary Budget Officer the funds

necessary to operate effectively. Stressing the close relationship between the Parliamentary Budget Officer and the Committee, he pointed out that section 79.1 of the *Parliament of Canada Act* states that the Parliamentary Budget Officer is mandated to serve the Standing Committee on Finance.

For the benefit of the House, I would like to briefly summarize the events surrounding the adoption of the Second Report in the Finance Committee.

On Tuesday, March 31, in the Standing Committee on Finance, the hon. Member for Saint-Maurice–Champlain moved a motion recommending an increase in the Parliamentary Budget Officer's budget and that this be reported to the House. The Chair of the Committee, the hon. Member for Edmonton–Leduc, ruled the motion out of order because it went beyond the mandate of the Committee. In his ruling, the Chair cited the mandates of committees in general and those of the Finance Committee and of the Standing Joint Committee on the Library of Parliament in particular. The ruling was appealed, the Committee overturned the ruling of the Chair and then proceeded to adopt the motion which became the Second Report of the Committee.

As the Chair of the Standing Committee on Finance noted in his ruling, the mandate of standing committees is specified in Standing Order 108(2) and states in part:

> The standing committees, shall, in addition to the powers granted to them pursuant to section (1) of this Standing Order and pursuant to Standing Order 81, be empowered to study and report on all matters relating to the mandate, management and operation of the department or departments of government which are assigned to them from time to time by the House.

The mandate of the Parliamentary Budget Officer is defined in section 79.1 of the *Parliament of Canada Act*. Although he is specifically required to provide research services for the Standing Committee on Finance, as Members know, section 79.1(1) states that the Parliamentary Budget Officer is an officer of the Library of Parliament. Thus, the resources and budget of the office are provided through the estimates of the Library of Parliament and not through those of the Department of Finance.

Standing Order 108(4) states that the mandate of the Standing Joint Committee on the Library of Parliament includes the review of the effectiveness, management and operation of the Library of Parliament. Thus, matters pertaining to the mandate and the resources allotted to the Parliamentary Budget Officer fall within the purview of the Standing Joint Committee on the Library of Parliament.

As Members will recall, the issue of a committee attempting to go beyond its mandate as defined in the Standing Orders was raised last year. In a ruling given on May 15, 2008, in the *Debates* at pages 5924-5, on the admissibility of the Seventh Report of the Standing Committee on Access to Information, Privacy and Ethics, I reminded the House that while committees are masters of their own proceedings, a committee cannot stray beyond its mandate.

I am sure that hon. Members would agree that the work of committees is vital to the functioning of the House and of Parliament. Because of their importance, the House has taken great care to define and differentiate the responsibilities of its committees, particularly where there might at first glance appear to be overlapping jurisdictions. While it is true that the House has given its committees broad mandates and significant powers, with such power and authority comes the responsibility of committees to respect their mandates and not exceed the limits of their authority.

Thus, it is expected that committees will be judicious in the exercise of their mandates so as to avoid bringing disputes to the House for the Speaker to adjudicate.

As explained in *House of Commons Procedure and Practice* at page 857, decisions of committee Chairs may be appealed to the committee. However, as I noted in rulings on March 14, 2008 and May 15, 2008, committees that overturn procedurally sound decisions by their Chairs and choose to present procedurally unacceptable reports to the House will have them declared null and void.

In this instance, while one might understand the concerns of hon. Members of the Finance Committee, their concerns are not sufficient cause for circumventing the Standing Orders. Indeed, I find it troubling that

a committee chose to proceed as it did with the knowledge that what it was doing was beyond its mandate.

The subject matter of the Second Report of the Standing Committee on Finance is clearly not within the mandate of that Committee, as spelled out in Standing Order 108, but rather is within the mandate of the Standing Joint Committee on the Library of Parliament, and therefore, in my view, the Report is out of order.

For this reason, I rule that the Second Report of the Standing Committee on Finance be deemed withdrawn and that no further proceedings may be taken in relation thereto.

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1. Second Report of the Standing Committee on Finance, presented to the House on April 1, 2009 (*Journals*, p. 352).
2. *Debates*, April 1, 2009, pp. 2272-4.

Committees

Mandate

Report: admissibility questioned for committee exceeding mandate

June 17, 2010 *Debates*, pp. 4022-3

Context: On June 10, 2010, Paul Szabo (Mississauga South) rose on a point of order with regard to the admissibility of the Third Report of the Standing Committee on Government Operations and Estimates. The Report, presented to the House earlier that day, concerned the Committee's study of the claim that Derek Lee (Scarborough–Rouge River) had been actively lobbying the Government while sitting as a Member.[1] Mr. Szabo argued that the Report went beyond the mandate of the Committee, as set out in Standing Order 108, since matters related to the *Conflict of Interest Code for Members of the House of Commons* and the conduct of Members fell within the mandate of the Standing Committee on Procedure and House Affairs. Mr. Szabo also argued that the dissenting opinion submitted by Mr. Lee had not been appended to the Report, thus rendering it incomplete. After hearing from another Member, the Speaker took the matter under advisement.[2]

Resolution: On June 17, 2010, the Speaker delivered his ruling. He stated that only committee members could submit dissenting opinions and, since Mr. Lee was not a member of the Committee, his dissenting opinion could not be appended to the Report. He concluded that the Report was therefore neither invalid nor incomplete on these grounds. With regard to the main argument, the Speaker noted that committees are empowered to deal with issues delegated to them by the House and that their power to report is limited to issues within their mandates or specifically assigned to them by the House. He declared that one committee cannot usurp the powers of another and ruled that the Third Report of the Committee was such an encroachment. He affirmed that should a committee wish to broaden its mandate, it must first seek the authority of the House to do so by means of a motion of instruction adopted by the latter. Accordingly, he declared that the Third Report was out of order, ordered that it be deemed withdrawn, that the motion for concurrence in it standing on the *Order Paper* also be deemed withdrawn, and that no further proceedings take place in relation to the Report. The Speaker concluded his remarks by reminding Members that, although committees are accorded significant power and authority, they must respect their mandates.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on June 10, 2010 by the hon. Member for Mississauga South concerning the admissibility of [the][3] Third Report of the Standing Committee on Government Operations and Estimates which was presented to the House earlier that day.

I would like to thank the Member for Mississauga South for bringing this matter to the attention of the House and the Member for Eglinton–Lawrence for his comments.

In his remarks, the Member for Mississauga South explained that the subject matter of the Third Report of the Standing Committee on Government Operations and Estimates was based on a study of claims that the Member for Scarborough–Rouge River was actively lobbying the Government of Canada while sitting as a Member of Parliament. He argued that the authority to look into any claims related to the *Conflict of Interest Code* or the conduct of Members of Parliament lay with the Standing Committee on Procedure and House Affairs pursuant to Standing Order 108(3)(*a*)(viii) and not the Standing Committee on Government Operations and Estimates.

He claimed that the Committee had strayed beyond its mandate and that the Report was therefore out of order.

The Member also complained that the dissenting opinion to the Report, which he understood had been submitted by the Member for Scarborough–Rouge River, had not been appended to the Report and so rendered the Report incomplete.

Let me deal with this matter immediately. Pursuant to Standing Order 108(1)(*a*) such appendices to reports must be proposed by committee members only. As the Member for Scarborough–Rouge River is not a member of the Committee, his dissenting opinion could not be appended to the Report. This in no way invalidates the Report nor does it render it incomplete.

Now, let us turn to what I see as the central question the Chair faces: whether the Report in question is procedurally invalid by virtue of the

Committee having undertaken to study and report on a matter that is beyond its mandate as prescribed by the House.

That committees are empowered to deal with issues delegated to it by the House is indisputable. As *House of Commons Procedure and Practice*, Second Edition, states at page 985:

> Like all other powers of standing committees, the power to report is limited to issues that fall within their mandate or that have been specifically assigned to them by the House. Every report must identify the authority under which it is presented.

The Member for Eglinton–Lawrence was correct when he stated that even though committees are masters of their own agenda and they can do what they wish, they have been created by the House and must reflect the intent of the House in carrying out their work.

Limitations on committees are again spelled out in *House of Commons Procedure and Practice*, Second Edition, which states at page 1048:

> These freedoms are not, however, total or absolute. First, it is useful to bear in mind that committees are creatures of the House. This means that they have no independent existence and are not permitted to take action unless they have been authorized/empowered to do so by the House.

It continues to read:

> … committees are free to organize their proceedings as they see fit provided that their studies and the motions and reports they adopt comply with the orders of reference and instructions issued by the House.

The text further emphasizes that orders of reference, instructions, the Standing Orders and rulings by the Speaker take precedence over any rules a committee may adopt.

In other words, while the actual decision to proceed with a study may be taken according to established committee procedures, the fact remains that no committee can simply usurp the powers of another. Rather, a committee must seek the authority from the House to widen an order of reference. Beauchesne's 6th edition, on page 233, citation 831(3) states:

> When it has been thought desirable to do so, the House has enlarged the Order of Reference of a committee by means of an instruction.

Objections to committees acting beyond their mandate are nothing new. For example, on May 15, 2008—see *Debates*, page 5924—during the Thirty-Ninth Parliament, the Chair determined that the Seventh Report of the Standing Committee on Access to Information, Privacy and Ethics went beyond the Committee's mandate and thus was out of order. An identical conclusion was reached in relation to the Second Report of the Standing Committee on Finance when I ruled that Report out of order on April 2, 2009—see *Debates*, pages 2301-2.

In that ruling, I acknowledged that

> … the House has taken great care to define and differentiate the responsibilities of its committees, particularly where there might at first glance appear to be overlapping jurisdictions.

In the case before us, I have carefully reviewed Standing Order 108(3)(*c*), which delineates the powers of the Standing Committee on Government Operations and Estimates.

It is clear to the Chair that the House did not grant that Committee the authority to study issues related to lobbying. The Member for Mississauga South is right in his assertion that the Standing Committee on Procedure and House Affairs, pursuant to Standing Order 108(3)(*a*)(viii), has been given the necessary authority to look into any claims related to the *Conflict of Interest Code* or the conduct of Members of Parliament. Authority for considering other issues related to lobbying have been conferred upon the Standing Committee on Information, Privacy and Ethics, including examination of reports from the Commissioner of Lobbying.

Therefore, for those reasons I must conclude that the Third Report of the Standing Committee on Government Operations and Estimates is out of order. Accordingly, I rule that the Report be deemed withdrawn. Furthermore, with regard to the motion on the *Order Paper* standing in the name of the hon. Member for Winnipeg Centre, I am ordering that this motion for concurrence in the Third Report be deemed withdrawn and that no further proceedings may take place in relation to this Report.

In conjunction with this, I will reiterate an important message contained in my ruling on April 2, 2009, when I stated:

> While it is true that the House has given its committees broad mandates and significant powers, with such power and authority comes the responsibility of committees to respect their mandates and not exceed the limits of their authority.

I thank hon. Members for their attention.

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1. Third Report of the Standing Committee on Government Operations and Estimates, presented to the House on June 17, 2010 (*Journals*, p. 502).
2. *Debates*, June 17, 2010, pp. 3640-1.
3. The published *Debates* read "a" instead of "the".

Committees

Committee Proceedings

Questions on the *Order Paper*: delay in reply deemed referred to committee; officials not questioned

February 4, 2002 — *Debates*, pp. 8664-5

Context: On January 31, 2002, Vic Toews (Provencher) rose on a question of privilege arguing that the Standing Committee on Justice and Human Rights subverted Standing Order 39(5)(*b*) by not considering the failure of the Ministry to provide a response to Question Q-98 on the *Order Paper* within the 45-day time limit. Mr. Toews noted that, although officials from the Department of Justice were present at the meeting held earlier that day, the Committee decided not to hear from them regarding the lateness of the Government's response.[1] This, he maintained, went against the Standing Order as the Committee had an obligation to investigate the delay and report its findings to the House. The Chair of the Committee, Andy Scott (Fredericton) pointed out that, given that the response to the Question was made prior to the Committee's meeting, the Members felt there was no need to pursue the matter of lateness any further. For his part, Ralph Goodale (Leader of the Government in the House of Commons, Minister responsible for the Canadian Wheat Board and Federal Interlocutor for Métis and Non-Status Indians) stated that the Standing Order did not prescribe how the Committee should dispose of the matter and that this was for the Committee to determine. He added that the Committee did meet the requirements of the Standing Order by meeting within five sitting days after the expiration of the time limit to consider the matter. Other Members also intervened. The Deputy Speaker (Bob Kilger) reminded the House that it was not the practice of the Chair to interfere in committee business, as committees are masters of their own proceedings; however, since this was the first time this new procedure had been tested, he would take the matter under advisement.[2]

Resolution: On February 4, 2002, the Deputy Speaker delivered his ruling. He declared that there was a long-standing convention in the House that committees are masters of their own proceedings, and that the Standing Committee on Justice and Human Rights was therefore free to dispose of the matter as it saw fit. That the Committee had chosen not to pursue the matter was a decision taken in full

compliance with the rules and procedures of the House. The Deputy Speaker concluded that since the Committee was empowered to decide how it managed its orders of reference and since there had been no report to the House, no further action was required. He also took the opportunity to review the Chair's understanding of how this new procedure was intended to function, when pursuant to Standing Order 39(5)(*b*), the matter of the failure of the Ministry to respond to a written question was referred to a standing committee. He noted that the Standing Order did not prescribe how a committee should dispose of such a matter but only that it must meet on the issue within five sitting days.

Decision of the Chair

The Deputy Speaker: Before I call for resumption of the debate I am now prepared to rule on the question of privilege raised by the hon. Member for Provencher on Thursday, January 31, concerning the manner in which the Standing Committee on Justice and Human Rights carried out its Order of Reference with respect to unanswered questions on the *Order Paper*.

I would like to thank the hon. Member for having raised this matter and the Chair of the Committee, the hon. Member for Fredericton, for providing additional helpful information on the Committee's work. I would also like to thank the hon. House Leader of the PC/DR Coalition, the hon. Member for Yorkton–Melville, the hon. Government House Leader and the hon. Member for Surrey North for their contributions on this question.

The hon. Member for Provencher in raising the question alleged that the Standing Committee on Justice and Human Rights violated Standing Order 39(5)(*b*) when at its meeting on Thursday, January 31, the Committee voted down a motion to invite departmental officials to testify regarding the delay in answering Question No. 98.

He argued that the Order of Reference given to the Committee on January 29 concerning the delay in replying to Question No. 98 constituted an Order of the House to investigate the delay and report the matter back. He disputed the Committee's right to decide that it was satisfied that there were mitigating circumstances and that, since a response had been tabled in the House, the matter could be considered closed. The Chair of the Committee explained that the Committee considered a motion to invite the departmental

officials to answer questions about the delay but that the motion was negatived and the Committee passed on to other business.

Let us briefly review the basic procedures involved in this matter. With respect to written questions, Standing Order 39(5)(*a*) provides that the Ministry must respond within 45 days. Standing Order 39(5)(*b*) states:

> If such a question remains unanswered at the expiration of the said period of forty-five days, the matter of the failure of the Ministry to respond shall be deemed referred to the appropriate Standing Committee. Within five sitting days of such a referral the Chair of the committee shall convene a meeting of the committee to consider the matter of the failure of the Ministry to respond. The question shall be designated as referred to committee on the *Order Paper* and, notwithstanding Standing Order 39(4), the Member may submit one further question for each question so designated.

It is important to note that it is the matter of the failure of the Ministry to respond that is referred to the Committee, and the hon. Member for Provencher rightly draws a distinction between that matter and any issue relating to the sufficiency of the reply, an issue that he wishes to pursue as a separate item.

There is a longstanding convention in this House that committees are masters of their own procedure. I refer hon. Members to page 804 of *Marleau and Montpetit* which states:

> Committees are bound to follow the procedures set out in the Standing Orders, as well as any specific sessional or special orders that the House has issued to them. Committees are otherwise left free to organize their work. In this sense, committees are said to be masters of their own proceedings.

Again at page 885 it states:

> If there is an irregularity in the committee's proceedings, the House can only be seized of it once it is reported to the House.

In the case before us the delay in replying to a question stands referred to the Committee, but it is important to remember that, like other matters before it, the Committee may dispose of this as it deems appropriate. The Committee in this instance has decided not to pursue the matter further. This is a decision that properly rests with the Committee, and while the hon. Member for Provencher may disagree with the decision it has been taken in full compliance with our rules and procedures.

The Chair has always refrained from interfering in the business of committees which are free to pursue the work before them as they see fit. In this instance the Chair has concluded that since the Committee is empowered to decide how it will deal with its orders of reference and since there has been no report to the House concerning its proceedings, no further action is required on this point of order.

That being said, as hon. Members know, I was the Chair of the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons and this new procedure with regard to unanswered questions was one of the Committee's recommendations that, like the rest of the Report, was adopted unanimously by this House. As such, this is a matter that is of special interest to me and I believe that it might be helpful for committees faced with such orders of reference in the future, if the Chair outlines its understanding of how this procedure is intended to function.

Let me simply describe how the Chair sees these matters unfolding, always bearing in mind that each committee will decide how to handle its own order of reference.

First, upon the expiration of the 45 days, the Speaker informs the House that the question has been referred to a particular standing committee. The Member in whose name the question stands is responsible for determining the committee to which the question will stand referred.

Second, the specified committee must meet within five sitting days of the referral to discuss the matter of the failure of the Government to respond in the time period provided by the Standing Orders. The Member in whose name the question stands should be advised at the committee meeting at which the failure to respond to the question will be raised.

Third, departmental officials may be asked to be available to explain why the question has not been answered within the 45 days. For more complicated questions, a committee may wish to invite the Parliamentary Secretary to the Leader of the Government in the House of Commons, who is responsible for coordinating the tabling of answers to questions.

Fourth, the committee decides how it wishes to proceed. It may decide to proceed no further with the matter; to invite witnesses to appear; not to report back to the House; or to report back to the House: one, stating that it has considered the matter and considers it closed; two, stating that it has considered the matter and recommending improvements in the departmental or agency responsiveness; three, stating that it has considered the matter and recommending to the Member certain actions to facilitate a timely response; four, stating that it has considered the matter and making other pertinent recommendations.

The Chair has provided this guidance because this is a new procedure. Also, as the Government House Leader explained, Standing Order 39(5)(*b*) does not prescribe how the committee will dispose of the matter but only that it must meet on the issue within five sitting days.

All Members of the House are conscious of the steps that we have taken recently toward modernizing our procedures. The changes that have been made as a result of the adoption of the Report of the Modernization Committee represent a clear indication that Members are committed to improving the way in which we conduct our proceedings. This is true of Members from all parties on both sides of the House.

I would urge everyone to respect the decision that the House has made to institute new procedures to better serve Members' interests. I hope that all of us will continue to be guided both by the letter and the spirit of the Special Committee's Report.

I thank the hon. Member for Provencher for raising his concern.

1. Standing Committee on Justice and Human Rights, *Minutes of Proceedings*, January 31, 2002, Meeting No. 59.
2. *Debates*, January 31, 2002, pp. 8561-3.

Committees

Committee Proceedings

Conduct of Chair: questions to witness ruled out of order; alleged breach of Member's freedom of speech

April 18, 2002 *Debates*, pp. 10539-40

Context: On March 19, 2002, Francine Lalonde (Mercier) rose on a question of privilege arising from the decision of the Chair of the Standing Committee on Foreign Affairs and International Trade, Jean Augustine (Etobicoke–Lakeshore), to rule certain questions out of order at the meeting of the Committee held earlier that day.[1] Ms. Lalonde argued that the Committee had the right to question Order in Council appointee Alfonso Gagliano, pursuant to Standing Order 111(2), on his qualifications and competence for the position of Canadian Ambassador to Denmark. She charged that the Chair had exceeded her authority in deciding not to allow members of the Committee to pose questions concerning the appointee's previous ministerial experience. She alleged that her privileges had been breached since the decision of the Chair, which had been unsuccessfully appealed, had infringed upon her freedom of speech. After other Members had spoken, Ralph Goodale (Leader of the Government in the House of Commons, Minister responsible for the Canadian Wheat Board and Federal Interlocutor for Métis and Non-Status Indians), argued that this was simply a dispute among members of the Committee as to the nature of the Committee's work and that since committees are masters of their own proceedings, it was up to the Committee to resolve any disagreement amongst its members. The Speaker took the matter under advisement.[2]

Resolution: On April 18, 2002, the Speaker delivered his ruling. He declared that, since committees were masters of their own proceedings, they were responsible for resolving their own procedural disputes. He cited a ruling of Mr. Speaker Fraser, to the effect that the conduct of a committee Chair is for the committee to judge unless and until it elects to report the matter to the House. He reminded the House that when some members of the Committee had appealed the Chair's ruling to disallow certain questions directed at Mr. Gagliano, the ruling had been upheld. The Speaker concluded that he could not substitute his judgment for a decision taken by a committee or a committee Chair or become an additional recourse for appealing decisions taken by a committee.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member from Mercier on March 19, 2002, relating to actions of the Chair of the Standing Committee on Foreign Affairs and International Trade during the Committee's examination of Mr. Alfonso Gagliano as Order in Council appointee to the position of ambassador to Denmark.

I thank the hon. Member for Mercier for raising this question as well as the hon. Members for Burnaby–Douglas, Portage–Lisgar, Cumberland–Colchester, Winnipeg–Transcona, the former Member for Gander–Grand Falls, the hon. Government House Leader, the Parliamentary Secretary to the Minister of Public Works and Government Services and the hon. Member for Pictou–Antigonish–Guysborough who all spoke to the matter.

The hon. Member for Mercier, in raising the matter, argued that her parliamentary privileges were violated when the Chair of the Standing Committee on Foreign Affairs and International Trade disallowed certain of her questions, thus, in the Member's view, hindering her right to question fully the witness's qualifications and competence as ambassador-designate.

The hon. Member explained that she and other members of the Committee had attempted to question the appointee as provided in Standing Order 111(2) that is, they wanted to "examine the qualifications and competence of the… nominee to perform the duties of the post to which he… has been appointed".

In support of the legitimacy of her line of questioning the hon. Member also cited *House of Commons Procedure and Practice*, page 876, which states:

> Any question may be permitted if it can be shown that it relates directly to the appointee's or nominee's ability to do the job.

The hon. Member argued that the Committee Chair had exceeded her authority. By excluding questions about the ambassador-designate's previous work experience, the Chair prevented Members from asking appropriate questions regarding the candidate's ability to fulfill his duties.

Furthermore, all hon. Members who spoke to the matter raised the issue of freedom of speech as being fundamental to the work of parliamentarians.

In reviewing the facts of the matter, I found that the arguments presented by hon. Members set out the difficulty clearly and concisely. However, as Members know from many previous rulings rendered in this place, it has been the consistent position of past Speakers—and I have shared that position—that committees are masters of their own destinies. It is with the committee itself that lies the responsibility for resolving its own procedural disputes. These are matters in which Speakers have, almost invariably, chosen—wisely in my opinion—not to interfere.

I wish to draw to the attention of hon. Members a previous ruling made in the House some years ago by Speaker Fraser, with regard to actions taken by the then Chair of the Standing Committee on Finance. In his ruling of March 26, 1990, Speaker Fraser made the following comments:

> A committee chairman is elected by the committee. Like the Speaker, he is the servant of the body that elected him or her. The chairman is accountable to the committee, and that committee should be the usual venue where his or her conduct is pronounced upon, unless and until the committee chooses to report to the House, which the Committee has not yet opted to do.

Unlike those of the Speaker, the decisions of committee Chairs are subject to appeal. This represents an important indication of the independence of committees.

It is my understanding that, in the situation before us, the ruling of the committee Chair with regard to the disallowance of certain lines of questioning was appealed but that the Chair's decision was upheld. While I understand the frustrations of the hon. Members, I cannot substitute my judgment for a decision taken either by a committee Chair or by a committee itself; the Chair cannot become an additional recourse for appealing decisions in committee. Committees must remain masters of their own procedure.

I am confident that committee Chairs continue to be mindful of their responsibilities to make fair and balanced rulings based on the democratic

traditions of this place. Members of committees must also strive to resolve procedural issues in a manner which ensures that the rules are followed and that committee deliberations are balanced and productive for those committees.

Again, I thank all hon. Members for their interventions in this matter.

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1. Standing Committee on Foreign Affairs and International Trade, *Minutes of Proceedings,* March 19, 2002, Meeting No. 65.
2. *Debates*, March 19, 2002, pp. 9833-8.

Committees

Committee Proceedings

Organization meeting: notice requirement not respected

November 5, 2002 *Debates*, p. 1327

Context: On November 5, 2002, Dale Johnston (Wetaskiwin) rose on a point of order with respect to a notice issued by the Committees Directorate for a meeting of the Standing Committee on Canadian Heritage to elect a Chair and Vice-Chairs. Earlier in the day, the Committee had met but had been unable to elect a Chair; the meeting had ended and a notice had been issued later that day for another organization meeting to be held the next day. Mr. Johnston argued that, pursuant to Standing Order 106(1), 48 hours' notice was required, so the Speaker should rescind the notice and order that a new notice be issued in conformity with the Standing Orders. The Speaker took the matter under advisement.[1]

Resolution: The Speaker delivered his ruling later in the sitting. He stated that 48 hours' notice should have been provided as required by the Standing Order. He informed the House that a new notice would be issued and that the Committee would meet on Thursday, November 7, 2002.

Decision of the Chair

The Speaker: I would like to interrupt the question and comment period following the Member's speech to rule on the point of order raised by the hon. Member for Wetaskiwin earlier today. I am ready to make a ruling at this point.

The hon. Member raised a question about the application of Standing Order 106 to notice of committee meetings of the House. Perhaps I could read Standing Order 106(1):

> Within ten sitting days following the adoption by the House of a report of the Standing Committee on Procedure and House Affairs pursuant to Standing Order 104(1), the Clerk of the House shall convene a meeting of each standing committee whose membership is contained

> in that report for the purpose of electing a Chairman, provided that forty-eight hours' notice is given of any such meeting.

I understand this morning there was a meeting of a committee, I believe it was the Standing Committee on Canadian Heritage, called for the purpose of electing a Chair. I may have the name of the Committee wrong, so I do not want to be quoted on that.

The Committee meeting broke up in disarray without electing a Chair. The hon. Member for Wetaskiwin was objecting to the fact that less than 48 hours' notice was given of the next meeting of the Committee for the purpose of electing a Chair.

I have concluded in reading Standing Order 106(1) it requires that 48 hours' notice be given and I have directed accordingly. I believe the hon. Member was correct. Accordingly there will be notice, and I understand it will be done by six o'clock tonight, requiring that the Committee meet on Thursday instead of tomorrow and I wish to advise the House accordingly.

Postscript: The Committee held its organization meeting on November 7, 2002.[2]

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1. *Debates*, November 5, 2002, p. 1311.
2. Standing Committee on Canadian Heritage, *Minutes of Proceedings*, November 7, 2002, Meeting No. 2.

Committees

Committee Proceedings

Conduct of Chair: interrupting a member of a committee to allow the previous question

November 27, 2002 *Debates*, pp. 1949-50

Context: On November 21, 2002, Yvon Godin (Acadie–Bathurst) rose on a question of privilege on behalf of his colleague, Joe Comartin (Windsor–St. Clair), because of the requirement that the matter be raised at the earliest opportunity. The question of privilege concerned the conduct of the Chair of the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources, Raymond Bonin (Nickel Belt).[1] At a meeting of the Committee earlier that day, Mr. Bonin had interrupted Mr. Comartin during debate on a motion to summon a witness to appear before the Committee in connection with its study of Bill C-4, *An Act to amend the Nuclear Safety and Control Act*, to allow Benoît Serré (Timiskaming–Cochrane) to move that the question be now put despite the objections of Mr. Comartin. Mr. Serré's motion had been agreed to and the Chair had immediately called for a vote on the main motion.[2] Mr. Godin, citing *House of Commons Procedure and Practice,* 2000, argued that the meeting should have been suspended or adjourned. After hearing from other Members, the Speaker stated that, although the Chair is not an appeal court for decisions by committee Chairs, he would review the transcript of the meeting in question and return to the House with a ruling in due course. Mr. Bonin and Mr. Comartin spoke to the matter on November 25, 2002,[3] and November 26, 2002,[4] respectively.

Resolution: On November 27, 2002, the Speaker delivered his ruling. He reminded Members of the long-standing tradition of the House that committees are masters of their own proceedings and that the Speaker is seized with a committee matter only when the committee reports to the House. However, he quoted Mr. Speaker Fraser to remind the House that in very serious and special circumstances, the Speaker might have to pronounce on a committee matter in the absence of a report from the committee. Citing Standing Order 116, he observed that the liberty accorded to committees to organize their business is not absolute; they are expected to follow the rules and practices of the House, unless specific exceptions are provided for. He acknowledged that the use of the previous question is not permitted in committee

but noted that the ruling of Chair had not been challenged, as is permitted in committees. Consequently, the Speaker concluded that the issue was within the power of the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources to resolve and he declined to intervene.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Acadie–Bathurst on behalf of the hon. Member for Windsor–St. Clair concerning events in the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources on Thursday, November 21, 2002.

I would like to thank the hon. Member for having drawn this matter to the Chair's attention as well as the hon. Government House Leader and the hon. Members for South Shore, Sherbrooke and Saint-Hyacinthe–Bagot for their contributions on this question. I would also like to thank the Member for Nickel Belt, Chair of the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources and the hon. Member for Windsor–St. Clair for their later interventions.

It is alleged that, while the hon. Member for Windsor–St. Clair was in the process of speaking on a motion to summon a witness to appear before the Committee, the Chair intervened to suggest that the question be now put on the motion. This was done notwithstanding the fact that the hon. Member for Windsor–St. Clair had not concluded his remarks.

As Speaker, I appreciate the responsibility that I have to defend the rights of all Members and especially those of Members who represent minority views in the House. At the same time, it is a long tradition in this place that committees are masters of their own proceedings. Ordinarily the House is only seized of a committee matter when the committee reports to the House outlining the situation that must be addressed.

However, this is not an absolute requirement. As Speaker Fraser said in a ruling given on March 26, 1990 (*Debates*, p. 9756):

> —in very serious and special circumstances, the Speaker may have to pronounce on a committee matter without the committee having reported to the House.

I listened carefully to the interventions that were made when this question was first raised and I have also examined the blues of the Committee meeting which is at issue.

There are two points I would like to draw to the attention of all Members. First of all, I would remind everyone that the liberty given to committees by the House to organize their business is not an absolute liberty. Standing Order 116 states:

> In a standing, special or legislative committee, the Standing Orders shall apply so far as may be applicable, except the Standing Orders as to the election of a Speaker, seconding of motions, limiting the number of times of speaking and the length of speeches.

Committees are expected to follow the rules and practices of the House, unless specific exceptions are made, as in the rule just cited. Further, I think all Members will agree that if a committee chooses to exercise its judgment in an area where it is not bound to follow the practices of the House, it must do so in a regular and orderly fashion. By this I mean it ought to proceed by adopting motions that set out the rules that the committee will follow in governing its work.

A second important point to make in this particular circumstance is that the use of the previous question, that is "that the question be now put", is not permitted in committee.

As *House of Commons Procedure and Practice* points out at page 786, the previous question is not permitted in any committee of the House, even a Committee of the Whole. This rule is found in all of our authorities dating as far back as the 1st edition of *Erskine May* in 1844. It is expected, not just by the

Speaker, but also by the House itself that its committees will conduct business that is before them with consideration for these time-honoured practices.

That being said, it is true as well that committees are permitted a greater latitude in the conduct of their proceedings than might be allowed in the House. It may not always be clear in a particular set of circumstances how best to proceed and so the ultimate decision is left to the committee itself.

Even the rulings of the Chair of a committee may be made the subject of an appeal to the whole committee. The committee may, if it thinks appropriate, overturn such a ruling. In the case before us, I note that no formal appeal of the Chair's ruling was made.

Where irregularities occur, or if a committee feels that there has been some disrespect of its authority, the committee may draw the matter to the attention of the House and the Speaker to the problem, by means of a report to the House.

In the present case the Speaker has been asked to reach into the proceedings of the Committee to overturn something that was done there. Such requests have occurred on many occasions in the past and previous Speakers have, without exception, resisted the temptation to intervene.

The issue raised originally by the hon. Member for Acadie–Bathurst concerning the experience of the hon. Member for Windsor–St. Clair is an issue that lies within the power of the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources to resolve. That is where it properly belongs. Although this is a serious matter, it is not one in which the Speaker feels compelled to intervene.

Once again, I would like to thank all hon. Members who intervened on this matter.

1. *Debates*, November 21, 2002, pp. 1738-40.
2. Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources, *Minutes of Proceedings*, November 21, 2002, Meeting No. 4.
3. *Debates*, November 25, 2002, pp. 1841-2.
4. *Debates*, November 26, 2002, pp. 1912-3.

Committees

Committee Proceedings

Transcripts of *in camera* proceedings: motion to render transcript public argued to exceed authority of committee

April 1, 2004 *Debates*, pp. 1968-9

Context: On April 1, 2004, John Reynolds (West Vancouver–Sunshine Coast) rose on a point of order with regard to a motion moved by Marlene Jennings (Notre-Dame-de-Grace–Lachine) in the Standing Committee on Public Accounts which had proposed to make public the *in camera* proceedings of a meeting in the previous session at which a former public servant, Chuck Guité, had appeared as a witness.[1] Citing a relevant precedent, Mr. Reynolds argued that *in camera* testimony could only be made public by Order of the House and that, in considering the release of the testimony, the Committee was exceeding its authority. He added that the Speaker needed to rule before the Committee voted on the motion. After hearing from another Member, the Speaker took the matter under advisement.[2] (**Editor's Note:** At its meeting on Thursday, April 1, 2004, the Committee resumed consideration of and adopted the motion, whereupon the Chair of the Committee ruled that the release of the testimony would be delayed until the Speaker had rendered a decision on the matter. The ruling of the Chair was challenged and overturned.[3])

Resolution: Later during the sitting, the Speaker delivered his ruling. He stated that he had no power to substitute his judgement for that of a committee prior to any decision being taken by it, anticipate its decisions or intervene in the internal deliberations of a committee. He concluded that, as he was unable to cite any rule to prevent a committee from releasing that kind of information, it was up to the members of the Committee to decide on the proper course of action. However, he added that, should Members feel that the Committee required direction on the matter, they might wish to consider having the House provide an instruction to it.

Decision of the Chair

The Speaker: I am now prepared to rule on a point of order raised by the hon. Opposition House Leader earlier today concerning proceedings in the Standing Committee on Public Accounts.

I would like to thank the hon. Opposition House Leader for presenting this issue to the House, as well as the hon. Parliamentary Secretary to the Government House Leader for his comments.

The Opposition House Leader stated that the Public Accounts Committee had before it a motion concerning the making public of *in camera* testimony delivered before the Public Accounts Committee in the first session of this Parliament. He pointed out that the past practice with respect to *in camera* testimony indicated that it had only been made public by Order of the House, and he relied on a precedent I believe cited to him concerning the year 1978, as I recall. He argued that the proper course for the Committee would be to seek such an Order and that, in acting on its own initiative in this matter, the Committee would be exceeding the power delegated to it by the House. In support of his position, the Opposition House Leader cited a letter from the Clerk of the House to the hon. Member for Notre-Dame-de-Grâce–Lachine, in which the Clerk indicated that it would be prudent for the Committee to seek such a House Order.

The Opposition House Leader also stressed that, if no preventative action were to be taken to prevent the Committee from making the *in camera* testimony public, the harm done would be irreversible and that it was therefore necessary for the Speaker to rule as soon as possible in order to forestall that eventuality.

The Parliamentary Secretary to the Government House Leader in his intervention, stated that it was contrary to our practice to intervene while a matter was before a committee. He indicated that the proper course procedurally would be to wait until the Committee reports to the House. At that time, any potential procedural irregularities that had occurred could be raised and the Speaker could deliver an appropriate ruling.

I would like first to indicate the extent to which the Chair views this as a question of the utmost importance. The Standing Orders accord to committees considerable powers in order that they may carry out their work. Committees are also accorded extensive freedom to organize their inquiries as they see fit and to control their own proceedings.

At the same time, they remain creatures of the House. They are bound by the applicable provisions of the Standing Orders and may not exceed the powers they are given or conduct themselves in a manner that is contrary to the practices and traditions of this place.

It is, however, precisely on that basis that, in the first instance, it is the Public Accounts Committee that must take responsibility for its actions. I certainly agree with the Opposition House Leader that there are important procedural questions at issue here. It is evident, by their seeking advice from the Clerk of the House, that the members of the Committee are aware of those issues.

The Speaker is however not empowered to substitute his judgment for that of the Committee prior to any decision being taken by it. The members of the Committee will, mindful of the rules of the House and the precedents in matters of this sort, decide on what they consider to be the proper course of action. The Speaker has no power to anticipate such a decision, nor to intervene in the internal deliberations of the Committee. I have stated that on many occasions.

While I appreciate that the subject matter before the Committee is of considerable interest both to Members of the House and indeed to all Canadians, that does not change either the Speaker's role or his obligation to refrain from intervening in the Committee's business. If Members feel that the Committee requires some direction in this matter, beyond the advice that has already been provided, they may wish to consider having the House provide an instruction to the Committee.

Once again, I would like to thank the hon. Opposition House Leader for having raised this matter. I am sure that we can rely on his continued vigilance with respect to proceedings in the Committee and to any issues raised by its reports to the House. That is my ruling on the matter today.

Mr. John Reynolds (West Vancouver–Sunshine Coast, CPC): Mr. Speaker, I have full respect for your ruling. I would ask you, based on what the Government's Parliamentary Secretary said, will this Committee have to report to the House before this document is released to the public? My great concern is that the Committee could do something that is against the rules of the House before we have a chance to rule on it.

Could I get some understanding as to whether it could release a document of this effect, based on the comments made by the Clerk that this would be improper?

Yes, I agree that committees have the power to do what they want to do. However, if the Committee is going to do something that will embarrass the House of Commons, what can we do or what assurances can we have that they cannot just go and throw something to the wind and then the rest of us have to take the blame for that?

The Speaker: The hon. Member for West Vancouver–Sunshine Coast knows that we are unable to cite any rule that prevents committees from making decisions to release this kind of information. That is not in the Standing Orders. We have had the Clerk explain the past practice. The Committee is free, as I have indicated, to make its own decision in respect of this matter.

If the House wishes to give directions to the Committee, by either changing the rules or by issuing a specific order by way of a motion to the Committee, that is fine, but it seems to me that the Committee is master of its own proceedings. If, for example, something happens that is clearly wrong in a committee and it takes place there, it is a little late for the House then to take action to stop the action from taking place.

These things are raised in the House from time to time, as hon. Members know. Sometimes Members have raised complaints about what a committee did and asked the Speaker to fix it. The Speaker, as I have indicated, is not in a position to interfere in the workings of a committee. The Committee is master of its own proceedings. The House can issue directions, but if the directions are not followed explicitly, what does the House do, is always an interesting question.

Perhaps it is for that reason that the House does not often issue instructions to committees except for directing them to go and study something, but it does not usually tell them exactly how the study will take place. The Committee is master of its own procedures and makes its own decisions in that respect.

I think if the hon. Member reviews the words of my ruling, he will see that is exactly what I said in the ruling I gave, perhaps not in exactly the same language, but very close.

Editor's Note: See also a related ruling on May 4, 2004.[4]

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1. Standing Committee on Public Accounts, *Minutes of Proceedings*, March 31, 2004, Meeting No. 18.
2. *Debates*, April 1, 2004, pp. 1944-5.
3. Standing Committee on Public Accounts, *Minutes of Proceedings*, April 1, 2004, Meeting No. 19.
4. *Debates*, May 4, 2004, pp. 2716-7.

Committees

Committee Proceedings

In camera meetings: disclosure of confidential information; Member accused of anticipating a decision of a committee by discussing contents of transcript with the media prior to its being made public

May 4, 2004 — *Debates*, pp. 2716-7

Context: On April 1, 2004, Michel Gauthier (Roberval) rose on a question of privilege with respect to Dennis Mills (Toronto–Danforth) having made public the *in camera* testimony of a former public servant, Chuck Guité, before the Standing Committee on Public Accounts prior to the Committee's decision on whether or not to release the testimony, thus anticipating a decision of the Committee. He added that a draft report had been prepared for the Committee on the matter but that it had been rejected by a majority of the Committee's members. After other Members had spoken, the Speaker took the matter under advisement. On April 20, 2004, Mr. Mills apologized to the House and to the Committee for any breach of privilege resulting from his actions.[1]

Resolution: On May 4, 2004, the Speaker delivered his ruling. He expressed concern that Members were raising procedural matters that had arisen in committee and reminded them that, in case of possible breaches of privilege, committees were free to report to the House or not. He ruled that there were no procedural grounds on which to overturn the Committee's decision not to report to the House. He also noted that, although committees are masters of their proceedings, the liberties accorded to them are finite and that, if the House had concerns about how a committee was conducting its work, it could issue an instruction by way of a motion of instruction or, if a report is deemed unsatisfactory, by the recommittal of the committee report. Finally, he reminded Members that structural or systemic deficiencies in committees could be raised before the Standing Committee on Procedure and House Affairs. The Speaker concluded that the matter had been dealt with by the Committee in a procedurally acceptable manner.

Decision of the Chair

The Speaker: Before moving to Government Orders, I am now prepared to rule on the question of privilege raised on April 1, 2004 by the hon. Member for Roberval concerning the release by the hon. Member for Toronto–Danforth of *in camera* testimony given before the Standing Committee on Public Accounts.

I would like to thank the hon. Member for Roberval for having raised this issue. I would also like to thank the hon. Deputy Leader of the Government in the House and the hon. Members for West Vancouver–Sunshine Coast, Provencher, Winnipeg North Centre and Scarborough–Rouge River and Toronto–Danforth for their contributions to the discussion.

In raising his question of privilege, the hon. Member for Roberval charged that the hon. Member for Toronto–Danforth had released to the media *in camera* testimony given before the Public Accounts Committee during the First Session of the Thirty-Seventh Parliament. He also charged that the hon. Member for Toronto–Danforth had done this deliberately, in full knowledge of the fact that the Committee had not yet taken the decision to make this testimony public.

He claimed further that permitting this action to go unchallenged would represent a *de facto* recognition that committee rules, particularly with respect to *in camera* proceedings, apply only to opposition Members.

His concerns in this regard were echoed by the hon. Members for West Vancouver–Sunshine Coast and Winnipeg North Centre.

The hon. Deputy Leader of the Government pointed out that the Committee had in fact decided to make the testimony public, so that the point raised by the hon. Member for Roberval was of only theoretical interest.

The hon. Member for Provencher drew to the attention of the House that a draft report had been prepared for the Committee concerning the actions of the hon. Member for Toronto–Danforth, but that the draft report had been rejected by a majority of the members of the Public Accounts Committee.

The hon. Member for Scarborough–Rouge River indicated that the question of the hon. Member for Toronto–Danforth's actions had been raised in the Committee, as was proper, and that the Committee had disposed of the matter as it saw fit. He maintained that the rejection of the draft report by majority vote in the Public Accounts Committee settled the matter.

In his presentation, the Member for Toronto–Danforth stated that the Committee had received written acknowledgement from Mr. Guité's counsel that the testimony could be made public. He also noted that the remarks in which he had revealed parts of the testimony had been made during a media scrum. He concluded his presentation by apologizing to the House and the Committee for any breach of privilege which might have occurred.

Before dealing with the procedural aspects of this question, I feel that it is my duty to share with the House the extent to which I have found this matter troubling. As Members will recall, I had given a ruling concerning another complaint about proceedings in the Public Accounts Committee earlier on the same day that the hon. Member for Roberval raised this issue. It is of deep concern to me that, in conducting this inquiry, Committee members found it necessary to raise procedural matters on the floor of the House. As hon. Members know, the procedure for dealing with possible breaches of privilege in committee is clear.

House of Commons Procedure and Practice states, page 128:

> Since the House has not given its committees the power to punish any misconduct, breach of privilege, or contempt directly, committees cannot decide such matters; they can only report them to the House. Only the House can decide if an offence has been committed. Speakers have consistently ruled that, except in the most extreme situations, they will only hear questions of privilege arising from committee proceedings upon presentation of a report from the committee which directly deals with the matter and not as a question of privilege raised by an individual Member.

In discussing consideration of a report related to a privilege matter in committee, *House of Commons Procedure and Practice*, page 130 states:

> If the committee decides that the matter should be reported to the House, it will adopt the report which will be presented to the House at the appropriate time during the Daily Routine of Business.

It is clear from this passage that a committee may choose to report a possible breach of privilege to the House or it may decide not to. In the case raised by the hon. Member for Roberval, the Public Accounts Committee has decided not to refer the conduct of the hon. Member for Toronto–Danforth to the House. As Speaker, I can see no procedural grounds on which to overturn the Committee's decision, or indeed, to interfere in its proceedings on this matter in any way.

While previous Speakers, and I myself in earlier rulings, have indicated that a Speaker might, in extreme circumstances, take action with respect to irregularities in a committee's proceedings, there has always been considerable reluctance to intervene in any matter which the committee itself ought to decide.

Speaker Fraser put the point at issue quite clearly, and I refer to the *Debates* of April 2, 1990, page 1076:

> It would place the Speaker in the untenable position of standing in appeal to any decision of standing, special and legislative committees, particularly in cases of high controversy and vigorous political debate, like this one. This is not foreseen in our rules nor does our practice anywhere provide such a role for the Speaker.

The hon. Member for Roberval has raised the concern that, although the House has in place rules and practices which protect Members from what is often referred to as "the tyranny of the majority", no such safeguards exist in committee.

I would like to remind hon. Members that, although committees are given considerable liberty to organize their work, they are not free to adopt whatever procedures they choose. *Marleau and Montpetit*, page 804, states:

> Committees, as creations of the House of Commons, only possess the authority, structure and mandates that have been delegated to them by the House.… The House has specified that, in relationship to standing, special or legislative committees, "the Standing Orders shall apply so far as may be applicable, except the Standing Orders as to the election of a Speaker, seconding of motions, limiting the number of times of speaking and the length of speeches."

With these exceptions, committees are bound to follow the procedures set out in the Standing Orders as well as any specific sessional or special orders that the House has issued to them.

While the House accords great latitude to committees, it is very far from simply turning a blind eye to how they conduct their business. As I mentioned in my earlier ruling on April 1, 2004, concerning proceedings in the Public Accounts Committee, the House may, if it has concerns about how the committee is conducting its work, issue an instruction. This can be done by way of a motion of instruction moved during Private Members' Business or, if unanimous consent was sought and obtained, such motion could be moved without notice under the rubric "Motions" during Routine Proceedings.

The hon. Member for Roberval, in his capacity as House Leader, has much experience in the negotiations of such proceedings.

Finally, another possibility is for the House to order the re-committal of a committee report if it finds it unsatisfactory in some respect.

It is to be expected that, very often, not every Member will be in complete agreement with decisions taken in committee. All Members understand that the confrontation of opposing views is a central feature of our parliamentary system of Government. This is true in committee as it is in the House itself.

If, however, it is felt that the disagreements in the Public Accounts Committee arise from some structural or systemic deficiency, that is something

that might be raised before the Procedure and House Affairs Committee, which has the mandate to review the procedures and practices in committee.

Just as committees remain bound by the rules established for them by the House, so too is the Speaker obliged to rule based on our rules and practices. The particular issue raised by the hon. Member for Roberval has in the present instance been dealt with in the Committee in a procedurally acceptable manner.

I remind the House that it is incumbent on all Members to ensure that committees, in carrying out the work delegated to them, function within the rules and procedures that are set down for them.

Editor's Note: See also a related ruling on April 1, 2004.[2]

1. *Debates*, April 20, 2004, p. 2151.
2. *Debates*, April 1, 2004, pp. 1968-9.

Committees

Committee Proceedings

Committees sitting during a recorded division in the House

March 22, 2007 *Debates*, pp. 7796-7

Context: On March 1, 2007, the Chair of the Standing Committee on Industry, Science and Technology, James Rajotte (Edmonton–Leduc), rose on a point of order in relation to a decision made during a meeting of the Committee on February 28, 2007, to continue sitting despite the sounding of the division bells. Mr. Rajotte noted that, in order to allow the members of the Committee to proceed to the House, two motions to adjourn had been moved but that these had been defeated.[1] He argued that this created a conflict between his duty as a Member to vote in the House and his responsibility as a Chair of a committee to uphold decisions of a committee. He added that the House has first claim upon the attendance and services of its Members. Mr. Rajotte concluded by requesting that the Speaker clarify the rules. After hearing from another Member, the Speaker cited a ruling by Mr. Speaker Fraser from March 20, 1990. He stated that the matter appeared to be a grievance rather than a point of order. He noted that Mr. Speaker Fraser had asked the Standing Committee on Elections and Privileges to consider recommending changes to the rules in this regard. The Speaker then took the matter under advisement.[2]

Resolution: On March 22, 2007, the Speaker delivered his ruling. He noted that, since the ruling of Mr. Speaker Fraser that he had previously cited, no relevant changes to the rules and practices of the House regarding the powers of committees to sit while the House is sitting. Acknowledging that Mr. Rajotte's grievance reflected a chronic and unresolved ambiguity in the practice of the House, he suggested that the Standing Committee on Procedure and House Affairs consider the matter and report its recommendations to the House. The Speaker also suggested that committees might wish to adopt their own rules to deal with this issue.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on March 1, 2007 by the hon. Member for Edmonton–Leduc in which he requested clarification of the rules applicable to the adjournment of meetings of standing committees of the House.

I wish to thank the hon. Member for raising this matter in a point of order and I note for the record his courtesy in stating that it was not his intention to criticize in any way the actions of the members and staff of the Committee.

In raising this matter, the hon. Member stated that during a meeting of the Standing Committee on Industry, Science and Technology on Wednesday, February 28, the bells were rung to summon Members to the Chamber for a recorded division. Shortly thereafter, in order to allow Members to proceed to the House, two motions to adjourn the meeting of the Committee were proposed and defeated, the majority on the Committee choosing to continue debate on the motion then under consideration.

The hon. Member cited pages 856 and 857 of *House of Commons Procedure and Practice* which states that the Chair of a committee must ensure:

> … that the deliberations adhere to established practices and rules, as well as to any particular requirements which the committee may have imposed upon itself and its members.

The hon. Member for Edmonton–Leduc then called the attention of the Chair to what he perceived as a contradiction between his duty to respect the decisions of the Committee and his duty to vote in the House of Commons. Invoking the principle that "the House has first claim upon the attendance and services of its Members", he expressed the view that in the event of a conflict with other parliamentary duties, a Member's duty to the House should take precedence.

In closing, the hon. Member for Edmonton–Leduc sought guidance from the Speaker to assist committee Chairs and members to address similar circumstances in the future.

In responding to the arguments made by the hon. Member for Edmonton–Leduc, I said that it appeared to me at first glance that the issue was a grievance rather than a point of order.

Having now had the opportunity to consider the matter further, I must return to the comments that I made at the time. Honourable Members may recall that I made reference to a ruling delivered by Mr. Speaker Fraser on the same issue. I refer again to pages 9512 and 9513 of the *Debates* for March 20, 1990. Mr. Speaker Fraser had observed at the time that:

> Committees sitting at the same time as bells are sounded to call members into the House for a recorded division continues to be a problem in the eyes of some hon. members.

I noted as well that Mr. Speaker Fraser had referred to previous rulings from the Chair in 1971, 1976, 1978 and 1981 on this question.

Since Mr. Speaker Fraser ruled on this question in 1990, there have been no changes to the rules and practices of the House material to this issue. The Standing Orders clearly confer upon both standing and legislative committees of the House the power "to sit while the House is sitting" and "to sit during periods when the House stands adjourned". I refer the hon. Member to Standing Order 108(1)(*a*) and Standing Order 113(5). There is no provision elsewhere in the rules which might have the effect of limiting the exercise of these powers.

Furthermore, *House of Commons Procedure and Practice* on page 840 states:

> While committees usually adjourn or suspend their proceedings when the division bells summon Members to the Chamber for a vote, committees may continue to sit while a vote is being held.

The Chair acknowledges that the grievance brought forth by the hon. Member for Edmonton–Leduc appears to reflect a chronic and still unresolved ambiguity in our practice. As Mr. Speaker Fraser did when this question was raised some years ago, I would suggest that the Standing Committee on Procedure and House Affairs consider this matter and report

to the House. In its Report, the Committee could recommend appropriate directives or changes to our rules.

In addition, I would like to remind hon. Members that there is no obstacle to a committee adopting a motion setting out how it will respond to the ringing of the division bells. It might be helpful for committees to consider including such motions among their routine motions.

I regret that there is no relief the Chair can offer the hon. Member for Edmonton–Leduc at this time but I thank him for raising this important question.

Postscript: On May 9, 2007, the Standing Committee on Procedure and House Affairs presented its Forty-Eighth Report to the House recommending an amendment to Standing Order 115 requiring Chairs of committees to suspend committee meetings when the division bells are sounded, unless unanimous consent was obtained to continue the sitting. The Report was concurred in later that day.[3]

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1. Standing Committee on Industry, Science and Technology, *Minutes of Proceedings*, February 28, 2007, Meeting No. 49.
2. *Debates*, March 1, 2007, pp. 7507-8.
3. Forty-Eighth Report of the Standing Committee on Procedure and House Affairs, presented to the House and concurred in on May 9, 2007 (*Journals*, pp. 1376-8).

Committees

Witnesses

Evidence: extension of parliamentary privilege; termination of House staff following appearance before a committee

February 13, 2001 *Debates*, pp. 608-10

Context: On February 6, 2001, Roger Gallaway (Sarnia–Lambton) rose on a question of privilege with regard to the termination of two employees of the Office of the Law Clerk and Parliamentary Counsel of the House of Commons some time after their appearance before the Standing Committee on Procedure and House Affairs in connection with its study on the confidentiality of the work of the Legislative Counsel. At that meeting, the Committee had adopted a motion assuring the witnesses that their testimony would be protected by parliamentary privilege.[1] Mr. Gallaway argued that the termination of the two employees was a direct result of their appearance before the Committee and thus raised concerns regarding the immunity accorded to witnesses appearing before committees of the House; this, he suggested, could result in the reluctance of employees to appear before committees. Chuck Strahl (Fraser Valley) spoke to the need for the Board of Internal Economy of the House to address the issue of increased funding for Legislative Counsel. In addition, he contended that the matter was a staff relations dispute and therefore should not be debated on the floor of the House or in a committee. After hearing from other Members, the Speaker took the matter under advisement.[2]

Resolution: On February 13, 2001, the Speaker delivered his ruling. He stated that at the time at which the two employees had appeared before the Committee there was already a long-standing, ongoing dispute between them and management and that relations between the parties had already deteriorated considerably. Given this deterioration, the Speaker declared that he could not conclude that termination was a direct result of their appearance before committee and ruled that there was no *prima facie* breach of privilege. With respect to staff relation, he said that in conjunction with the statutory requirement for confidentiality of Board of Internal Economy discussions and as its Chair, he had a particular responsibility to uphold the integrity of the staff relations' system created by a decision of Parliament and that this risked being compromised by *ad hoc* hearings in the Chamber or in committee. In addition, he stated that the need for increased resources for legislative services

was an administrative matter and, as such, should be dealt with by the Board. The Speaker cautioned Members to be wary of situations in which they were asked to step into the role of *ad hoc* arbiters.

Decision of the Chair

The Speaker: The Chair will now deal with the question of privilege raised by the hon. Member for Sarnia–Lambton on February 6, 2001. The question of privilege concerned the departure from the House of Commons of two Legislative Counsel who had appeared last spring as witnesses before the Standing Committee on Procedure and House Affairs.

The hon. Member argued that the witnesses had sought, and had received, the assurance of the Committee that their testimony would be privileged and that there would be no reprisals for their testifying. He alleged that the departure of the two counsel was a direct result of their testimony and so constituted a *prima facie* case of privilege.

Before proceeding further, I would like to thank the hon. Member for Sarnia–Lambton and all Members who contributed to the discussion. In particular, I would like to draw attention to the comments of the Opposition House Leader (the hon. Member for Fraser Valley), the Whip of the Bloc Québécois (the hon. Member for Verchères–Les Patriotes), the House Leader for the Progressive Conservative Party (the hon. Member for Pictou–Antigonish–Guysborough), and the hon. Member for Pickering–Ajax–Uxbridge.

In his presentation, the hon. Member for Sarnia–Lambton provided a chronology of events that occurred subsequent to the Committee appearance of these two individuals and suggested that this chronology represented evidence that what he termed their "shotgun firing" from the House of Commons was a direct consequence of their appearance before the Committee. Thus, the hon. Member argued that this action constituted a *prima facie* case of privilege.

First, let me say that this is a matter that I take very seriously. The allegation, if it is founded, carries serious repercussions not only for the two individuals directly concerned but for the integrity of the committee system of the House as well as for the House's reputation as a fair and just employer.

Furthermore, for my part as I render this decision, I am aware that I play two different roles in this situation. As the Speaker presiding over this Chamber, I must determine whether or not the hon. Member for Sarnia–Lambton has made a persuasive argument for this matter being judged a *prima facie* case of privilege. As the Speaker chairing the Board of Internal Economy, which is the employer, I am duty bound to preserve the confidentiality of Board discussions, particularly as they concern matters of staff relations which are, by their very nature, completely confidential.

The case before us is especially complex for it intertwines the issue of privilege with a complicated staff relations situation that predates any invitation to appear before the Standing Committee on Procedure and House Affairs. Added to this already difficult situation is the whole matter of resourcing of the legislative drafting function, an issue on which many hon. Members have strong opinions. Let me try to settle the differences of view in this situation.

As Presiding Officer in the House, it is my duty to act as the guardian of the rights and privileges of Members and of the House as an institution. Insofar as parliamentary privilege extends to witnesses, I have also to protect their rights and privileges.

So first I would like to deal with the issue of the intimidation of witnesses before parliamentary committees. It is clearly stated at pages 862 and 863 of Marleau-Montpetit's *House of Commons Procedure and Practice* that the principles of parliamentary privilege are extended to witnesses when they appear before a parliamentary committee. I quote:

> Witnesses appearing before committees enjoy the same freedom of speech and protection from arrest and molestation as do Members of Parliament… Tampering with a witness or in any way attempting to deter a witness from giving evidence at a committee meeting may constitute a breach of privilege. Similarly, any interference with or threats against witnesses who have already testified may be treated as a breach of privilege by the House.

In the present case, the hon. Member for Sarnia–Lambton has recounted a chronology of events and, based on this chronology, alleges a cause and effect connection between the appearance of two counsel before the Standing

Committee on Procedure and House Affairs and their subsequent departure from the House. The hon. Member points out that the witnesses had asked for and had received assurances from the Committee that they would be protected by parliamentary privilege in the event of reprisals arising out of their testimony. He contends that this protection appears to have been ignored and argues that a *prima facie* case of privilege exists.

I am not going to review the chronology of the events presented except to say, with respect, that it is incomplete. As a review of the testimony of counsel before the Committee will reveal, the relationship between the employer and these employees was already in an advanced state of deterioration by the time these individuals testified. Were the appearance before the Committee the only circumstance to be considered in examining this case, there might indeed be a persuasive argument for concluding that this is in fact a case of reprisal.

However, things are not so simple. By the time of the testimony last spring, the employer-employee relationship was already characterized by acrimony and recrimination. The dispute between these Legislative Counsel and management was longstanding and continuing. Indeed, there were several issues that were the subject of complaint at the time counsel appeared before the Committee. Given these circumstances, the Chair must conclude that there is not a *prima facie* case of privilege.

The Chair would commend to all hon. Members the intervention of the hon. House Leader of the Official Opposition who cautioned against judging the situation having heard only one side of the dispute. At page 309 of *Debates* he said:

> However, I have a problem with raising personnel issues on the floor of the House of Commons… When these two employees of the House appeared before the Standing Committee and asked for protection of the House, we did not understand that there were outstanding grievances between management and the employees… We ended up hearing a kind of rehash of the ongoing problems… we did not have the background knowledge to deal with… We should not handle a grievance process, in a public forum, on the floor of a committee or on the floor of the House of Commons.

The Opposition House Leader like any other member of the Board, and I remind Members that I was also a Board member in the last Parliament when this issue was raised there, is bound by the statutory requirement for confidentiality of Board discussions on this or any other matter, but we all feel a particular responsibility with regard to staff relations issues which, by their nature, must be kept completely private and confidential.

In addressing this most unfortunate situation the Board has been guided by the usual principles of human resource management and in seeking a solution we have made every effort to reach a fair and equitable settlement with the parties. In one case happily such a settlement has been possible. In the other case it has not been possible to reach agreement and the individual is now seeking redress through a third party tribunal, the Public Service Staff Relations Board. While the matter that is before the PSSRB is not, strictly speaking, *sub judice*, I would suggest that we should not interfere in that process but rather allow it to reach its own conclusions in due course.

Many hon. Members have been employers in their professional lives before being elected to this House. All hon. Members are now employers in their own right of staff here in their Hill offices or at home in their constituency offices.

I know that hon. Members will appreciate from their own experience that the most difficult and often the most delicate situation an employer can face is dealing with employees with whom there are irreconcilable differences.

Parliament has set out the terms of the employer-employee relationship here at the House of Commons. Labour relations are governed by statute, that is, the *Parliament of Canada Act* and the *Parliamentary Employment and Staff Relations Act*; by collective agreements with bargaining agents; and in this instance, by practice that is parallel to the professional norms governing counsel employed in the Public Service of Canada. Under the terms of this framework employees have the right to raise complaints and follow grievance procedures up to and including bringing matters before the Public Service Staff Relations Board. Individuals also have the right to seek redress through the courts.

As the employer of record at the House, the Board of Internal Economy is always mindful of its responsibilities in dealing with employee issues generally

or, in certain circumstances, with the cases of individual employees. As the Chair of the Board, I have a particular responsibility to uphold the integrity of the staff relations system and to allow the procedures that have been set in motion to reach their conclusions unhampered.

Therefore, on a close examination of all the facts, I have concluded that to interpose into the system of existing safeguards, whether they be provided by the PSSRB or the courts, *ad hoc* hearings by Members of Parliament in the Chamber or in committee is in my view to compromise the integrity of the labour relations framework that was created by decision of Parliament.

Finally, a word about the need for increasing resources in the Office of the Law Clerk and Parliamentary Counsel. As previous Speakers have indicated, these matters are basic administrative issues and, as such, must be dealt with by the Board of Internal Economy.

I specifically draw to your attention the ruling given on October 23, 1997, with regard to a similar question of privilege raised by the hon. Member for Sarnia–Lambton. My predecessor, Mr. Speaker Parent, stated at page 1003 of *Debates* the following:

> When dealing with similar questions, my predecessors have repeatedly indicated that these should be brought to the attention of the Board of Internal Economy and should not be raised on the floor of the House as a point of order nor as a question of privilege.

I take very seriously the ongoing concerns many hon. Members have regarding Legislative Counsel and I must reiterate that these concerns have been brought to the attention of the Board of Internal Economy and are being dealt with.

In summary, then, the Chair finds that there is no *prima facie* case of privilege in this instance. I hope that I have been able to throw some light on this complex series of unfortunate circumstances while respecting the confidentiality of information entrusted to me as a member of the Board of Internal Economy.

In closing, I would entreat all hon. Members to proceed with caution when dealing with staff relations matters. If we find that the procedures for remedy and redress are inadequate, then by all means let us address what is lacking in the existing safeguards and take corrective measures, but let us be wary of situations where we are asked to step into the role of *ad hoc* arbiters on individual cases.

I thank all hon. Members for their contributions and assistance on this important question.

Postscript: On February 14, 2001, in order to provide clarification of his ruling after some Members had indicated to him that it had led to some confusion, the Speaker delivered the following statement (which is reproduced *in extenso*):[3]

> **The Speaker:** Since a few Members have indicated to me that the ruling I delivered yesterday on the question of privilege raised by the Member for Sarnia–Lambton had led to some confusion, I wish to provide clarification immediately.
>
> At page 609 of *Debates* I stated:
>
> In addressing this most unfortunate situation the board has been guided by the usual principles of human resource management—
>
> The text should go on to read:
>
> —and in seeking a solution the administration of the House has made every effort to reach a fair and equitable settlement with the parties.
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> I thank hon. Members for their attention.

1. Standing Committee on Procedure and House Affairs, *Minutes of Proceedings*, March 30, 2000, Meeting No. 33.
2. *Debates*, February 6, 2001, pp. 308-11.
3. *Debates*, February 14, 2001, p. 700.

Committees

Witnesses

Evidence: alleged existence of an instruction manual for Chairs of committees on managing witnesses

May 28, 2007 *Debates*, p. 9784

Context: On May 28, 2007, Libby Davies (Vancouver East) rose on a question of privilege with respect to alleged attempts by the Government to tamper with witnesses appearing before standing committees. Ms. Davies referred to an article published in the *National Post*, whose author claimed to have come into possession of a manual prepared by the Government for Conservative Chairs of committees instructing them on how to behave with witnesses. The article reported that the manual suggested that committee Chairs should meet with witnesses to review testimony and assist in question preparation. Citing several authorities, Ms. Davies argued that the manual, instructing Chairs of committees to behave in a way that would potentially alter the testimony of witnesses, constituted contempt of Parliament. Jay Hill (Secretary of State and Chief Government Whip) argued that the document in question had been produced by the Conservative Party and was an internal document, comparing it to similar manuals produced by other parties for the purposes of training their Members.[1] Other Members also spoke to the question of privilege.

Resolution: The Speaker ruled immediately. He stated that the existence of a document suggesting that Chairs of committees should meet with witnesses did not constitute tampering with witnesses and, in the absence of any evidence of such tampering, the Speaker ruled that no *prima facie* breach of privilege had occurred.

Decision of the Chair

The Speaker: The Chair has heard enough on this issue. We have had four presentations and I believe that should complete the matter. I am prepared to make a decision at once.

This matter was sent to me by the hon. Member for Vancouver East this morning and she forwarded with her letter a publication of an article by Don Martin in *The Saskatoon StarPhoenix* with a headline: "Secret book whips Tories into line".

The only paragraph in the entire article that could give rise to a question of privilege, as the hon. Member for Vancouver East pointed out in her remarks although she did not state it quite this way, was that:

> The chairmen should "meet with witnesses so as to review testimony and assist in question preparation".

The Chair has some concern that it is possible there could be a breach of Members' privileges, or at least the members of the committee, if there had been tampering with witnesses, but because somebody writes that there should be a meeting between witnesses and Chairs, to suggest that it somehow constitutes tampering, I believe is simply beyond reason.

I think this discussion here in the House is about the duties of committees. The Chief Government Whip and the Bloc Québécois Whip really made speeches about the work of the House committees in order to continue a debate that was started a few weeks ago. But this is not a question of privilege in this House.

The business of the committees is their own affair.

Had there been some evidence of tampering with a witness, I might have found there was a question of privilege. But there is no evidence whatsoever. What we have is a suggestion that some internal memo, manual or book, contains some suggestion that Chairs should meet with witnesses. That is the most we have.

If some hon. Member prepared a memo urging Members to come into the House and raise phony questions of privilege, are we to take that as some kind of breach of the privileges of Members of the House? I do not think so and I suspect such a thing might have happened before. I do not know but I suspect it might have.

I am not prepared to find a question of privilege on the basis of an article in a paper that suggests there may have been a phrase in a document or manual that says that Chairs should meet with witnesses to discuss their testimony.

Until there is evidence of tampering with witnesses, I do not believe that the Chair can find that there has been a breach of Members' privileges. There is no such evidence before me and accordingly, I do not believe there is a question of privilege here.

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1. *Debates*, May 28, 2007, pp. 9781-4.

Committees

Witnesses

Evidence: question of privilege; contempt of the House; providing false and misleading testimony; *prima facie*

April 10, 2008 *Debates*, p. 4721

Context: On February 12, 2008, the Standing Committee on Public Accounts presented its Third Report to the House recommending that the Deputy Commissioner of the RCMP, Barbara George, be found in contempt of the House for providing false and misleading testimony to the Committee and that no further action be taken.[1] On April 10, 2008, the Chair of the Committee, Shawn Murphy (Charlottetown), rose on a question of privilege based on the Report and requested that the Speaker find that a *prima facie* contempt of the House had occurred.[2]

Resolution: The Speaker ruled immediately. As the Report of the Committee was unanimous, he found that there was a *prima facie* case of privilege and allowed Mr. Murphy to move the appropriate motion. (**Editor's Note:** The exchange is reproduced *in extenso*.)

Decision of the Chair

The Speaker: The Chair has notice of a question of privilege from the hon. Member for Charlottetown.

Hon. Shawn Murphy (Charlottetown, Lib.): Mr. Speaker, on February 12 of this year, I, on behalf of the House of Commons Standing Committee on Public Accounts, tabled in the House the Third Report of that Committee. In the Report, the Committee was of the unanimous opinion that then RCMP Deputy Commissioner Barbara George provided false and misleading testimony to the Committee on February 21, 2007, and the Committee further recommended that the House find her in contempt and that no further action be taken.

Marleau and Montpetit, on page 862, state:

> —the refusal to answer questions or failure to reply truthfully may give rise to a charge of contempt of the House, whether the witness has been sworn in or not.

I rise today on a question of privilege. Based upon the unanimous Report of the Committee, I would ask that you find that a *prima facie* case of contempt has been established. Should you so rule, Mr. Speaker, I would then be prepared to make the appropriate motion.

The Speaker: I have heard the hon. Member for Charlottetown and his submissions. I understand that the Report he has tabled on this matter from the Standing Committee on Public Accounts was a unanimous report of the Committee and accordingly I am prepared to find there is a *prima facie* case of privilege and will allow him to move a motion.

Hon. Shawn Murphy: Mr. Speaker, I move, seconded by the Member for Edmonton–St. Albert:

> That the House of Commons find Barbara George in contempt of Parliament for providing false and misleading testimony to the House of Commons Standing Committee on Public Accounts on February 21, 2007; and that the House of Commons take no further action as this finding of contempt is, in and of itself, a very serious sanction.

The Speaker: Is it the pleasure of the House to adopt the motion?

Some hon. Members: Agreed.

The Speaker: I declare the motion carried.

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1. *Journals*, February 12, 2008, p. 423.
2. *Debates*, April 10, 2008, p. 4721.

Committees

Witnesses

Evidence: alleged intimidation of public servant

November 26, 2009 *Debates*, p. 7239

Context: On November 26, 2009, Jack Harris (St. John's East) rose on a question of privilege. He alleged that the Government had suppressed evidence that was to be presented to the Special Committee on the Canadian Mission in Afghanistan.[1] The Committee had intended to use its powers to call for persons and papers in order to obtain the evidence in question which had been suppressed by the Government under sections 37 and 38 of the *Canada Evidence Act*. The Committee had obtained advice from the Law Clerk of the House of Commons to the effect that parliamentary privilege overruled these sections of the Act and that witnesses were therefore not prevented from testifying and from providing documents to the Committee. The Committee had accordingly called Richard Colvin, a senior diplomat, to give evidence. At issue was an e-mail sent to Mr. Colvin by his employer, the Department of Foreign Affairs and International Trade, advising him that the Government did not accept the opinion of the Law Clerk and counselling him to conduct himself in accordance with the Government's interpretation of the *Canada Evidence Act*. Mr. Harris argued that such action constituted contempt of Parliament and a clear violation of Members' privileges in that it had attempted to intimidate the witness and to interfere with and obstruct his carrying out the lawful order of the Committee. Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons) noted that a motion had been adopted by the Committee to provide documents the previous day and that the response from the Government was forthcoming.[2] Other Members also spoke to the question of privilege.[3]

Resolution: The Speaker ruled immediately. He stated that, in the absence of a report from the Committee, there was no question of privilege properly before the House. Since the witness in question appeared before a committee of the House, the Speaker concluded that it was for the Committee to determine whether its privileges or those of its Members had been breached and to report the fact to the House before he could rule on the matter.

Decision of the Chair

The Speaker: I have heard enough on this point.

I would like to thank the hon. Members who raised this issue, especially the hon. Member for St. John's East, whom I thank for his interventions on this.

In my view this is not a matter of privilege for the House at this time, and I say, "at this time". It may become one.

The witness in question is testifying before a committee of this House, not before the House. The question of privilege, in my view, is one that should be raised in the Committee. The Committee has full power to decide whether or not its privileges have been breached and it will want to do so when it sees what information is submitted by the witnesses to the Committee.

They may not have had all the papers with them on the day they appeared, but they may be tabled later before the Committee or brought to the Committee later. The Committee can decide whether or not it has received what it was entitled to receive and whether or not there has been a breach of its privileges, and it can then present a report to the House.

If a report comes to the House, it is up to the Speaker to decide whether that report then allows a Member to raise a question of privilege arising from the report, which will then get priority treatment in this House as befits a question of privilege.

I refer hon. Members to pages 151-2 of *O'Brien and Bosc*, and this is in committee, where it states:

> If, in the opinion of the Chair, the issue raised relates to privilege… the committee can proceed to the consideration of a report on the matter to the House. The Chair will entertain a motion which will form the text of the report. It should clearly describe the situation, summarize the events, name any individuals involved, indicate that privilege may be involved or that a contempt may have occurred, and request the House to take some action. The motion is debatable and amendable, and will have priority of consideration in the committee. If the committee

> decides that the matter should be reported to the House, it will adopt the report which will be presented to the House at the appropriate time under the rubric "Presenting Reports from Committees" during Routine Proceedings.
>
> Once the report has been presented, the House is formally seized of the matter. After having given the appropriate notice, any Member may then raise the matter as a question of privilege. The Speaker will hear the question of privilege and may hear other Members on the matter, before ruling on the *prima facie* nature of the question of privilege. As Speaker Fraser noted in a ruling, "… The Chair is not judging the issue. Only the House itself can do that. The Chair simply decides on the basis of the evidence presented whether the matter is one which should take priority over other business". Should the Speaker rule the matter a *prima facie* breach of privilege, the next step would be for the Member who raised the question of privilege to propose a motion asking the House to take some action.

In my view this is clearly a matter that the Committee can consider. If it decides that its privileges and its Members' privileges have been breached, it can report the matter to the House and we can deal with the matter when that report arrives here in the Chamber.

But in my view the privileges of the House itself at this moment have not been breached. Possibly there has been a breach in the Committee, I am making no judgment on that matter, but when the Committee presents a report, I will hear argument on it if necessary and give a ruling in accordance with practice at that time.

However, I believe it would be premature for the Speaker of the House to decide a matter that is currently before a committee, and has not come back to the House from the Committee except in submissions by the hon. Member. The Committee will have to decide on its own initiative whether or not the privileges of the Committee or of its Members have been breached by what has transpired.

We will leave the matter there for the time being and move on at this point to Orders of the Day.

Postscript: The Special Committee on the Canadian Mission in Afghanistan presented its Third Report to the House on this matter and regarding its request for the production documents,[4] and a question of privilege was raised by Paul Dewar (Ottawa Centre) on November 30, 2009 based on the Report. The Speaker stated that the Report did not contain adequate information regarding an alleged breach of the Committee's privileges and therefore he could not rule at that time.[5] The Speaker delivered a ruling on a related question of privilege on April 27, 2010.[6]

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1. Special Committee on the Canadian Mission in Afghanistan, *Minutes of Proceedings*, November 18, 2009, Meeting No. 15.
2. See Special Committee on the Canadian Mission in Afghanistan, *Minutes of Proceedings*, November 25, 2009, Meeting No. 16.
3. *Debates*, November 26, 2009, pp. 7236-9.
4. Third Report of the Special Committee on the Canadian Mission in Afghanistan, presented to the House on November 27, 2009 (*Journals*, p. 1101).
5. See *Debates*, November 30, 2009, pp. 7386-7.
6. See *Debates*, April 27, 2010, pp. 2039-45.

Committees

Reports

Disclosure of committee report: Members accused of divulging contents prior to presentation in the House

February 13, 2003 *Debates*, pp. 3505-6

Context: On December 12, 2002, Réal Ménard (Hochelaga–Maisonneuve) rose on a question of privilege to allege premature and unauthorized disclosure of parts of the Report of the Special Committee on the Non-Medical Use of Drugs. He charged that two members of the Committee, Randy White (Langley–Abbotsford) and Carole-Marie Allard (Laval East), had given media interviews which revealed the Report's contents before it had been presented to the House. After hearing from other Members, the Speaker took the matter under advisement and stated that he would not rule until the Members involved had been given the opportunity to speak.[1] On January 27, 2003, John Reynolds (West Vancouver–Sunshine Coast) argued that matter was out of order as there was no report from the Committee regarding a breach of its privilege. Mr. White also intervened on the same day.[2] On February 6, 2003, Ms. Allard spoke to the matter after which the Speaker again took the matter under advisement.[3]

Resolution: The Speaker delivered his ruling on February 13, 2003. He explained that, although committees are masters of their proceedings, special committees cease to exist once their final reports are presented, and so the only way in which such a committee can consider procedural questions after the presentation of its report is further to an Order from the House re-establishing the special committee and empowering it to do so. He therefore concluded that the matter must be considered in the House. Having examined the media reports, he declared that, while it appeared that confidentiality had indeed been breached with respect to the Committee Report, none of the remarks by Members quoted in the media reports had constituted a direct disclosure of the Report nor did the media reports claim that a member of the Committee provided the information. For this reason the Speaker concluded that he did not find that the media reports provided *prima facie* evidence of the disclosure of contents of the Report by the Members identified by Mr. Ménard.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Hochelaga–Maisonneuve on December 12, 2002, concerning the premature disclosure of the Report of the Special Committee on the Non-Medical Use of Drugs.

I should explain that the unusual delay in returning to the House in this case is due to the adjournment and is a result of the Chair waiting to give an opportunity to all Members involved to intervene on the question.

I would like to thank the hon. Member for Hochelaga–Maisonneuve for having raised this matter as well as the hon. Member for Brossard–La Prairie, the hon. Opposition House Leader, the hon. Member for Langley–Abbotsford and the hon. Member for Laval East for their contributions.

The hon. Member for Hochelaga–Maisonneuve claimed that newspaper reports published prior to the tabling of the Special Committee's final Report on December 12, 2002, revealed premature disclosure of parts of the Report dealing with the Committee's recommendations related to the decriminalization of marijuana. He alleged that the premature release of information could be traced to the hon. Members for Laval East and the hon. Member for Langley–Abbotsford.

As the hon. Member for Hochelaga–Maisonneuve rightly noted, this is contrary to our practices and is a breach of the privileges of the House and of all Members and, as he went on to point out, past Speakers' rulings have consistently indicated the need to include the source of the leak in raising any charge of this nature.

House of Commons Procedure and Practice sets this out clearly on pages 884 to 885:

> Speakers have ruled that questions of privilege concerning leaked reports will not be considered unless a specific charge is made against an individual, organization or group, and that the charge must be levelled not only against those outside the House who have made

in camera material public, but must also identify the source of the leak within the House itself.

The hon. Member for Langley–Abbotsford acknowledged that he had discussed the topic of decriminalization in the media, but contended that he had not done so in the context of the Special Committee's Report. He stated that the topic of decriminalization is one that has generated considerable public interest in recent months and that his remarks were directed at the position of the Government made public by the Minister of Justice.

The hon. Opposition House Leader, citing *House of Commons Procedure and Practice*, pages 128-9, argued that our practice has clearly been to have such questions dealt with first by the committee concerned so that the House is seized with the question of a leak only upon receiving a report from a committee raising that issue.

I will deal with his latter point first. While it is true that committees are masters of their own proceedings and have primary responsibility for dealing with their own questions of order, the situation is somewhat more complicated for a special committee. While a special committee, like any other committee of this House, should deal with procedural matters as they arise, it is unable to take the initiative in this regard once it has presented its final report.

House of Commons Procedure and Practice makes this quite clear at page 812, "Special committees cease to exist with the presentation of their final report".

So, while it is true in general that committees are responsible for their own procedural matters, in a case such as this, the only way in which a special committee can consider the question is by receiving an Order from the House re-establishing it and empowering it to do so. Out of necessity, then, in this case, the matter must be considered here in the House.

I would like to say to the hon. Member for Hochelaga–Maisonneuve that I view this matter very seriously since the confidentiality of committee reports has been a constant source of concern to your Speaker and to the House itself. On that basis, I have examined all the press reports submitted to me with particular care. Taking them at their face value, it does appear that

confidentiality has been breached with respect to the Report of the Special Committee on the Non-Medical Use of Drugs. I know that all hon. Members will share my disappointment and frustration at such an occurrence.

However, with respect to the charges levelled against the hon. Members for Laval East and Langley–Abbotsford, the situation is somewhat different. In addition to the general interest in the subject of how marijuana is to be treated, there enters the further complicating factor that on December 10, 2002, the hon. Minister of Justice made statements concerning the Government's position with respect to decriminalization.

I would further point out that there are many similarities between the views expressed by the Minister and those contained in the Committee's Report.

My examination of the press reports shows that several Members made comments concerning decriminalization of marijuana. None of these remarks actually quoted in the media constitutes a direct disclosure of the contents of the Committee's Report, nor do any of the stories allege that a Member of the Committee provided the information they contain.

I am therefore not inclined to accept that these press reports can be accepted as *prima facie* evidence of the involvement of the hon. Members for Laval East and Langley–Abbotsford in the premature disclosure of the Committee's Report.

At the same time, as I have said, it appears that at least parts of the Report were provided to the media prior to its tabling in the House. I would urge all hon. Members to remember their responsibilities in this regard to their colleagues and to the House.

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1. *Debates*, December 12, 2002, pp. 2639-40.
2. *Debates*, January 27, 2003, pp. 2734-5.
3. *Debates,* February 6, 2003, pp. 3256-8.

Committees

Reports

Conduct of Chair: signature on a report viewed as a conflict of interest

May 8, 2003 *Debates*, pp. 5990-1

Context: On May 1, 2003, John Reynolds (West Vancouver–Sunshine Coast) rose on a point of order with respect to the Sixth Report of the Standing Committee on Official Languages presented to the House on April 30, 2003. The Report had requested that the House recommend to the Board of Internal Economy the reimbursement of legal costs incurred by the Chair of the Committee, Mauril Bélanger (Ottawa–Vanier), in the course of his intervention in *Quigley v. Canada (House of Commons)*.[1] Mr. Reynolds argued that, in signing the Report, Mr. Bélanger had placed himself in a position of conflict of interest by directly endorsing a decision granting him personal monetary gain. Mr. Reynolds further alleged that the act of signing the Report had a "parliamentary consequence almost as effective as the Member's vote" on a matter in which the Member had a direct pecuniary interest, in direct contravention of Standing Order 21. After hearing from another Member, the Speaker took the matter under advisement.[2] On May 2, 2003, Mr. Bélanger responded citing the 6th edition of Beauchesne's *Rules and Forms of the House of Commons of Canada*, which explains that the signature of the Chair on a committee report serves only as an authentication on behalf of the committee rather than as an expression of the committee Chair's own views with respect to the report's contents. He assured the House that he had acted in full conformity with the rules and practices. (**Editor's Note:** The meeting of the Standing Committee on Official Languages at which the Report was adopted was held *in camera*.[3]) The Speaker again took the matter under advisement.[4]

Resolution: The Speaker delivered his ruling on May 8, 2003. He noted that there was no suggestion that Mr. Bélanger stood to receive any monetary gain. The Speaker then declared that the signing of the report by the Chair of a committee is a routine practice that serves to validate the text presented to the House. The Speaker referred to Mr. Bélanger's assertions that he had left the Chair and abstained from voting on a similar item at an earlier meeting of the Committee, and that there was no reason to believe that he had behaved any differently at a subsequent

meeting held *in camera*. Accordingly, the Speaker concluded that based on the facts presented, Mr. Bélanger had not violated the provisions of Standing Order 21.

Editor's Note: Standing Order 21 was deleted on October 4, 2004 with the adoption of the *Conflict of Interest Code for Members of the House of Commons*.[5]

Decision of the Chair

The Speaker: I am now ready to rule on the point of order raised on Thursday, May 1 by the hon. Member for West Vancouver–Sunshine Coast concerning the Sixth Report of the Standing Committee on Official Languages.

I would like to thank the hon. Member for West Vancouver–Sunshine Coast for raising this issue. I also wish to thank the hon. Leader of the Government in the House, and the hon. Members for Ottawa–Vanier and Acadie–Bathurst for their interventions on the matter.

The hon. Member for West Vancouver–Sunshine Coast raised concerns related to the decision of the Standing Committee on Official Languages to request that the Board of Internal Economy support the Chair of the Committee, the hon. Member for Ottawa–Vanier, in his intervention in the *Quigley v. Canada* court case. The Committee motion, adopted on April 29, 2003 and reported to the House on April 30 reads as follows:

Pursuant to Standing Order 108, the Committee adopted the following motion:

> It is resolved that the Standing Committee on Official Languages express its support for the initiative of Mauril Bélanger, MP (Ottawa–Vanier) in the *Quigley v. Canada (House of Commons)* case, and request the House of Commons suggest to its Board of Internal Economy to make available a maximum budget of $30,000 to cover a portion of the legal fees incurred by Mr. Bélanger for his role as intervener in this case.

First, the hon. Member for West Vancouver–Sunshine Coast argued that by signing the Report of the Committee, the hon. Member for Ottawa–Vanier placed himself in a position of conflict of interest by directly endorsing a decision that grants him a personal gain of $30,000.

Second, the House Leader for the Official Opposition suggested that the act of signing the Report can be equated with voting on a matter in which the Member has a direct pecuniary interest, thereby directly contravening Standing Order 21 which states:

> No Member is entitled to vote upon any question in which he or she has a direct pecuniary interest, and the vote of any Member so interested will be disallowed.

The hon. Member for Ottawa–Vanier responded to the charges laid against him on Friday, May 2. The Member indicated that in signing the Committee Report, he was only complying with the well-established practice of having the Chair authenticate a report on behalf of the Committee just prior to its being tabled in the House.

I have now reviewed the facts of the case and wish to make the following points. First, let me deal briefly with the matter of personal gain.

In the present case, I believe that it is important to note that the reimbursement is being recommended to the hon. Member for Ottawa–Vanier as a reimbursement for legal costs he incurred as a third party intervener. The funds are not, strictly speaking, a grant of money to the Member personally, though it must be admitted that, if no reimbursement is made, the hon. Member will have suffered a loss and so can be said to have a pecuniary interest in the matter. However, the Chair understands, as do all hon. Members, that there has been no suggestion that the hon. Member stands to receive any direct monetary gain.

Now let us consider carefully the very strict interpretation that has always been given to Standing Order 21 relating to conflict of interest. *House of Commons Procedure and Practice* at page 194 states:

> —the Standing Orders of the House provide that Members may not vote on questions in which they have direct pecuniary interests; any such vote will be disallowed. The pecuniary interest must be immediate and personal, and belong specifically to the person whose vote is contested.

Standing Order 21 is also quite explicit that the prohibition relates to voting. The hon. Member for West Vancouver–Sunshine Coast alleged that signing the Committee's Report was tantamount to voting in favour of the contents and recommendations contained in the Report itself. The hon. Member for Ottawa–Vanier countered this argument by stating that the signing of the Report was only an authentification of it and not an endorsement. He quoted from Beauchesne's 6th edition, citation 873 on page 241 to illustrate that the signing of a report by the Chair of a committee is an expected part of our practice:

> The chairman signs only by way of authentification on behalf of the committee. Therefore, the chairman must sign the report even if dissenting from the majority of the committee.

I would further draw the attention of hon. Members to page 827 of *Marleau and Montpetit* where the role of committee Chairs is laid out in regard to the procedures for tabling reports. It states:

> Reports to the House from the committee are signed by the Chair, who must ensure that the text presented in the House is the one agreed to by the committee.

There is not, as the hon. Member for Ottawa–Vanier pointed out, any suggestion either in our written rules or our practice that, in signing a report, the Chair takes a position for or against its contents. The signature merely attests that the contents of the report reflect the decisions of the committee.

With respect to the votes that took place during the Committee's consideration and adoption of the Report, the hon. Member for Ottawa–Vanier refrained from disclosing how he had conducted himself during those votes, given that they were taken at an *in camera* meeting of the Committee.

However, he assured the House that he is very aware of the rules and has followed them to the letter. He pointed out that for a similar vote held at a public meeting of the Committee in February, he had left the Chair and abstained from taking part in the Committee's decision making. He asserted that there was no reason for him to have behaved any differently during the vote to adopt the recommendations of the Sixth Report.

Taking all of the facts presented into account, your Speaker can see no foundation for a suggestion that the hon. Member for Ottawa–Vanier has violated the provisions of Standing Order 21 in any way.

Postscript: On May 12, 2003, Mr. Reynolds rose on a point of order with respect to a notice of motion on the *Order Paper* to concur in the Sixth Report of the Standing Committee, again alleging a pecuniary interest on the part of the Chair of the Committee.[6] The Speaker delivered his ruling on July 12, 2003, in which he noted that the Chair of Committee, in moving the motion, had informed the House that he would refrain from voting, thereby satisfying the provisions of Standing Order 21.[7] (**Editor's Note:** The report was not concurred in.[8])

1. Sixth Report of the Standing Committee on Official Languages, presented to the House on April 30, 2003 (*Journals*, p. 716).
2. *Debates*, May 1, 2003, pp. 5714-5.
3. Standing Committee on Official Languages, *Minutes of Proceedings*, April 29, 2003, Meeting No. 21.
4. *Debates*, May 2, 2003, pp. 5762-3.
5. *Journals*, April 29, 2004, pp. 348-9.
6. *Debates*, May 12, 2003, pp. 6095-6.
7. *Debates*, June 12, 2003, pp. 7178-9.
8. See *Journals*, June 12, 2003, pp. 915-6.

Committees

Reports

Report adopted during meeting held in Parliamentary Restaurant; procedural acceptability

June 3, 2003 *Debates*, pp. 6773-5

Context: On May 29, 2003, immediately following the presentation to the House of the Third Report of the Standing Committee on Transport with respect to the Committee's consideration of the Main Estimates for 2003-04, Don Boudria (Minister of State and Leader of the Government in the House of Commons) rose on a point of order to question the admissibility of the Third Report. He contended that it was a requirement that committee meetings provide simultaneous interpretation, recording, access for the public and adequate notice. He argued that, given that the Committee had held a meeting in the Parliamentary Restaurant (at which the Third Report had been adopted), these requirements had not been met, thus rendering the Report inadmissible.[1] The Chair of the Committee, Joe Comuzzi (Thunder Bay–Superior North) stated that the meeting had been a continuation of the sitting from the previous evening that had been suspended due to a lack of quorum; the decision to continue the meeting the following day had been taken while the Committee still had quorum. He added that no other room had been available; quorum had been present; a recording of the meeting had been made; interpretation had been available; and the clerk of the Committee had been present. He emphasized that the Committee had been working to respect the reporting deadline for the Main Estimates as set out in the Standing Orders. Finally, he pointed out that none of the members of the Committee present at the meeting had raised any objections.[2] After hearing from other Members, the Deputy Speaker (Bob Kilger) took the matter under advisement.[3]

Resolution: On June 3, 2003, the Deputy Speaker delivered his ruling. He declared that arrangements had been made to provide interpretation services and that since the meeting had been held *in camera,* recording for transcription and publication was not required, and the need for notice was a moot point. He did, however, express concern with regard to the overnight suspension of the Committee meeting due to a lack of quorum, noting that the House in such circumstances must adjourn forthwith. He acknowledged that there is no similar

obligation for committees but noted that he did not consider this situation to be a precedent. Referring to the long-standing reluctance of Speakers to interfere in the proceedings of committees and to the fact that none of the members of the Committee had raised any objections, the Deputy Speaker nonetheless reminded Members that the liberty granted to committees from the House is accompanied by the concomitant responsibility to see that the necessary rules and procedures are followed. He concluded that the Report had been adopted in conformity of the established rules and practices of the House and was therefore in order.

Decision of the Chair

The Deputy Speaker: I am now prepared to rule on the point of order raised by the hon. Government House Leader on May 29, 2003, concerning the procedural acceptability of the Third Report of the Standing Committee on Transport presented earlier that day.

I thank the hon. Government House Leader for having drawn this matter to the attention of the House. I would also like to thank the hon. Members for Thunder Bay–Superior North; New Westminster–Coquitlam–Burnaby; Saanich–Gulf Islands; Argenteuil–Papineau–Mirabel; Acadie–Bathurst; Beauport–Montmorency–Côte-de-Beaupré–Île-d'Orléans; Kootenay–Boundary–Okanagan; and Ottawa West–Nepean for their comments.

In questioning the receivability of the Transport Committee's Third Report, the Government House Leader drew four points to the Chair's attention. He indicated, first, that in order for a properly constituted committee meeting to take place simultaneous interpretation services must be available.

Second, he contended that provision must be made for the recording of Committee deliberations so that a permanent record of the deliberations, corresponding to the *Debates* of the House, may be produced.

Third, he noted that committee meetings are usually open to the public and to members of the media, who are also entitled to simultaneous interpretation services.

Finally, the Government House Leader indicated that no notice had been sent out for the Committee's meeting on May 29.

The Government House Leader raised concerns that these four elements had been ignored by the Transport Committee, which met in a room in the Parliamentary Restaurant rather than in one of the fully equipped committee rooms. In the absence of these elements, he argued that the Report of the Committee must be regarded as not having been adopted at a properly constituted meeting and, therefore, the Speaker should rule it out of order.

In replying to these concerns, the Chair of the Transport Committee, the hon. Member for Thunder Bay–Superior North, stated that at its meeting on May 28 the Committee had decided to continue its deliberations on the morning of May 29. When quorum was lost, the Committee was prevented from taking any decisions with respect to the estimates it was studying so the Chair suspended the meeting until the next day.

The Chair pointed out that the Committee met in a room in the Parliamentary Restaurant only because none of the regular committee rooms were available at 8:00 a.m. on May 29 and the Committee was working to respect the reporting deadline for main estimates set out in Standing Order 81(4).

Honourable Members will be familiar with the beginning lines of Standing Order 81(4), which read:

> In every session the main estimates to cover the incoming fiscal year for every department of government shall be deemed referred to standing committees on or before March 1 of the then expiring fiscal year. Each such committee shall consider and shall report, or shall be deemed to have reported, the same back to the House not later than May 31 of the then current fiscal year—

This year, May 29 was the last sitting day prior to the May 31 deadline on which reports on the estimates could be presented.

The hon. Member for Thunder Bay–Superior North indicated that a recording was made of the proceedings at the meeting and that an interpreter from the Interpretation and Parliamentary Translation Service was present. He also stated that the quorum requirement was satisfied and that the clerk of the Committee was present to ensure that the Committee's decisions were properly recorded in its minutes.

Most important, the Chair also pointed out that no objections to any of the Committee's arrangements were raised by the Members who attended the meeting.

I have examined the *Minutes* of the Transport Committee Meeting No. 30, the only documents available to the Speaker since the meetings were held *in camera*, and the *Minutes* confirm the Committee Chair's statements.

I would now like to respond to the four objections raised by the hon. Government House Leader with respect to this case.

First, there is the question of simultaneous interpretation. Like the hon. Members who spoke to this issue, I too would like to underline the obligation that we have to respect the rights of Members to use the official language of their choice. Honourable Members at the Committee acknowledge that *ad hoc* arrangements were made for interpretation and that these were considered satisfactory by the Committee members present.

Second, there is the matter of recording. There is no disputing that the Committee chose to meet in a room where the usual services could not be provided and that recording for transcription and subsequent publication was not available. Nevertheless, it must be acknowledged that, in the view of the members of the Committee present, the meeting room was adequate to their needs since the Committee was meeting *in camera*, transcription was not required and publication was not contemplated.

On the fourth point at issue, the matter of notice, here again since the meeting was *in camera*, neither the public, the media nor other Members would be entitled to attend the meetings so the matter of notice in their regard is moot.

Your Speaker is, however, somewhat troubled by the notion of an overnight suspension of proceedings. As hon. Members know, if the Speaker's attention is drawn to a lack of quorum and no quorum is found, the House must adjourn forthwith. While it may be argued that no such obligation exists for committees, I would not consider the unorthodox actions of the Transport Committee in this particular instance to be a precedent in committee practice.

The Chair of the Committee has explained the circumstances of his decision to suspend the meeting on Wednesday night having lost the quorum needed to adopt a report and to reconvene at the earliest possible moment on Thursday so as to be able to report on the estimates within the time frame provided by the Standing Orders. Your Speaker is bound to accept the explanation of the hon. Member.

However, the fact remains that, like my predecessors, I am very reluctant to interfere in the work of any committee. I think it is worth reminding the House of the liberty that it grants to committees. *House of Commons Procedure and Practice*, page 804, states:

> —committees are bound to follow the procedures set out in the Standing Orders as well as any specific sessional or special orders that the House has issued to them. Committees are otherwise left free to organize their work. In this sense, committees are said to be "masters of their own proceedings".

The actions of the Standing Committee on Transport in this instance might well have given rise to various questions perhaps about the overnight suspension, perhaps about meeting without the usual services or notice, but the fact is, as the Chair of the Committee has stated, no such questions were raised in the Committee itself, nor did anyone who rose to speak in response to the Government House Leader's point of order make that claim.

Honourable Members know that should they have procedural concerns about matters related to the arrangements that a committee has made for its meetings or the conduct of its business, it is in the committee itself that they should raise them.

I have said that committees are granted much liberty by the House but, along with the right to conduct their proceedings in a way that facilitates their deliberations, committees have a concomitant responsibility to see that the necessary rules and procedures are followed and the rights of Members and the Canadian public are respected. Issues concerning such matters should be brought before the Committee for resolution.

As I have said, in the present case, no such questions were raised and no evidence has been presented to suggest that the Transport Committee exceeded its authority to conduct its proceedings as its members saw fit.

On that basis, after reviewing the *Minutes* of the Transport Committee's meeting and the contents of the Third Report itself, I find that the Report was adopted by the Committee in conformity with our rules and practices, that the Report has been duly presented in the House and that it is now properly before the House.

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1. *Debates*, May 29, 2003, pp. 6643-4, *Journals*, pp. 825-6.
2. Standing Committee on Transport, *Minutes of Proceedings*, May 28, 2003, Meeting No. 30.
3. *Debates*, May 29, 2003, p. 6646.

Committees

Reports

Guidelines for report related to a question of privilege in committee

November 30, 2009 *Debates*, pp. 7386-7

Context: On November 27, 2009, the Special Committee on the Canadian Mission in Afghanistan presented its Third Report to the House stating that the Committee believed that a serious breach of privilege had occurred and that Members' rights had been violated through the intimidation of a Committee witness by the Government and by its obstruction and interference with the Committee's work and with the papers that it had requested.[1] On November 30, 2009, Paul Dewar (Ottawa Centre) rose on a question of privilege based on the Committee's Report. He alleged that the Government had attempted to intimidate a witness prior to his testimony before the Committee by warning him that it did not accept the Law Clerk's view that parliamentary privilege overrode the provisions of the *Canada Evidence Act,* thus instructing him on how he was to answer questions from Members of Parliament. Mr. Dewar added that the witness had been deprived of documents in his possession with a view to withholding them from the Committee. He deplored what he characterized as "the Government's attempt to wilfully ignore a constitutionally enshrined right of Parliament". He pointed out that by virtue of the Committee's Report, the matter was properly before the House. The Speaker also heard from several other Members on the question of privilege.[2]

Resolution: The Speaker ruled immediately. He stated that the Report, as presented, was inadequate, in that it did not contain sufficient details for the Speaker to arrive at a decision on privilege; specifically, he noted the absence of a detailed outline of the alleged breach of privilege, the names of the individuals involved, which witnesses had allegedly been intimidated and what documents had or had not been delivered to the Committee. The Speaker concluded that, as the Report failed to meet the requirements of current practice, he could not determine whether there had been a *prima facie* breach of privilege.

Decision of the Chair

The Speaker: I thank hon. Members for their submissions on this point, but I think I have heard enough for the time being to deal with it.

I thank the hon. Members from all parties who made submissions on this point. We have before us today the Third Report of the Special Committee on the Canadian Mission in Afghanistan. The Report is very brief. I can read it again. It states:

> That the Committee believes a serious breach of privilege has occurred and Members' rights have been violated, that the Government of Canada, particularly the Department of Justice and the Department of Foreign Affairs and International Trade, have intimidated a witness of this Committee, and obstructed and interfered with the Committee's work and with the papers requested by this Committee.

My ruling last week on the point raised by the hon. Member for St. John's East was cited by the Parliamentary Secretary to the Minister of National Defence in his response to the request for a question of privilege to be dealt with. I will again cite the quotation that I used from *House of Commons Procedure and Practice*, Second Edition, page 151, which is also from Chapter 3 that everyone has been referring to today. It states:

> If, in the opinion of the Chair—

—and this is the Chair of the committee—

> —the issue raised relates to privilege (or if an appeal should overturn a Chair's decision that it does not touch on privilege), the committee can proceed to the consideration of a report on the matter to the House. The Chair will entertain a motion which will form the text of the report. It should clearly describe the situation, summarize the events, name any individuals involved, indicate that privilege may be involved or that a contempt may have occurred, and request the House to take some action. The motion is debatable and amendable…

… and so on.

The point is that this Report, in my view, is inadequate. It does not provide the details on which the House can make a decision on privilege. One may be forthcoming from the Committee. The Committee is free to do this at another meeting and come in with a detailed report that meets the requirements of our practice, but in my view it has failed to do so in the Report that we have received today.

There are no names of any individuals involved. I understand the Committee is receiving more material as we are discussing this. I do not know when the Committee is meeting, but undertakings have been given that more material will be filed. The Committee is calling other witnesses.

It seems to me that we should have a report from the Committee that outlines in detail the alleged breach, what has or has not been tabled, which witnesses have been intimidated and which have not, and those sorts of things. These are not here in this Report and, in my view, they ought to be. Until they are, I do not think I can make a finding that there has been a breach of privilege.

I need the details provided to the House in a report. The Speaker then makes a finding on that report. That is the practice outlined in *House of Commons Procedure and Practice*. Then a motion can be moved.

Otherwise, as the Parliamentary Secretary pointed out, any committee can pass a motion like this, send something back here saying that it looks as though there has been a breach of privilege and ask the Speaker to make a finding and therefore in effect order an emergency debate that takes priority over other business of the House. It is important that if the Speaker is going to make a finding of a breach of privilege of Members of the House, there be a detailed report from the Committee indicating what the alleged breach is. We do not have that at the moment.

By saying no today, I am not saying there will not be a finding later if material is brought to the House, but in my view the Committee Report as it stands is inadequate for this purpose. It needs to have considerable further detail in it. I would hope that the Committee, in its deliberations, will come up with a list of things that it needs or that it feels are inappropriate and that it will get those in testimony from the witnesses whom it calls.

Therefore, when the information is available, I trust that the hon. Member for Ottawa Centre or other hon. Members who are members of the Committee will be back in the House with a report asking the Chair to make a ruling in respect of privilege with regard to that Report. I believe the Chair requires further information in accordance with our practice to make such a finding and cannot make it just because the Committee majority thinks there has been a breach without then providing some information on which the Speaker can base a finding of a breach of privilege of hon. Members.

I will leave the matter at that for the time being.

Editor's Note: The Speaker gave a ruling on a related question of privilege on April 27, 2010.[3]

1. Third Report of the Special Committee on the Canadian Mission in Afghanistan, presented to the House on November 27, 2009 (*Journals*, p. 1101).
2. *Debates*, November 30, 2009, pp. 7379-87.
3. *Debates*, April 27, 2010, pp. 2039-45.

Committees

Committee Powers

Sending for persons: refusal by the Government to allow officials to appear before an *ad hoc* committee

November 1, 2001 — *Debates*, pp. 6846-7

Context: On November 1, 2001, John Bryden (Ancaster–Dundas–Flamborough–Aldershot) rose on a question of privilege regarding the work of an *ad hoc* committee comprised of private Members, including himself, from both sides of the House studying the *Access to Information Act*. While noting that the matter might not pertain to privilege, Mr. Bryden argued that he and his colleagues sitting on the committee were prevented from hearing from Government officials and officials from Crown corporations as the Government issued orders for them not to appear before the committee. He further contended that the *ad hoc* committee was set up under "exceptional circumstances", namely, that the committee conduct its study and present a report before a "bureaucratic task force" was expected to do so in the fall, thus requiring the committee to meet during the summer adjournment of the House. Mr. Bryden went on to note that the committee did hold hearings over the summer and prepared a report. He concluded his remarks by suggesting that he was impeded in his ability to carry out his duties as a Member of Parliament, and that as a result, his privileges had been contravened. Geoff Regan (Parliamentary Secretary to the Leader of the Government in the House of Commons) argued that privilege related only to formal proceedings of Parliament, which the *ad hoc* committee was not. Mr. Reagan asserted that Mr. Bryden's privileges could not, therefore, have been breached. He also indicated that contrary to Mr. Bryden's claim, the Government remained willing to have its officials brief the members of the committee in private, instead of in public as Mr. Bryden had insisted upon, and quoted from a letter from Don Boudria (Leader of the Government in the House of Commons) to Mr. Bryden to that effect adding that the need for a briefing to be held in private was to avoid influencing ongoing court cases on access to information.[1]

Resolution: The Speaker ruled immediately that it was not a question of privilege since, although Members do have certain privileges, these do not include the right to call Government officials before an *ad hoc* committee and to insist on answers to questions. He added that, had the Member wished to have a committee of the

House struck, he could have introduced a motion to do so under Private Members' Business, empowering it in the process to send for persons, papers and records. The Speaker concluded that the *ad hoc* group had no powers to compel attendance and it was consequently legitimate for officials to decline to appear before it.

Decision of the Chair

The Speaker: The Chair wants to thank the hon. Parliamentary Secretary to the Government House Leader for his remarks and the hon. Member for Ancaster–Dundas–Flamborough–Aldershot for raising this matter.

I am inclined to say that the matter was raised at the earliest possible time, given the hon. Member deliberately waited until his report was ready so that as it were, his question of privilege had grown into full blossom by the time he brought it to the attention of the House.

Having raised the question and suggested that it was a question of privilege, I have to say that in my view the matter is not a question of privilege.

The Member who raised this issue is an experienced Member. I think he is well aware that Members do have certain privileges but I do not believe that any one of us has the right to call before us a Government official and insist on answers to questions. That is in effect what he is saying because by his own admission in the course of his remarks, he stated that the committee that he was chairing was an *ad hoc* caucus of Members. It clearly was not a committee of this House. Had he wished to have a committee in place, he could have introduced a motion under Private Members' Business to establish a committee for the very purpose of studying the materials and issues that his *ad hoc* group in fact studied.

Had he done so, I have no doubt that the motion establishing the committee would have empowered the committee in accordance with Standing Order 108(1) to send for persons, papers and records. That great power that our committees have would have enabled his committee to summon these officials, whether or not the Government House Leader said they were to appear, because had they failed to appear, the committee could have reported the matter to the House. Of course the House could then have summoned the

individuals to appear at the Bar of the House for chastisement for contempt of Parliament.

An hon. Member: Caning.

The Speaker: An hon. Member suggests caning but that has not been in our lexicon of punishments. However, there is the fact that people can be called to the Bar of the House and chastised for contempt.

Of course the *ad hoc* group had no such powers and so it was perfectly legitimate in my opinion for some to say, "No, you may not appear", and for people to refuse to appear either on instructions or because they themselves chose not to appear, because the *ad hoc* group had no power to compel attendance.

In the circumstances, I am unable to find there was any breach of the hon. Member's privileges. I would urge him in future to look to the other options that are available to him and to all hon. Members in asserting their claims, by going through the proper channel of a parliamentary committee with all the wondrous powers that each of those committees enjoys.

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1. *Debates,* November 1, 2001, pp. 6845-6.

Committees

Committee Staff

Retention of expert advisors: remuneration; role and neutrality

April 23, 2002 *Debates*, pp. 10725-6

Context: On April 15, 2002, Roger Gallaway (Sarnia–Lambton) rose on a question of privilege with regard to two expert advisors hired by the Standing Committee on Canadian Heritage. Mr. Gallaway argued that allowing the Department of Canadian Heritage to provide funding for expert advisors violated the principle of comity by failing to respect the separation that should exist between the House and the executive.[1] This, he claimed, violated his privileges by denying him the services of advisors that were free from the executive in every respect. Furthermore, he argued that quotes in the media by one of the advisors concerning Members of the House and political events, violated the terms of the contract and cast more doubt on the neutrality and objectivity of the policy advice provided.[2] Jim Abbott (Kootenay–Columbia) rose in support of the question of privilege.[3] On April 16, 2002, the Chair of Standing Committee on Canadian Heritage, Clifford Lincoln (Lac-Saint-Louis) maintained that the Committee remained autonomous in making its decision with neither the Minister nor the Department having provided direction to the Committee. In light of this, Mr. Lincoln concluded that Mr. Gallaway's privileges had not been breached.[4] The Speaker took the matter under advisement.

Resolution: The Speaker delivered his ruling on April 23, 2002. Since the Committee agreed to the hiring, fully aware that the advisors were paid by the Department of Canadian Heritage and since the contract was consistent with the provisions of Standing Order 120 permitting committees to retain expert staff, the Speaker had no role to play in the matter. With regard to the comments made by one of the advisors to the media, the Speaker ruled that they were neither unparliamentary nor could they be interpreted as impeding a Member in his or her ability to carry out his or her duties, thus there was no *prima facie* breach of privilege. The Speaker further indicated that should the Committee feel that the public comments made by one of its advisors demonstrated a bias that could impede the advisor's ability to provide impartial advice, the Committee could address the issue directly.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised on Monday, April 15, 2002 by the hon. Member for Sarnia–Lambton concerning the expert advisers hired by the Standing Committee on Canadian Heritage in the course of its study on Canadian broadcasting.

I would like to thank the hon. Member for Sarnia–Lambton for drawing this matter to the attention of the Chair, as well as the hon. Member for Kootenay–Columbia and the hon. Member for Lac-Saint-Louis for their contributions on the question.

In raising this issue, the hon. Member for Sarnia–Lambton identified two points that he felt indicated that his privileges as a Member had been breached. First, the expert advisers hired by the Canadian Heritage Committee are being paid with funds provided by the Department of Canadian Heritage rather than by the House of Commons. In his view, this violates the proper separation that should exist between the House and the executive. The hon. Member further suggested that under these circumstances, it was not possible to regard the advice of these experts as neutral and objective. This impeded his ability to carry out his work as a member of the Canadian Heritage Committee and hence constituted a breach of his privileges.

The second point made by the hon. Member for Sarnia–Lambton involved comments made to the media by one of the expert advisors, Mr. David Taras. The hon. Member pointed out that the contract signed by the Committee's advisors contained a provision restricting their ability to comment publicly on the work of the Committee.

He also alleged that public comments made by Mr. Taras violated the contract with the Committee and, by their political nature, cast further doubt on the neutrality and objectivity of the advice being provided to the Committee. The hon. Member for Sarnia–Lambton regarded this as further evidence that his privileges had been breached, a claim which was supported by the hon. Member for Kootenay–Columbia.

I think that the situation as set out in Members' interventions is quite clear. As the *Minutes of Proceedings* of the Committee indicate, the Committee

as a whole agreed to retain the professional services of these two advisers, first on December 6, 2001 and again later, in its decision to renew the contract for the new fiscal year at its meeting of March 21, 2002. The Committee was fully aware on both these occasions that funds from the Department of Canadian Heritage were to be used to pay the advisers. Since the Committee on Canadian Heritage agreed to the hiring and since the Committee is empowered by Standing Order 120 to retain the services of expert staff, the Chair has no role to play in this situation.

Our practice, as described in *House of Commons Procedure and Practice* at page 804 and as set out in many previous rulings is quite clear: the Chair does not interfere in committee affairs. While members of the Canadian Heritage Committee may have some concerns about the Committee's actions, those concerns ought more appropriately to be raised in the Committee itself.

In the second part of his argument, the hon. Member for Sarnia–Lambton raised the issue of recent comments made in the media by one of the two special advisers. He quoted from the contract made with the adviser in question, which states:

> The Contractor shall not comment in public on the Committee's deliberations relating to the broadcasting study…. However, the foregoing does not prohibit the experts from writing or speaking on broadcasting issues generally, such as would be the case in the normal conduct of their professional duties.

He concluded that the special adviser to the Committee "cannot offer opinion on the political fate of certain Members of this Chamber".

Having reviewed the documentation made available to me, I cannot find that there has been any breach of parliamentary privilege in relation to the comments made to the media. These comments did not contain language that was unparliamentary and could not be construed as interference in the ability of any Member to carry out his or her parliamentary duties.

However, it is true that these comments were of a political nature and did relate to certain Members of this House and to political events. As the hon. Member for Kootenay–Columbia has stated, commentary of that nature

would not be tolerated if it came from any of the staff of the House of Commons or the Library of Parliament. Should members of the Committee believe, as the hon. Member for Sarnia–Lambton says he does, that the comments portray a bias that could impede the contractor's ability to provide impartial advice to the Committee, then the matter should be raised in Committee where the members may resolve the matter.

I thank all hon. Members who contributed to this discussion.

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1. Standing Committee on Canadian Heritage, *Minutes of Proceedings*, March 21, 2002, Meeting No. 46.
2. *Debates*, April 15, 2002, pp. 10395-7.
3. *Debates*, April 15, 2002, pp. 10396-7.
4. *Debates*, April 16, 2002, pp. 10464-6.

Committees

Committee of the Whole House

Appeal of the Chair's ruling

May 27, 2003 *Debates*, pp. 6592-3

Context: On May 27, 2003, during a sitting of the Committee of the Whole to consider, pursuant to Standing Order 81(4)(*a*), the Main Estimates under JUSTICE for 2003-04, Kevin Sorenson (Crowfoot) moved that Vote 1 for the Department of Justice be reduced.[1] After briefly suspending the sitting, the Chair of the Committee of the Whole (Bob Kilger) allowed the motion to go forward for debate despite expressing reservations about whether or not it was in order. Dale Johnston (Wetaskiwin) rose on a point of order calling for the motion to be put to a vote immediately. The Chair allowed debate to begin, whereupon Mr. Johnston again rose to call for a vote. Geoff Regan (Parliamentary Secretary to Leader of the Government in the House of Commons) then rose on a point of order to argue that Standing Order 81(4)(*a*) contained no provision for the Committee of the Whole to vote, but rather was strictly for debating the estimates before it. John Cummins (Delta–South Richmond) appealed the Chair's decision, whereupon, in accordance with the established procedure when such an appeal is made in Committee of the Whole, the Chair left the Table, and reported the incident to the Speaker who had resumed the Chair.[2]

Resolution: The Speaker ruled immediately. Citing Standing Order 101(1) which provided that the Standing Orders of the House were to be observed in Committees of the Whole with the exception of the seconding of motions, the limit on the number of times Members may speak and the length of speeches, and *House of Commons Procedure and Practice,* 2000, which specified that debate must proceed on an amendment once it has been moved, he ruled that the motion moved by Mr. Sorenson was indeed debatable. Accordingly, the Speaker sustained the decision of the Chair of the Committee of the Whole.

Decision of the Chair

The Speaker: I am now prepared to rule on the appeal of the Chair's decision taken earlier this evening in the Committee of the Whole.

The issue before us is whether the motion moved by the hon. Member for Crowfoot is subject to debate when the hon. Member for Delta–South Richmond has asked that the Committee proceed immediately to vote on that motion.

Standing Order 101(1) states:

> The Standing Orders of the House shall be observed in Committees of the Whole so far as may be applicable, except the Standing Orders as to the seconding of motions, limiting the number of times of speaking and the length of speeches.

These are the only exceptions, nor can your Speaker find any provision that would suggest proceeding differently either in the Special Order adopted earlier today to govern this debate or in the terms of Standing Order 81(4) under which this debate is being held.

Similarly, *Marleau and Montpetit* at page 779 states clearly:

> When an amendment is moved, debate must proceed on the amendment until it is disposed of.

In this case, the Committee of the Whole is meeting pursuant to Standing Order 81(4)(*a*) to consider the Main Estimates under JUSTICE. The hon. Member for Crowfoot has proposed a motion to reduce Vote 1 for the Department of Justice by $100 million. That motion is indeed debatable.

Accordingly, the ruling of the Chair of the Committee of the Whole is sustained. I do now leave the Chair so the debate in Committee of the Whole may resume.

Postscript: After the Speaker delivered his ruling, Mr. Cummins rose on a point of order to ask for clarification. The Speaker responded by explaining that the situation in Committees of the Whole is different from that in Standing Committees in which a vote is taken to decide an appeal to the ruling of the Chair. In contrast, in Committees of the Whole, an appeal to the ruling of the Chair is made to the Speaker. Referring to *House of Commons Procedure and Practice,* 2000, he explained that: "As with all Speaker's rulings, after it has been delivered by the Speaker, there is no appeal and no discussion is allowed." He continued to say that "since the

Committee had not risen and reported progress, as soon as the appeal proceedings are completed, the Speaker leaves the Chair, the Mace is removed from the Table and the Committee of the Whole resumes its deliberations."[3]

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1. *Debates*, May 27, 2003, pp. 6590-3.
2. *Debates*, May 27, 2003, p. 6592.
3. *Debates*, May 27, 2003, p. 6593.

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Chapter 10 — Private Members' Business

Introduction

Private Members' Business consists of the consideration of bills and motions introduced in the House of Commons by Members of Parliament other than the Speaker, the Deputy Speaker, Ministers of the Crown and Parliamentary Secretaries. One hour of every sitting day is devoted to Private Members' Business.

The current rules relating to the conduct of Private Members' Business developed largely from recommendations of the Special Committee on the Reform of the House of Commons (the "McGrath Committee"), established in December 1984. Further modifications were implemented throughout the 1980s, 1990s and 2000s in a continuing effort to provide equal opportunities for Members to have their items considered.

Several reforms of Private Members' Business occurred during Mr. Speaker Milliken's tenure, with important implications for the kinds of rulings he was called upon to make. In February 2003, the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons presented two reports on Private Members' Business (its First and Third), which were concurred in by the House. These reports proposed a number of changes to existing practice as well as amendments to the Standing Orders. Under the proposed new rules, every private Member would have an opportunity to have a bill or motion considered by the House of Commons during the life of a Parliament. Whereas previously most items of Private Members' Business did not come to a vote, all items would now be votable by default, although criteria and procedures to make some items non-votable were set out in the proposed Standing Orders. On March 17, 2003, the new rules came into effect on a provisional basis, and were made permanent as of June 30, 2005, following the concurrence in the Thirty-Seventh Report of the Standing Committee on Procedure and House Affairs on May 11, 2005.

Of Mr. Speaker Milliken's rulings on Private Members' Business, the majority dealt with three issues: financial restrictions; the prohibition of similar items; and questions of votability.

Private Members' bills are subject to restrictions arising from the financial prerogatives of the Crown. Any bill containing provisions for the spending of funds must be accompanied by a recommendation from the Governor General which only a Minister of the Crown may obtain. In 1994, the Standing Orders were amended to permit private Members to introduce bills requiring royal recommendations and many Members now take advantage of this provision in the rules. However, no such bill may come to a vote at third reading unless a royal recommendation has been produced. The power to impose or increase a tax rests solely with the Government and any legislation to do so must be preceded by a ways and means motion which only a Minister may provide. Therefore a private Member cannot introduce bills which impose taxes. The Standing Order amendments of 2003 making all items of Private Members' Business votable required Mr. Speaker Milliken to rule on the financial implications of private Members' bills more often than his predecessors.

If a Member submits notice of a bill or motion which is judged by the Speaker to be substantially the same as another item of Private Members' Business already submitted, the Speaker has the discretionary power to refuse the most recent notice. This is intended to prevent a number of similar items being placed in the Order of Precedence. For two or more items to be substantially the same, they must have the same purpose and they have to achieve that purpose by the same means. Thus, there could be several bills addressing the same subject, but if their approaches to the issue are different, the Chair could deem them to be sufficiently distinct that they may both proceed. On a number of occasions Mr. Speaker Milliken was required to rule on what constitutes similar or identical items.

Mr. Speaker Milliken's rulings touching on the votability of items of Private Members' Business sought to protect the rights of Members whose items had been designated non-votable by ensuring that they had ample time to pursue all options under the Standing Orders; that is, to accept the decision of the Committee; to appeal its decision; or to substitute another item. In more than one instance, the Speaker ordered that an item be dropped to the bottom of the Order of Precedence pending a report of the Committee on its votable status. In another decision, he declined to find a Member's inability to ascertain the reasons for the Committee's denial of votable status to be a breach of privilege.

Mr. Speaker Milliken's numerous precedent-setting rulings with respect to Private Members' Business were a necessary response to the introduction of sweeping changes to the manner in which it was conducted during his tenure as Speaker. Collectively, they are an important part of his procedural legacy.

Private Members' Business

Financial Limitation

Business of Ways and Means: infringement on the financial initiative of the Crown

March 11, 2004 *Debates*, p. 1366

Context: On February 26, 2004, Roger Gallaway (Parliamentary Secretary to the Leader of the Government in the House of Commons) rose on a point of order with respect to Bill C-472, *An Act to amend the Income Tax Act (deductibility of fines)*, standing in the name of Pat Martin (Winnipeg Centre), which had been introduced on February 5, 2003.[1] Mr. Gallaway argued that the purpose of the Bill was to remove a deduction from the *Income Tax Act*, thereby decreasing or eliminating an exemption from taxation and increasing revenue to the Consolidated Revenue Fund. This, he alleged, would constitute a "charge upon the people" and would therefore require a ways and means motion. For this reason, he suggested the Bill be ruled out of order. The Speaker took the matter under advisement.[2]

Resolution: On March 11, 2004, the Speaker delivered his ruling. He declared that the Bill eliminated a deduction with the net result of increasing the level of taxation. As the Bill had not been preceded by a ways and means motion, he ruled that it was improperly before the House and declared the first reading proceedings null and void. The Order for second reading was discharged and the Bill was dropped from the *Order Paper*.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised on February 26, 2004, by the hon. Parliamentary Secretary to the Leader of the Government of the House of Commons concerning Bill C-472, *An Act to amend the Income Tax Act (deductibility of fines)*, introduced by the hon. Member for Winnipeg Centre. I would like to thank the Parliamentary Secretary to the Leader of the Government in the House of Commons for having raised this matter.

The Parliamentary Secretary pointed out that Bill C-472 proposes an amendment to the *Income Tax Act* that would have the effect of eliminating from the Act an existing deduction from taxation for fines or penalties imposed by law. The net result of the elimination of this exemption would be an increase in the level of taxation for affected taxpayers.

As stated in a ruling on October 24, 2002, dealing with an earlier version of this Bill introduced by the hon. Member for Winnipeg Centre, a bill of this nature can only be brought before the House if it is preceded by the adoption of a motion of ways and means.[3]

As *House of Commons Procedure and Practice* states at pages 758 and 759:

> The House must first adopt a Ways and Means motion before a bill which imposes a tax or other charge on the taxpayer can be introduced.
>
> … Before taxation legislation can be read a first time, a notice of a Ways and Means motion must first be tabled in the House by a Minister of the Crown—

Furthermore, it goes on, at page 898, to state:

> With respect to the raising of revenue, a private Member cannot introduce bills which impose taxes. The power to initiate taxation rests solely with the government and any legislation which seeks an increase in taxation must be preceded by a Ways and Means motion.

Bill C-472, introduced on February 5, 2004, by the hon. Member for Winnipeg Centre, seeks to eliminate an existing tax deduction. If adopted, the Bill would result in an increase of the tax payable by a certain group of taxpayers. Our practice in these matters is clear.

Since the Bill has not been preceded by the necessary ways and means motion, the proceedings related to its introduction and first reading that took place on February 5, 2004, are null and void. The Chair therefore rules that the Order for second reading of the Bill be discharged and the Bill withdrawn from the *Order Paper*.

I thank the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons for bringing this matter to the attention of the Chair.

(Order discharged and Bill C-472 withdrawn)

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1. *Debates*, February 5, 2004, p. 171.
2. *Debates*, February 26, 2004, p. 1077.
3. *Debates*, October 24, 2002, p. 889.

Private Members' Business

Financial Limitation

Establishment of first Order of Precedence: Speaker's statement regarding royal recommendation

November 18, 2004 *Debates*, pp. 1553-4

Context: On October 29, 2004, the House concurred in the Twelfth Report of the Standing Committee on Procedure and House Affairs. This had the effect of extending, until the last sitting day of June 2005, the provisional Standing Orders relating to Private Members' Business, adopted by the House on March 17, 2003, and subsequently amended on February 16, 2004, and October 20, 2004. In addition, Standing Orders 68(4)(*b*) and 68(7)(*b*) (whereby a private Member and not only a Minister of the Crown could present a motion to have a committee prepare and bring in a bill) were to remain suspended for the same period.[1]

On November 18, 2004, to mark the establishment of the first complete Order of Precedence in the Thirty-Eighth Parliament, the Speaker made a statement with respect to the provisional Standing Orders on Private Members' Business. He explained that all items of Private Members' Business would be votable unless specifically designated as non-votable. The Speaker also reminded Members that any bill authorizing the expenditure of public funds required a royal recommendation, which can only be transmitted to the House by a Minister of the Crown, before the question could be put for third reading. He added that bills proposing to impose or increase taxes require ways and means motions and may not be introduced by private Members. Thus, bills requiring ways and means motions would be identified early and would not be placed on the Order of Precedence.

Statement of the Chair

The Speaker: I wish to make a statement to the House regarding Private Members' Business.

Members will recall that on October 29, 2004, the House concurred in the Twelfth Report of the Standing Committee on Procedure and House Affairs concerning the provisional Standing Orders on Private Members' Business.

The effect of that Report is to continue the provisional Standing Orders concerning Private Members' Business until the last sitting day in June 2005.

The complete Order of Precedence for Private Members' Business was published this morning in the *Order Paper*.

The provisional Standing Orders provide that Private Members' Business will not operate on a sessional basis. That is to say that proceedings on Private Members' Business originating in the House will not expire on prorogation, and that the Order of Precedence will continue from one session to the next.

It is therefore very important that Members be clear on the workings of the provisional Standing Orders, as they may not have a second opportunity to present an item even should the House be prorogued. Members should also note that unless specifically designated as non-votable, all Private Members' Business items will be votable.

I would like in particular to draw to the attention of Members the possibility that a proposed private Members' bill may require a royal recommendation or a ways and means motion.

First of all, I wish to address the royal recommendation. Any bill which authorizes the spending of public funds or effects an appropriation of public funds must be accompanied by a message from the Governor General, recommending the expenditure to the House. This message, known formally as the royal recommendation, can only be transmitted to the House by a Minister of the Crown.

House of Commons Procedure and Practice, page 710 states:

> In 1994, the Standing Orders were again amended to remove the requirement that a royal recommendation had to be provided to the House before a bill could be introduced. The royal recommendation can now be provided after the bill has been introduced in the House, as long as it is done before the bill is read a third time and passed… The royal recommendation accompanying a bill must still be printed in the *Notice Paper*, printed in or annexed to the bill and recorded in the *Journals*.

With respect to private Members' bills, it is stated on pages 711 and 712:

> —since the rule change of 1994, private Members' bills involving the spending of public money have been allowed to be introduced and to proceed through the legislative process, on the assumption that a royal recommendation would be submitted by a Minister of the Crown before the bill was to be read a third time and passed. If a royal recommendation were not produced by the time the House was ready to decide on the motion for third reading of the bill, the Speaker would have to stop the proceedings and rule the bill out of order. The Speaker has the duty and responsibility to ensure that the Standing Orders on the royal recommendation as well as the constitutional requirements are upheld.

Where it seems likely that a bill may need a royal recommendation, the Member who has requested to have it drafted will be informed of that fact by the Legislative Counsel responsible for drafting the bill. Members may wish to consult with Legislative Counsel or with Private Members' Business Office to obtain further advice with respect to individual cases.

It remains my duty as Speaker to make the final decision concerning the need for a royal recommendation. I remain open to hear the submissions of hon. Members from both sides of the House who may wish to assist the Chair in reaching a decision on particular bills.

As the House has not yet begun to debate items of Private Members' Business, I felt that it would be of assistance to alert hon. Members to the important impact that the requirement for a royal recommendation may have on their bills. The Standing Orders leave no doubt that the House cannot be asked to decide on the motion for the third reading of a bill requiring the expenditure of public funds unless proper notice of a royal recommendation has been given. Should Members have any concerns about the provisions of individual bills in this regard, it would be prudent for them to raise such concerns well before the third reading stage is reached.

With regard to ways and means, any bill which imposes or increases a tax on the public must be preceded by the adoption of a motion of ways and

means. Such a motion can only be proposed by a Minister of the Crown. As *House of Commons Procedure and Practice* states at pages 758 and 759:

> The House must first adopt a Ways and Means motion before a bill which imposes a tax or other charge on the taxpayer can be introduced… Before taxation legislation can be read a first time, a notice of a Ways and Means motion must first be tabled in the House by a Minister of the Crown—

Furthermore, it goes on, at page 898, to state:

> With respect to the raising of revenue, a private Member cannot introduce bills which impose taxes. The power to initiate taxation rests solely with the government and any legislation which seeks an increase in taxation must be preceded by a Ways and Means motion.

A Member who has requested to have a bill drafted that proposes the imposition or increase of taxation will be so advised by the Legislative Counsel responsible for drafting the bill. Members may wish to consult with Legislative Counsel or with [the][2] Private Members' Business Office to obtain further advice with respect to individual cases.

The Standing Orders are more restrictive with regard to ways and means bills. The Speaker will identify such bills at an early stage to prevent them from being placed on the Order of Precedence.

I have made this statement as part of my responsibility to ensure the orderly conduct of Private Members' Business. If Members should have specific questions on a particular item, I would invite them to contact the Private Members' Business Office.

I would like to inform the House that under the provisions of Standing Order 88, at least two weeks shall elapse between the first and second reading of private Members' public bills.

The second reading of Bill C-333, standing as the first item on the Order of Precedence in the name of the hon. Member for Durham, could only have been considered on or after Monday, November 29, 2004.

The debate at second reading of the Bill can therefore not take place as scheduled tomorrow. Accordingly, I am directing the Table Officers to drop that item of business to the bottom of the Order of Precedence in the *Order Paper*.

Private Members' Hour will thus be cancelled and the House will proceed with the business before it prior to Private Members' Hour tomorrow.

Postscript: In its Twelfth Report, presented to the House and concurred in on October 29, 2004,[3] the Standing Committee on Procedure and House Affairs charged the Subcommittee on Private Members' Business with reviewing the provisional Standing Orders. The Subcommittee reported on its review in its Second Report, adopted by the Committee on May 10, 2005.[4] It observed that there appeared to be a significant degree of satisfaction with the provisional Standing Orders, that no major problems had been identified, and that they had redressed many of the concerns and complaints that had been previously expressed by Members. The Subcommittee noted that the "vast majority" of Members were in favour of the new regime: 48% of the 103 Members who responded to a survey on the new regime felt that the changes should be permanently adopted, and another 27% wished to see them continue, albeit still provisionally. The Subcommittee recommended, therefore, the permanent adoption of the rules. The Standing Committee agreed with the Subcommittee's recommendation and reported it to the House, which concurred in the Committee's Thirty-Seventh Report on May 11, 2005.[5] Accordingly, the provisional Standing Orders were adopted as permanent, effective June 30, 2005.

Editor's Note: See similar statements to mark the publication of the first complete Order of Precedence of the Thirty-Ninth Parliament on May 31, 2006, and of the Fortieth Parliament on February 25, 2009.

1. *Debates*, October 29, 2004, pp. 959-60.
2. The word "the" is missing from the published *Debates*.
3. Twelfth Report of the Standing Committee on Procedure and House Affairs, presented to the House and concurred in on October 29, 2004 (*Journals*, pp. 170-1).
4. Standing Committee on Procedure and House Affairs, *Minutes of Proceedings*, May 10, 2005, Meeting No. 8.
5. *Journals*, May 11, 2005, pp. 738-9.

Private Members' Business

Financial Limitation

Royal Recommendations: not required for a bill that negotiates an agreement for redress

March 21, 2005 *Debates*, pp. 4372-3

Context: On December 7, 2004, when the Order for second reading of Bill C-331, *Ukrainian Canadian Restitution Act*, standing in the name of Inky Mark (Dauphin–Swan River–Marquette), was called for debate, the Acting Speaker (Jean Augustine) stated that at first glance the Bill appeared to require a royal recommendation, but invited the sponsor and other Members to make submissions to the Chair.[1] On February 22, 2005, Mr. Mark rose on a point of order to address the Chair's concerns over the Bill. In speaking to the point of order, Dominic LeBlanc (Parliamentary Secretary to the Leader of the Government in the House of Commons) drew the attention of the Chair to the Government's concerns with respect to Bill C-333, *Chinese Canadian Recognition and Redress Act*, which he argued also required a royal recommendation. The Speaker took the matter under advisement.[2]

Resolution: On March 21, 2005, the Speaker delivered his ruling. He declared that in the case of Bill C-331, clause 2(*c*) mandated the establishment of a permanent museum and that public funds would be needed for this. Accordingly, he ruled that the Bill would not be put to a vote at third reading unless a royal recommendation was first brought forward by a Minister. In the meantime, consideration of the Bill could continue in the House and in committee. In the case of Bill C-333, clause 4 provided for negotiations with the Chinese community before any payment could be made but did not directly authorize the spending of public funds. Explaining that the adoption of a bill either effects an appropriation of public funds or it does not do so, and that a royal recommendation is not required in respect of actions that may or may not ever happen, the Speaker concluded that a royal recommendation was not required for a bill that merely negotiates an agreement for redress. The Speaker ruled accordingly that a royal recommendation was not required in respect of clause 3 of Bill-333 and that it could proceed to a vote at third reading.

Decision of the Chair

The Speaker: I am now ready to rule with regard to issues affecting two private Members' bills, Bill C-331, the *Ukrainian Canadian Restitution Act*, and Bill C-333, the *Chinese Canadian Recognition and Redress Act*.

Last December 7 when debate commenced on second reading of Bill C-331, the *Ukrainian Canadian Restitution Act*, I expressed some concern about provisions of this Bill which might infringe on the financial initiative of the Crown. At that time I asked for submissions on this matter from interested Members before the Bill was next debated.

On February 22, the Member for Dauphin–Swan River–Marquette, the Parliamentary Secretary to the Government House Leader and the Member for Glengarry–Prescott–Russell made submissions on the requirements for a royal recommendation for this Bill. The Parliamentary Secretary also made a submission of why a royal recommendation was required for Bill C-333, the *Chinese Canadian Recognition and Redress Act* standing in the name of the Member for Durham. The Chair wishes to thank these Members for having addressed this matter thoroughly and providing the Chair with sufficient time to consider their arguments.

The central issue which is being addressed at this time is whether Bill C-331 in its present form requires a royal recommendation. If this is the case, the Bill in its current form will not be put to a vote at third reading unless a royal recommendation is first brought forward by a Minister of the Crown. If the Bill is amended at committee or report stage, the need for a royal recommendation may be removed and a vote may be requested.

Honourable Members may recall the ruling given on February 24, 2005 with respect to the royal recommendation and Bill C-23, *An Act to establish the Department of Human Resources and Skills Development*. The issue which was addressed at that time is similar to the one before us today, specifically, is there an infringement on the financial initiative of the Crown? The financial initiative of the Crown, a well-established principle of our parliamentary system of Government, reserves to the Government the right to propose the spending of public funds for a particular purpose. The initiative of the Crown is assured by the constitutional requirement that any such proposal to

the House must be accompanied by a royal recommendation as required by section 54 of the *Constitution Act, 1867* and Standing Order 79 of this House.

Does Bill C-331 require a royal recommendation; that is, does Bill C-331 contain a proposal for the spending of public funds that would constitute an appropriation or an equivalent authorization to spend? In my view it does. Clause 2(*c*) states that the Minister of Canadian Heritage shall:

> (*c*) establish a permanent museum in Banff National Park, at the site of the concentration camp that was established there,—

It is clear that it mandates the establishment of a permanent museum. Therefore, in my view, clause 2(*c*) constitutes an appropriation within the meaning of section 54 of the *Constitution Act, 1867* and Standing Order 79. Alternatively, it constitutes an authorization to spend the necessary public funds and as such is the equivalent of an appropriation under section 54 or Standing Order 79.

The hon. Member has advised the House that the new museum would be housed in an existing building and restructuring costs would be paid from funds obtained from the negotiated restitution. However, this is not indicated in the Bill, and the Chair can only rely on the text of the Bill in these matters.

I appreciate the hon. Member sharing with the House what is contemplated by this Bill. No doubt the hon. Member and others supporting this initiative have been mindful of the need to minimize the cost of this project to the public purse, but costs there nonetheless would be, and for a new and distinct purpose: a Ukrainian Canadian museum at Banff, Alberta. I must assume that these costs would be met by public funds from the Consolidated Revenue Fund. The mandatory language allows me no other interpretation of clause 2(*c*).

Clause 3 has been challenged by the hon. Parliamentary Secretary to the Government House Leader who contends that it also requires a royal recommendation. Clause 3 states, in part:

> The Minister of Canadian Heritage shall—negotiate—a suitable payment in restitution for the confiscation of property and other assets from Ukrainian Canadians.

The House will recall that in an initial ruling relating to Bill C-331 made on December 7, 2004, it was determined that this clause did not require a royal recommendation. The hon. Parliamentary Secretary now argues that the notion of a restitution payment created a positive obligation, in his words, to spend funds. I have now given the matter further consideration and I find no requirement for a royal recommendation.

If the term "positive obligation" means that the Government is given a mandate to spend public funds, then I would expect to see legislative text that clearly indicates an intention to expend those funds.

This Bill provides for a negotiation with the Ukrainian community before any payment can be made, implying that no restitution amount may ever be determined. Accordingly, it cannot be said that this Bill upon enactment would effect an appropriation of public funds. At the very least, a bill effecting an appropriation of public funds or an equivalent authorization to spend public funds does so immediately upon enactment.

Once Parliament approves a bill that requires a royal recommendation, there should be nothing further required to make the appropriation. To subject an appropriation to a subsequent action beyond the control of Parliament is in effect for Parliament to delegate its powers and responsibilities in respect of supply to someone else. This Parliament cannot do.

When Parliament adopts a bill, it is either effecting an appropriation of public funds or it is not doing so. A royal recommendation is not required in respect of actions that may or may not ever happen and so is not required in respect of clause 3 of the Bill.

Now let us turn to Bill C-333, the *Chinese Canadian Recognition and Redress Act* sponsored by the hon. Member for Durham.

In this case as well the hon. Parliamentary Secretary argued that the Bill required a royal recommendation because it would impose a positive obligation upon the Government to spend public funds once the amount of redress was negotiated and formed part of an agreement between the Government of Canada and the National Congress of Chinese Canadians.

The hon. Parliamentary Secretary drew attention to Clause 4 that reads:

> The Government of Canada shall negotiate an agreement for redress with the National Congress of Chinese Canadians, to be proposed to Parliament for approval.

He argued that the negotiated agreement provided for did not detract from the positive obligation imposed upon the Government by the Bill. The Chair does not agree with that position.

For the reasons I just gave in respect to Bill C-331 and its restitution clause, I cannot accept that Bill C-333 constitutes an appropriation within the meaning of the term in section 54 of the *Constitution Act, 1867*, or Standing Order 79. Nor do I consider that it constitutes an equivalent authorization to spend public funds under these authorities.

Accordingly, to summarize, in the case of Bill C-331, the *Ukrainian Canadian Restitution Act* standing in the name of the hon. Member for Dauphin–Swan River–Marquette, a royal recommendation will be required before it can be put to a vote at third reading in its current form. In the meantime, consideration of this Bill can continue in the House and in committee.

With respect to Bill C-333, the *Chinese Canadian Recognition and Redress Act* standing in the name of the hon. Member for Durham, a royal recommendation is not required to negotiate an agreement for redress. This Bill in its current form can proceed to a vote at third reading.

I wish to thank the House for its patience in allowing me to review the requirements for a royal recommendation.

As it is the responsibility of the Chair to ensure that Private Members' Business is conducted in an orderly manner, the Chair will continue to bring to the attention of the House those private Members' bills on the Order of Precedence which may require a royal recommendation.

If the Chair does not identify a specific bill having need of a royal recommendation, it would still be open to any Member to raise his or her

concerns at an early opportunity. In this way the House can proceed in an informed manner in its consideration of Private Members' Business.

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1. *Debates*, December 7, 2004, p. 2412.
2. *Debates*, February 22, 2005, pp. 3834-7.

Private Members' Business

Financial Limitation

Senate bill: infringement on the financial initiative of the Crown

June 20, 2005 *Debates*, p. 7397

Context: On May 10, 2005, Karen Redman (Chief Government Whip) rose on a point of order with respect to the need for a royal recommendation to accompany Bill S-14, *An Act to protect heritage lighthouses*. She argued that provisions of the Bill would require the owners of such lighthouses to maintain them in a reasonable state of repair and in a manner in keeping with their heritage character. As most lighthouses in Canada are the property of the Crown, over time this requirement would necessarily involve significant expenditures of funds by the Government. Noting that the Speaker had ruled that the Bill's predecessor in the previous Parliament (Bill S-7) did not require a royal recommendation, as it did not impose an obligation to expend public funds until heritage lighthouses were so designated by the Governor in Council, she argued that the timing of an expenditure had not been a factor in previous rulings. Thus, she held, if a bill involved a new and distinct cost to the Crown, it did not matter if the cost was incurred immediately upon assent to the Bill or at some future point. In his intervention, Gerald Keddy (South Shore–St. Margaret's) argued that the lighthouses were owned by the federal Government which was already spending money for their upkeep. Since the lighthouses were being given over to private ownership, and future owners would be asked to keep their exteriors in a condition consistent with the era in which they were built, less federal money would be expended. After interventions from other Members, the Speaker took the matter under consideration.[1]

Resolution: On June 20, 2005, the Speaker delivered his ruling. Making reference to his ruling on the predecessor of Bill S-14, Bill S-7,[2] he stated that, in this case, while the Bill might at some point in the future require an expenditure of public funds, those expenditures would fall within departmental operational costs to be approved by Parliament through an appropriation act. He concluded, therefore, that Bill S-14 did not require a royal recommendation.

Decision of the Chair

The Speaker: Before we resume debate on second reading of Bill S-14, *An Act to protect Heritage Lighthouses*, I would like to deliver a ruling on the point of order raised by the Chief Government Whip on May 10 with regard to the requirement for a royal recommendation for this Bill.

I want to take this opportunity to thank the hon. Chief Government Whip for having raised this matter at the commencement of debate at second reading. This is the most appropriate time to raise such concerns as it permits the Chair to return to the House with a decision before detailed consideration of the Bill is taken up in committee.

The Chair also wishes to thank the hon. Members for South Shore–St. Margaret's, Wellington–Halton Hills, and Halifax for their submissions on this matter.

Bill S-14 proposes a mechanism to designate and protect heritage lighthouses as well as to require that they be reasonably maintained. In making her presentation, the Chief Government Whip argued that clause 17 of the Bill appeared to involve the expenditure of significant funds by Parks Canada and the Department of Fisheries and Oceans. The clause reads as follows:

> The owner of a heritage lighthouse shall maintain it in a reasonable state of repair and in a manner that is in keeping with its heritage character.

She also referred to a ruling on this Bill's predecessor, Bill S-7, delivered on October 29, 2003, and argued:

> This ruling seemed to focus on the fact that the Bill did not immediately impose an obligation to expend public funds… To my knowledge, the timing of an expenditure has not been a factor in previous rulings. If a bill involves a new and distinct cost to the Crown, it surely does not matter if the cost is incurred immediately upon assent of the bill or at some future point.

In 2003, the Chair was responding to a similar point of order raised by the hon. Member for Kootenay–Columbia and the then Government

House Leader, the hon. Member for Glengarry–Prescott–Russell. They also asked the Chair to look at clause 17, asking whether it involved spending. In my reply, I stated:

> Both the hon. Member for Kootenay–Columbia and the Government House Leader are in agreement that the Bill does not immediately require the expenditure of public funds. Any funds that may be required to comply with clause 17 of the Bill will be required of the owners of lighthouses only once those lighthouses have been designated as heritage lighthouses… As there is no obligation for public expenditure created by the passage of Bill S-7, there is no need for a royal recommendation.

The Chair was referring to the fact that this Bill, of and by itself, does not create an authorization for new spending for a distinct purpose. For example, the Bill does not create a new agency to protect heritage lighthouses nor does it set up a program for funding the maintenance of lighthouses. This Bill simply provides a mechanism for designating heritage lighthouses and requiring that they be reasonably maintained. These provisions do not authorize new spending for a distinct purpose.

The Chair acknowledges that at some point in the future when heritage lighthouses are designated, there may be an expenditure of public funds. However, I would characterize those expenditures as falling within departmental operational costs, for which an appropriation would have been obtained in the usual manner. From year to year, such expenditures would vary depending on the condition and number of heritage lighthouse structures and on the effects of weather. Such operational expenditures are covered through the annual appropriation act that Parliament considers and approves.

Therefore, after listening to the submissions of hon. Members and after reviewing my previous ruling and the provisions of this Bill, I would conclude that Bill S-14 does not require a royal recommendation.

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1. *Debates*, May 10, 2005, pp. 5909-10.
2. *Debates*, October 29, 2003, pp. 8899-8900.

Private Members' Business

Financial Limitation

Establishment of first Order of Precedence: Speaker's statement regarding royal recommendation

May 31, 2006 *Debates*, pp. 1777-9

Context: To mark the publication of the first complete Order of Precedence for the Consideration of Private Members' Business of the Thirty-Ninth Parliament, the Speaker made a statement regarding the rules governing Private Members' Business. He noted that the rules governing Private Members' Business, adopted provisionally by the House in 2003, had now become permanent. He reminded Members that, while the new rules accorded more opportunities for private Members, certain constitutional procedural realities limited the Chair and Members with regard to legislation. The Speaker focussed the remainder of his statement on the requirement that any bill "authorizing or necessitating the expenditure of public funds" must be accompanied by a royal recommendation prior to the conclusion of third reading.

Statement of the Chair

The Speaker: With the indulgence of the House, since we are about to take up Private Members' Business for the first time in this session later this afternoon, and indeed in this Parliament, I wish to make a statement regarding the management of such business, particularly with regard to how it has evolved over the past few years.

In March 2003, the House adopted provisionally a series of new procedures for the conduct of Private Members' Business. I need not go into all the details here except to say that one of the main principles of this reform was that, over the course of a Parliament, each eligible Member would have the opportunity to have an item debated and voted upon. These rules have since been made permanent. While it can be argued that such a system creates more opportunities for private Members, it is important to note that such possibilities are not limitless. Certain constitutional procedural realities constrain the Speaker and Members insofar as legislation is concerned.

At the beginning of the last Parliament, on November 18, 2004, I reminded all hon. Members about the new procedures governing Private Members' Business and the responsibilities of the Chair in the management of this process. One procedural principle that I underscored in that statement, and in others over the course of the Thirty-Eight Parliament, concerned the possibility that certain private Member's bills may require a royal recommendation.

While it may seem that this preoccupation of the Chair is new, in fact it is grounded in constitutional principles found in the *Constitution Act, 1867*. The language of section 54 of that Act is echoed in Standing Order 79(1), which reads:

> This House shall not adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to the House by a message from the Governor General in the session in which such vote, resolution, address or bill is proposed.

Any bill which authorizes the spending of public funds or effects an appropriation of public funds must be accompanied by a message from the Governor General recommending the expenditure to the House. This message, known formally as the royal recommendation, can only be transmitted to the House by a Minister of the Crown.

This provision protects a fundamental element of responsible Government. While all spending must be authorized by Parliament, only the Crown, that is to say the Government, may initiate requests for funds.

The Government is subsequently held accountable for the spending of such funds.

Recent changes in House procedure have resulted in more attention being paid to the royal recommendation. Until a few years ago, a private Member could not even introduce a bill which involved spending provisions. Since 1994, such bills may be introduced and considered right up until third reading, on the assumption that a royal recommendation would be provided by a Minister. If none is produced by the conclusion of the third reading stage, the Speaker is required to stop proceedings and rule the bill out of order.

The reforms adopted in 2003 have resulted in more private Members' bills being votable, thereby increasing the number of bills with the potential to reach the third reading stage. In addition, as Members have only one opportunity to sponsor an item over the course of a Parliament, the Chair wishes to provide Members with ample opportunity to address possible procedural issues in relation to their bills. For these reasons, a number of new practices have been instituted.

Where it seems likely that a bill may need a royal recommendation, the Member who has requested to have it drafted will be informed of that fact by the Legislative Counsel responsible for drafting the bill. A Table Officer will also send a letter to advise the Member that the bill may require a royal recommendation.

Should the Member decide to proceed with the bill and select it for inclusion in the Order of Precedence, then, at the beginning of the second reading debate, the Speaker will draw to the attention of the House concerns regarding the royal recommendation. Members may then make submissions regarding the royal recommendation and, if necessary, the Chair will return with a definitive ruling later in the legislative process.

As is stated in *House of Commons Procedure and Practice* at page 712,

> The Speaker has the duty and responsibility to ensure that the Standing Orders on the royal recommendation as well as the constitutional requirements are upheld. There is no provision under the rules of financial procedure which would permit the Speaker to leave it to the House to decide or to allow the House to do so by unanimous consent.

There are a number of bills on the Order of Precedence which cause the Chair some concern. At first glance, certain provisions of these bills raise questions about the need for a royal recommendation.

These bills are as follows: Bill C-292, standing in the name of the Rt. Hon. Member for LaSalle–Émard; Bill C-257, standing in the name of the hon. Member for Gatineau; Bill C-293, standing in the name of the hon. Member for Scarborough–Guildwood; Bill C-286, standing in the name

of the hon. Member for Lévis–Bellechasse; Bill C-284, standing in the name of the hon. Member for Halifax West; Bill C-278, standing in the name of the hon. Member for Sydney–Victoria; Bill C-269, standing in the name of the hon. Member for Laurentides–Labelle; Bill C-295, standing in the name of the hon. Member for Vancouver Island North; Bill C-303, standing in the name of the hon. Member for Victoria; and Bill C-279, standing in the name of the hon. Member for Burlington.

While these Bills cause me concern, I am not prepared at this point to make a definitive ruling on them. As always, the Chair remains open-minded on these questions. If Members wish to present arguments as to why they feel these Bills do or do not require a royal recommendation, I certainly would be prepared to hear them. I would then return to the House at the appropriate time with a final decision.

In closing, let me say that while I have no doubt that it is my responsibility as Speaker to uphold the requirements of the Standing Orders and exceptionally, in cases such as these, the Constitution, the duty of reviewing private Members' bills for spending provisions is an increasingly onerous one. For this reason, I would welcome any suggestions from the House, House Leaders or, indeed, from the Standing Committee on Procedure and House Affairs, on how to improve our process in relation to this aspect of the management of Private Members' Business.

I thank all hon. Members for their attention.

Postscript: Immediately following this statement, Réal Ménard (Hochelaga), asked for more detailed criteria to determine the need for royal recommendation. In response, the Speaker made the following additional remarks:

The Speaker: It would certainly be a pleasure for the Speaker to deliver another statement to the House on this matter, but the hon. Member knows full well that there is a list of elements of this kind in *Marleau and Montpetit*, which I quoted in my ruling today. He can consult this book and he will have many opportunities to consult people who prepare bills for presentation in the House because he is well aware of the rules on this. The hon. Member could be advised of the problems with his Bill or the wording therein that might cause some problems with the Chair later.

I can certainly consider the idea of making a presentation, but there is truly only one principle and I quoted it in my ruling. I have it here in English; I am referring to Standing Order 79(1), which reads as follows:

> This House shall not adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to the House by a message from the Governor General in the session in which such vote, resolution, address or bill is proposed.

I think that is the important point. Perhaps we could create a list, but the Standing Orders are quite clear to me. It is simply a question of determining whether a bill or motion proposes spending any money and, if so, a royal recommendation is needed before passing it in the House.

Editor's Note: See similar statements to mark the publication of the first complete Order of Precedence of the Thirty-Eighth Parliament on November 18, 2004, and of the Fortieth Parliament on February 25, 2009.

Private Members' Business

Financial Limitation

Business of Ways and Means: motion not necessary for a tax deferral

November 1, 2006 *Debates*, p. 4540

Context: On June 21, 2006, Rob Nicholson (Leader of the Government in the House of Commons and Minister for Democratic Reform) rose on a point of order regarding Bill C-253, *An Act to amend the Income Tax Act (deductibility of RESP contributions)*, standing in the name of Dan McTeague (Pickering–Scarborough East). The Government House Leader argued that while the intent of the Bill was to alleviate the tax burden for individuals who contributed to registered education savings plans, Bill C-253 contained specific provisions that would effectively increase the amount of tax payable by the taxpayer. He concluded that, since it had not been preceded by a ways and means motion, Bill C-253 was improperly before the House. The Government House Leader asked that the Bill be stricken from the *Order Paper*.[1]

Resolution: On November 1, 2006, the Speaker delivered his ruling. He declared that, although Bill C-253 could have the effect of increasing the tax payable by given individuals by making certain refunds of RESP contributions taxable, this amounted to a tax deferral and thus did not have to be preceded by a ways and means motion. He concluded that Bill C-253 was therefore properly before the House.

Decision of the Chair

The Speaker: I am now prepared to rule on the point of order raised by the hon. Government House Leader on June 21, 2006, in relation to the procedural issues relating to Bill C-253, *An Act to amend the Income Tax Act (deductibility of RESP contributions)*, standing in the name of the hon. Member for Pickering–Scarborough East.

In his arguments, the hon. Government House Leader explained that clause 2 of the Bill contained provisions which would effectively increase how taxable income was calculated and thus result in potentially more taxes being collected. Specifically, subclause 2(5) would make any refund of payments regarding contributions to RESPs considered as taxable income. Subclause 2(6)

necessarily repealed a section of the *Income Tax Act*, which would have made such refunds excluded as taxable income.

Therefore, the hon. Government House Leader argued that if Bill C-253 was creating a new tax burden, then it should not have been given first reading without the adoption of a ways and means motion, and the Speaker should discharge the Order for second reading and remove the Bill from the *Order Paper*.

House of Commons Procedure and Practice provides some information on the operation of taxation bills on pages 758 and 759:

> The House must first adopt a Ways and Means motion before a bill which imposes a tax or other charge on the taxpayer can be introduced. Charges on the people, in this context, refer to new taxes, the continuation of an expiring tax, an increase in the rate of an existing tax, or an extension of a tax to a new class of taxpayers… Legislative proposals which are not intended to raise money but rather reduce taxation need not to be preceded by a Ways and Means motion before being introduced in the House.

Furthermore, on page 898 it states:

> With respect to the raising of revenue, a private Member cannot introduce bills which impose taxes. The power to initiate taxation rests solely with the government and any legislation which seeks an increase in taxation must be preceded by a Ways and Means motion.

As I understand it, the current RESP regime requires the person contributing to the plan to make such contributions out of after tax income. If, subsequently, the amount in the plan is not to be used for funding post-secondary education as intended, the contributor may have the contributions refunded. This refund is not taxed as the original contribution was made from income on which tax had already been paid. Similarly, a student withdrawing money from an RESP is not required to report the contribution amount as income, but only the interest earned while the funds were invested in the plan.

Let us now turn to the proposal before the House. The summary of Bill C-253 states that the Bill provides "that contributions to a Registered Education Savings Plan are deductible from a taxpayer's taxable income".

The Bill also provides that if, at a later time, contributions are taken out of the plan by the contributor, they are to be included as taxable for that year. Not having been taxed initially, the contributions would cease to enjoy tax-exempt status at the time of withdrawal from the plan.

This proposal amounts to a tax deferral. Rather than making contributions out of after tax income, the contributor would be provided with a tax deduction at the time that the contribution is made. If, subsequently, the money is not used for educational purposes but is withdrawn from the plan, the funds would be reported as taxable income at that time.

I do not regard such a tax deferral as imposing any increased tax burden on the contributor. It is permissible for a private Member's bill to introduce a tax exemption, or to propose a delay in the reporting of income. Therefore, I find that Bill C-253 is properly before the House.

Accordingly, in my view, debate may continue on the Bill in its current form.

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1. *Debates*, June 21, 2006, p. 2758.

Private Members' Business

Financial Limitation

Royal Recommendation: repeated raising of similar points of order

February 14, 2007 *Debates*, p. 6816

Context: On February 13, 2007, Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform) rose on a point of order with respect to Bill C-288, *Kyoto Protocol Implementation Act*, standing in the name of Pablo Rodriguez (Honoré–Mercier). He argued that the Bill required a royal recommendation as a result of amendments made in committee which entailed the expenditure of Government funds. After hearing from other Members, the Speaker reserved his decision.[1]

Resolution: On February 14, 2007, the Speaker delivered his ruling. He stated that the arguments raised by the Government House Leader were substantially the same as previous submissions that had been the object of rulings by the Chair, and that it had already been established that Bill C-288 did not authorize any spending of public funds for a distinct purpose. The Bill did not, therefore, require a royal recommendation. He added that while a Member might fear that a given bill will entail constitutional or other legal difficulties, the Chair's authority is limited to interpreting matters of parliamentary procedure, not matters of law or public policy. The Speaker expressed concern that the repeated raising of the point of order came "perilously close to an appeal of the Chair's decisions", something that is prohibited by Standing Order 10.

Decision of the Chair

The Speaker: Last night, just before debate on Private Members' Business began, the hon. Government House Leader raised a point of order relating to Bill C-288, the *Kyoto Protocol Implementation Act*, standing in the name of the hon. Member for Honoré–Mercier.

The House will recall that on Friday, February 9, 2007, debate on Bill C-288 was completed and divisions on the report stage of the Bill deferred to February 14, 2007. Because of this, I felt obliged to point out to the

hon. Government House Leader that his intervention came very late although I proceeded to listen to his argument in case he had new light to shed on the Bill.

After his intervention, the hon. Members for Wascana, Scarborough–Rouge River and Honoré–Mercier offered their views.

I have now carefully reviewed the comments made by the hon. Government House Leader and I confess that I find them somewhat troubling, for the hon. Minister presents no new arguments, but instead comes perilously close to an appeal of the Chair's decisions, an appeal specifically prohibited by Standing Order 10.

Despite two rulings from the Chair to the contrary, the crux of the argument presented by the hon. Government House Leader is that Bill C-288 does require a royal recommendation because the course of action it puts forward would require the expenditure of Government funds.

This is substantially the same argument so ably presented by the Minister's predecessor on June 16, 2006. It was not persuasive then and is no more persuasive now.

With respect, I would refer the hon. Government House Leader to *Debates* for September 27, 2006, at pages 3314 and 3315 where I ruled on the original point of order raised on June 16. Since this latest intervention provided no new insights, let me simply quote from that decision. Referring back to an earlier decision on a similar case, I said:

> the Chair—in the case of Bill C-292, *An Act to implement the Kelowna Accord*—made a distinction between a bill asking the House to approve certain objectives and a bill asking the House to approve the measures to achieve certain objectives. So too in the case before us—[Bill C-288]—the adoption of a bill calling on the government to implement the Kyoto Protocol might place an obligation on the government to take measures necessary to meet the goals set out in the Protocol but the Chair cannot speculate on what those measures may be. If spending is required, as the Government House Leader contends, then a specific request for public moneys would need to be brought forward by means of an appropriation

> bill or through another legislative initiative containing an authorization for the spending of public money for a specific purpose.

As it stands, Bill C-288 does not contain provisions which specifically authorize any spending for a distinct purpose relating to the Kyoto Protocol. Rather, the Bill seeks the approval of Parliament for the Government to implement the Protocol. If such approval is given, then the Government would decide on the measures it wished to take. This might involve an appropriation bill or another bill proposing specific spending, either of which would require a royal recommendation.

As Bill C-288 stands however, the Chair must conclude that the bill does not require a royal recommendation and may proceed.

This first ruling on the Bill seems quite clear. The House will also recall that on February 2, 2007, a point of order was raised by the Parliamentary Secretary to the Government House Leader to the effect that amendments to this Bill reported by the Standing Committee on Environment and Sustainable Development on December 8, 2006 required a royal recommendation and some hon. Members commented on his intervention. That exchange is captured at pages 6341 and 6342 of the *Debates*. It too concludes that the Bill does not require a royal recommendation and I would commend it to the attention of all hon. Members. In short, the Chair has not been presented with any precedents that would reverse the views it expressed earlier.

I can appreciate that the hon. Government House Leader is frustrated by the prospect of what he calls a bad law being enacted and by the constitutional difficulties that he foresees, but these are not matters within the Speaker's purview. The Chair's powers are limited to interpreting matters of parliamentary procedure, not matters of law, nor matters of public policy.

Bill C-288 seeks to ensure Canada meets its global climate change obligations under the Kyoto Protocol ratified by Canada on December 17, 2002, but the Bill contains no provisions authorizing spending to that end. Therefore, there is simply no procedural impediment to the Bill proceeding further or to the House pronouncing itself on report stage and third reading.

Let me just say in conclusion that, as your Speaker, I take very seriously indeed the responsibility to interpret the procedures and practices of this House in specific cases, particularly where the prerogatives of the Crown may be at issue and particularly in controversial cases such as this one where parties are deeply divided as to the right course of action.

The House's new rules on Private Members' Business bring out in full relief the Chair's role and responsibility in these matters. I believe that a careful reading of my rulings on such cases, including the two rulings already rendered on Bill C-288, reveals them to lie squarely within the traditions of this place. I thank hon. Members for their attention.

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1. *Debates*, February 13, 2007, pp. 6796-9.

Private Members' Business

Financial Limitation

Business of Ways and Means: motion required for bill seeking an increase in taxation

November 28, 2007 *Debates*, pp. 1463-4

Context: On March 27, 2007, Bill C-418, *An Act to amend the Income Tax Act (deductibility of remuneration)*, standing in the name of Chris Charlton (Hamilton Mountain) was introduced in the House. Ms. Charlton stated that the Bill would no longer allow companies to write off as a business expense more than one million dollars per year in respect of remuneration paid to an employee or officer of the corporation in that year.[1]

Resolution: On November 28, 2007, the Speaker, exercising his duty under Standing Order 94 to "make all arrangements necessary to ensure the orderly conduct of Private Members' Business", ruled on the procedural admissibility of Bill C-418. Since the Bill would increase the tax payable by certain corporations, the Speaker stated that it must be preceded by a ways and means motion. Noting that this difficulty ought to have been detected earlier, he informed the House that he had asked legislative drafters and procedural staff to provide early advice to Members to avoid similar problems in the future. In the absence of a ways and means motion, he directed that the Order for second reading of the Bill be discharged and the Bill withdrawn from the *Order Paper*.

Decision of the Chair

The Speaker: Before we proceed to Orders of the Day, I wish to give a ruling on a matter before the House.

Members will recall that on October 16, 2007, the Chair made a statement reminding Members that our Standing Orders provide for the continuance of Private Members' Business from session to session within a Parliament.

In discharging its usual responsibilities regarding the orderly conduct of Private Members' Business, the Chair reviewed all Private Members' Business

items eligible to continue from the First Session into this new one. I need to bring to the attention of the House an issue that was noted with regard to Bill C-418, *An Act to amend the Income Tax Act (deductibility of remuneration)*, standing in the name of the hon. Member for Hamilton Mountain.

Bill C-418 proposes to amend the *Income Tax Act* to provide that a corporation may not deduct as a business expense more than $1 million per year in respect of remuneration paid to an employee or officer of the corporation in that year. If adopted, this measure would therefore have the effect of increasing the tax payable by certain corporations. In essence, this constitutes a reduction of an alleviation of taxation. In other words, the Bill deals with an issue of ways and means.

As indicated at page 748 of *House of Commons Procedure and Practice*, there are two types of ways and means proceedings. The budgetary policy of the Government is the first of these. The second type refers to "the consideration of legislation (bills based on ways and means motions already approved by the House) which imposes a tax or other charge on the taxpayer".

Furthermore, at page 896 of Erskine May's *Parliamentary Practice*, 23rd edition, it states that "the repeal or reduction of existing alleviations of taxation" must be preceded by a ways and means motion.

In my view, Bill C-418 imposes a charge on the taxpayer, but it was not preceded by a ways and means motion, which, as hon. Members know, can only be proposed by a Minister of the Crown. I realize that this is a difficulty that ought to have been noticed earlier. In fact, it should have been noted when the Member for Hamilton Mountain introduced the Bill.

Accordingly, I have asked legislative drafters and procedural staff, working together, to provide early advice to Members on their legislative initiatives so that Members have ample opportunity to make the necessary adjustments to ensure their draft legislation does not offend House rules.

In conclusion, for the reasons stated above, proceedings on the Bill to date, namely, introduction and first reading, have not respected the provisions of our Standing Orders and are therefore null and void. Accordingly, the Chair

must now direct that the Order for second reading of the Bill be discharged and the Bill withdrawn from the *Order Paper*.

I thank hon. Members for their attention.

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1. *Debates*, March 27, 2007, p. 7938.

Private Members' Business

Financial Limitation

Establishment of first Order of Precedence: Speaker's statement regarding royal recommendation

February 25, 2009 *Debates*, pp. 968-9

Context: On February 25, 2009, immediately prior to the first occasion on which Private Members' Business was to be taken up in the Fortieth Parliament, the Speaker made a statement with regard to the management of Private Members' Business. He drew particular attention to the rules requiring that a royal recommendation accompany "any bill which authorizes the spending of public funds for a new and distinct purpose or effects an appropriation of public funds". He indicated that he would continue the practice of notifying the House of those items of Private Members' Business that appeared to need a royal recommendation.

Statement of the Chair

The Speaker: Honourable Members will want to hear all about Private Members' Business in this fascinating statement.

At the beginning of the last Parliament on May 31, 2006, as well as at the beginning of the one before that on November 18, 2004, I reminded all hon. Members about the procedures governing Private Members' Business and the responsibilities of the Chair in the management of this process. Given that the House is about to take up Private Members' Business for the first time in this Parliament later this afternoon, I would like to make a statement regarding the management of Private Members' Business.

As Members know, certain constitutional procedural realities constrain the Speaker and Members insofar as legislation is concerned. One procedural principle that I have underscored in a number of statements over the course of the two preceding Parliaments concerns the possibility that certain private Member's bills may require a royal recommendation.

The requirement for a royal recommendation is grounded in constitutional principles found in the *Constitution Act, 1867*. The language of section 54 of that Act is echoed in Standing Order 79(1), which reads:

> This House shall not adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to the House by a message from the Governor General in the session in which such vote, resolution, address or bill is proposed.

Any bill which authorizes the spending of public funds for a new and distinct purpose or effects an appropriation of public funds must be accompanied by a message from the Governor General recommending the expenditure to the House. This message, known formally as the royal recommendation, can only be transmitted to the House by a Minister of the Crown.

Such bills may be introduced and considered right up until third reading on the assumption that a royal recommendation could be provided by a Minister. If none is produced by the conclusion of the third reading stage, the Speaker is required to stop proceedings and rule the bill out of order.

Following the establishment and replenishment of the Order of Precedence, the Chair has developed the practice of reviewing items so that the House can be alerted to bills which, at first glance, appear to impinge on the financial prerogative of the Crown. The aim of this practice is to allow Members the opportunity to intervene in a timely fashion to present their views about the need for those bills to be accompanied by a royal recommendation.

Accordingly, following the establishment of the Order of Precedence on February 13, 2009, I wish to draw the attention of the House to five bills that give the Chair some concern as to the spending provisions they contemplate. These are: Bill C-201, *An Act to amend the Canadian Forces Superannuation Act and the Royal Canadian Mounted Police Superannuation Act (deletion of deduction from annuity)*, standing in the name of the Member for Sackville–Eastern Shore; Bill C-241, *An Act to amend the Employment Insurance Act (removal of waiting period)*, standing in the name of the Member for Brome–Missisquoi; Bill C-279, *An Act to amend the Employment Insurance Act (amounts not included in earnings)*, standing in the name of the hon. Member for Welland;

Bill C-280, *An Act to amend the Employment Insurance Act (qualification for and entitlement to benefits)*, standing in the name of the hon. Member for Algoma–Manitoulin–Kapuskasing; and Bill C-309, *An Act establishing the Economic Development Agency of Canada for the Region of Northern Ontario*, standing in the name of the hon. Member for Nipissing–Timiskaming.

I would encourage hon. Members who would like to make arguments regarding the need for a royal recommendation for any of these bills, or with regard to any other bills now on the Order of Precedence, to do so at an early opportunity.

I thank all hon. Members for their attention to this important ruling.

Editor's Note: See similar statements at the creation of the first complete Order of Precedence of the Thirty-Eighth Parliament on November 18, 2004, and of the Thirty-Ninth Parliament on May 31, 2006.

Private Members' Business

Financial Limitation

Business of Ways and Means: motion not required

March 15, 2010 *Debates*, pp. 419-20

Context: On December 1, 2009, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons) rose on a point of order to argue that Bill C-470, *An Act to amend the Income Tax Act (revocation of registration)*, standing in the name of Albina Guarnieri (Mississauga East–Cooksville), should be preceded by a ways and means motion since it had the effect of imposing a tax or other charge on the taxpayer. Mr. Lukiwski declared that since Bill C-470 provided for the "revocation of the registration of a charitable organization, public foundation or private foundation offering compensation in excess of $250,000 to its personnel", it would have the effect of extending a tax burden to those organizations. He maintained that in the absence of a ways and means motion, the Order for second reading of Bill C-470 should be discharged and the Bill withdrawn from the *Order Paper*. After hearing from other Members, the Deputy Speaker (Andrew Scheer) reserved his decision.[1]

Resolution: On March 15, 2010, the Deputy Speaker delivered his ruling. He stated that Bill C-470 did not propose a new tax, continue an expiring tax, or increase the rate of an existing tax. He added that those charitable organizations that would be affected by the Bill, namely those which pay to a single executive or employee annual compensation that exceeds $250,000, were not a "class of taxpayer" for the purpose of the requirement of a ways and means motion. He concluded that the Bill did not therefore need to be preceded by a ways and means motion.

Decision of the Chair

The Deputy Speaker: I am now prepared to rule on the point of order raised by the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons, concerning the requirement for a ways and means motion for Bill C-470, *An Act to amend the Income Tax Act (revocation of registration)*, standing in the name of the hon. Member for Mississauga East–Cooksville.

I would like to thank the hon. Parliamentary Secretary for having raised this matter, as well as the hon. Member for Mississauga East–Cooksville, the hon. Member for Mississauga South, the hon. Member for Scarborough–Rouge River, the hon. Parliamentary Secretary to the Minister of International Cooperation, the hon. Member for Algoma–Manitoulin–Kapuskasing, the hon. Member for Eglinton–Lawrence, and the hon. Member for Brampton West for their comments.

The Parliamentary Secretary pointed out in his remarks that the purpose of Bill C-470 is to allow for the revocation of the registration of a charitable organization, public foundation or private foundation, if it provides annual compensation in excess of $250,000 to any of its executives or employees. On this point, he and the Member for Mississauga East–Cooksville agreed.

Beyond that, however, the Parliamentary Secretary contended that such a revocation would extend the incidence of a tax to organizations which are not currently subject to it. Specifically, he noted that such organizations, on losing their registration, would be subject to the revocation tax imposed by subsection 188(1.1) of the *Income Tax Act*, since the revocation tax is a tax imposed on a charitable organization which loses its official registration under the Act.

He further characterized the effect of the Bill as follows in the *House of Commons Debates* of December 1, 2009, at pages 7410 and 7411:

> Upon deregistration of an entity in the circumstances proposed by Bill C-470, that entity loses its tax exempt status as a registered charity and, assuming it remains a charity, it will not be able to benefit from the other exemptions from tax provided for in subsection 149.1.
>
> In other words, Bill C-470 would result in an extension of the incidence of a tax by including entities that are not already paying the revocation tax, or potentially, a tax on their income.

Finally, the Parliamentary Secretary noted that the issue of ways and means is one which the Chair takes very seriously. He referred to a November 28, 2007, Speaker's ruling regarding the case of Bill C-418, *An Act to amend the Income Tax Act (deductibility of remuneration)*, introduced in the Second Session of

the Thirty-Ninth Parliament. That Bill had the effect of removing an existing deduction, and hence of increasing the amount of tax payable by certain corporations. It was clear that the Bill, in removing a tax exemption, effectively increased the tax payable and therefore required that it be preceded by a notice of ways and means.

In her submission, the Member for Mississauga East–Cooksville, in *Debates* of December 1, 2009, page 7458, contended that the purpose of Bill C-470 is simply to add another reason that would allow the Minister to revoke the registration of a charitable organization.

Bills involving provisions of the *Income Tax Act* can be complex and confusing. However, after careful examination of Bill C-470, as well as the authorities cited and the provisions of the *Income Tax Act* referred to by the Parliamentary Secretary, I have found the following reference from *House of Commons Procedure and Practice*, Second Edition, page 900, particularly relevant. It states:

> The House must first adopt a ways and means motion before a bill which imposes a tax or other charge on the taxpayer can be introduced. Charges on the people, in this context, refer to new taxes, the continuation of an expiring tax, an increase in the rate of an existing tax, or an extension of a tax to a new class of taxpayers.

It seems clear to the Chair that Bill C-470 does not propose a new tax, nor does it seek the continuation of an expiring tax, nor does it attempt to increase the rate of an existing tax.

The question which remains to be asked is the following: Does the Bill extend a tax to a new class of taxpayer?

A close examination of the provisions of Bill C-470 indicates that the Bill targets all registered charitable organizations, public foundations and private foundations, and seeks to introduce consequences for those within that class which pay to a single executive or employee annual compensation that exceeds $250,000.

I have difficulty in regarding organizations finding themselves in that situation as constituting unto themselves a "class of taxpayer".

In the Chair's view, class of taxpayer refers in this case to registered charitable organizations, public foundations and private foundations, and Bill C-470 does not seek to alter that class.

It seems to me that the Bill instead seeks to provide a new criterion that would allow the Minister to determine into which existing class of taxpayer an organization falls. The existing tax regimes and the existing tax rates are not affected.

Accordingly, I rule that Bill C-470 does not extend the incidence of a tax to a new class of taxpayer and therefore need not be preceded by a ways and means motion.

I thank the House for its attention.

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1. *Debates*, December 1, 2009, pp. 7410-1.

Private Members' Business

Financial Limitation

Royal Recommendation

February 3, 2011 *Debates*, pp. 7650-1

Context: On November 2, 2010, Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons) rose on a point of order with respect to Bill C-507, *An Act to amend the Financial Administration Act (federal spending power)*, standing in the name of Josée Beaudin (Saint-Lambert).[1] Mr. Lukiwski argued that the Bill required a royal recommendation since it infringed upon the financial initiative of the Crown. He pointed out that, under existing statutes, direct spending in areas of provincial jurisdiction occurred when the federal Government allocated money directly to individuals, agencies or municipalities, but that Bill C-507 would allow the federal Government to transfer money directly only to the provinces. He added that Bill C-507 would change the conditions of existing payments to the provinces and make them unconditional. Finally, he maintained that the Bill provided authorization for compensation out of the Consolidated Revenue Fund to provinces that chose to opt out of federal programs in areas of provincial jurisdiction—i.e. for purposes not authorized in the statutes. The Speaker reserved his decision.

Resolution: On February 3, 2011, the Speaker delivered his ruling. He stated that the relevant subsections of Bill C-507 did not enable existing appropriations to be used for a new purpose, but only affected whether the moneys appropriated were actually spent. He added that another effect of the Bill would be to allow the transfer of funds to provinces that opted out of federal programs, without there being any further conditions attached. Since those funds could be disbursed for purposes not limited to the original appropriation, the Speaker ruled that the Bill required a royal recommendation before the question could be put on it at third reading.

Decision of the Chair

The Speaker: The Chair is now prepared to rule on the point of order raised by the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons on November 2, 2010, concerning the requirement

for a royal recommendation for Bill C-507, *An Act to amend the Financial Administration Act (federal spending power)*, standing in the name of the hon. Member for Saint-Lambert.

I thank the Parliamentary Secretary for having raised this important matter. In raising his point of order, the Parliamentary Secretary set out two separate grounds on which he alleged that Bill C-507 infringes the financial initiative of the Crown. First, he claimed that the Bill seeks to alter the terms and conditions of existing royal recommendations which authorize payments out of the Consolidated Revenue Fund to provinces and municipalities for various purposes. This alteration would take two different forms. Where transfers are made conditional upon provinces meeting certain federal standards, these transfers would now be unconditional. Where the federal Government provides funds to individuals, agencies or municipalities, these funds would now be transferred only to the provinces.

The Parliamentary Secretary maintained that this alteration in the way in which funds are transferred violates the terms of the existing royal recommendations on which those transfers depend.

The second cause for concern which the Parliamentary Secretary highlighted is the effect of the provisions of Bill C-507 on payments to provinces that choose to opt out of federal programs in areas of provincial jurisdiction. These payments would be authorized whenever a province did not delegate its responsibility to the federal Government in relation to a federal program in an area of provincial jurisdiction. He claimed that this would result in payments out of the Consolidated Revenue Fund for purposes not currently authorized.

The Chair has examined carefully the provisions of Bill C-507 in light of the arguments presented. The nature of the royal recommendation requirement is explained in *House of Commons Procedure and Practice*, Second Edition, at page 834:

> A royal recommendation not only fixes the allowable charge, but also its objects, purposes, conditions and qualifications. For this reason, a royal recommendation is required not only in the case where money is being appropriated, but also in the case where the authorization to spend for a specific purpose is significantly altered. Without a

> royal recommendation, a bill that either increases the amount of an appropriation, or extends its objects, purposes, conditions and qualifications is inadmissible on the grounds that it infringes on the Crown's financial initiative.

What is at issue in each case is whether the provisions of the bill introduce a new appropriation, increase an existing appropriation or entail changes to the objects, purposes, conditions and qualifications of the existing appropriations to enable these appropriations to be used for a new purpose.

Bill C-507 seeks to amend the *Financial Administration Act* by proposing new subsections 26.1(1) and (2) which would prevent the federal Government from making payments in respect of expenditures in areas of provincial jurisdiction unless the province concerned delegates that power to it. Proposed new subsection 26.1(3) establishes a time frame for that delegation. While it has been argued that the proposed new subsections 26.1(1), (2) and (3) would have the effect of altering the conditions under which the authorization to spend currently exists, the Chair is of a different view. These subsections in no way enable existing appropriations to be used for a new purpose. Instead, these new subsections would affect whether or not the moneys appropriated are actually spent. The appropriations themselves remain unchanged and such a consideration does not give rise to the need for a royal recommendation.

As for the second issue raised by the Parliamentary Secretary, the Chair refers hon. Members to the proposed new subsection 26.1(4) which requires that payments be made to a province that does not provide a delegation under subsection 26.1(2). In the Chair's view the effect of this provision would be to allow the transfer of funds without there being any conditions attached. In other words, those funds could be expended for purposes not limited to, or governed by, the conditions—or purposes—of the original appropriation. Obviously, this would be a relaxation of applicable conditions, to say the least, and would necessarily constitute an infringement of the financial initiative of the Crown as the appropriated funds could be used for purposes not approved by Parliament when it made the appropriation.

On this basis, it is my ruling that Bill C-507, in its current form, requires a royal recommendation. Consequently, I will decline to put the question on

third reading of the Bill in its present form unless a royal recommendation is received.

Today's debate, however, is on the motion for second reading and this motion shall be put to a vote at the close of the second reading debate.

I thank hon. Members for their attention.

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1. *Debates*, November 2, 2010, pp. 5642-3.

Private Members' Business

Similar Items

Private Members' Bills: identical items on the *Order Paper*

December 14, 2004 — *Debates*, p. 2789

Context: On October 18, 2004, Bill C-228, *Pension Ombudsman Act*, standing in the name of Pat Martin (Winnipeg Centre), was introduced and read a first time.[1] On December 13, 2004, Bill C-320, bearing a title identical to that of Bill C-228, and standing in the name of Judy Wasylycia-Leis (Winnipeg North), was introduced and read a first time.[2] On December 14, 2004, the Acting Speaker (Marcel Proulx) informed the House that Bills C-228 and C-320 were identical, and that Bill C-320 had been improperly introduced. Accordingly, he directed the Clerk of the House to have Bill C-320 removed from the *Order Paper*.

Statement of the Chair

The Acting Speaker (Marcel Proulx): Order, please. I wish to inform the House that there is an error in today's *Order Paper*. Two identical private Members' bills appear on the list of items outside the Order of Precedence under the Private Members' Business section of the *Order Paper*.

Bill C-228 establishing the *Pension Ombudsman Act*, standing in the name of the hon. Member for Winnipeg Centre, was introduced and read the first time on Monday, October 18, 2004. Yesterday, Bill C-320, a bill identical to Bill C-228, standing in the name of the hon. Member for Winnipeg North, was introduced and read the first time. Only the first such item should have appeared on the *Order Paper*. I am directing the Clerk to remove Bill C-320 from the *Order Paper*.

I regret any inconvenience this may have caused hon. Members.

1. *Debates*, October 18, 2004, p. 499.
2. *Debates*, December 13, 2004, p. 2671.

Private Members' Business

Similar Items

Private Members' bills: similar items on the Order of Precedence

November 7, 2006 *Debates*, p. 4785

Context: On November 1, 2006, Derek Lee (Scarborough–Rouge River) rose on a point of order with respect to Bill C-257, *An Act to amend the Canada Labour Code (replacement workers)*, standing in the name of Richard Nadeau (Gatineau), which had recently received second reading, and Bill C-295, *An Act to amend the Canada Labour Code (replacement workers)*, standing in the Order of Precedence in the name of Catherine Bell (Vancouver Island North). Each Bill was aimed at amending the *Canada Labour Code* with respect to replacement workers. Mr. Lee argued that, apart from minor differences with respect to fines, the two Bills were substantially the same, and that proceeding with both would cause confusion. He further argued that, since it was possible that Bill C-257 would not ultimately be passed, Bill C-295 should not be withdrawn altogether but be held in abeyance pending the possible defeat or removal from the *Order Paper* of Bill C-257, at which point Bill C-295 could once again be considered without procedural irregularity. Libby Davies (Vancouver East) argued that the two Bills, though only slightly different in content, were nonetheless different bills, that it would be an undesirable precedent for a Member with an item of Private Members' Business to lose his or her place in the Order of Precedence through the actions of a third party. She concluded that since the Bills had become the property of the House, it would not be appropriate for the Speaker to remove one of them from consideration. The Speaker took the matter under advisement.[1]

Resolution: On November 7, 2006, the Speaker delivered his ruling. He stated that he had found that except for minor differences and the sums of the fines imposed, both Bills were identical in terms of their legislative and procedural impact, and achieved their objectives through the same means. He added that allowing both to remain on the *Order Paper* would put at risk a key principle of parliamentary procedure, namely, that a decision once made cannot be questioned again, but must stand as the judgment of the House. He did, however, express reluctance to withdraw Bill C-295 since it might be Ms. Bell's only opportunity to have an item in the Order of Precedence, and therefore ruled that Bill C-295 should drop to the

bottom of the Order of Precedence to give the Standing Committee on Procedure and House Affairs an opportunity to come up with a solution. In the absence of a resolution, the Speaker indicated that, when Bill C-295 next reached the top of the Order of Precedence, he would order that debate not proceed, that the Order for debate be discharged, and that the Bill be dropped from the *Order Paper*.

Decision of the Chair

The Speaker: The Chair is now prepared to rule on a point of order raised by the hon. Member for Scarborough–Rouge River on November 1, 2006, concerning Bill C-257, standing in the name of the hon. Member for Gatineau, and Bill C-295, standing in the name of the hon. Member for Vancouver Island North. Both Bills amend the *Canada Labour Code* in relation to replacement workers.

I want to begin by thanking the hon. Member for Scarborough–Rouge River for having raised this matter and the hon. Member for Vancouver East for having made a submission.

In his presentation, the hon. Member for Scarborough–Rouge River argues that these Bills are substantially the same, except for some minor differences relating to fines. A decision was taken by the House on October 18 to adopt Bill C-257 at second reading and refer it to committee. The hon. Member argues, in light of this decision, that debate should not continue on Bill C-295 and that the Bill should be removed from the Order of Precedence.

The hon. Member for Vancouver East contends that although both Bills deal with the same subject, they are different and, therefore, Bill C-295 should not be removed from the Order of Precedence.

Let me first clarify our practices with regard to items of Private Members' Business which are similar. Standing Order 86(4) states:

> The Speaker shall be responsible for determining whether two or more items are so similar as to be substantially the same, in which case he or she shall so inform the Member or Members whose items were received last and the same shall be returned to the Member or Members without having appeared on the *Notice Paper*.

When this Standing Order was first adopted, Private Members' Business operated very differently than it does today. The Standing Orders provided for only 20 items of Private Members' Business to be placed by lottery on the Order of Precedence and provided that, of those, only three bills could come to a vote. Realistically, then, there was little chance that bills considered substantially the same would ever be drawn together and placed on the Order of Precedence, let alone be debated and voted upon. Given those odds, Standing Order 86(4) came to be [invoked][2] only rarely: only when a bill was identical to one already introduced would it be refused. This generous interpretation is referred to in a ruling of Mr. Speaker Fraser on November 2, 1989, at pages 5474-5 of *Debates*, where he states:

> I should say that in the view of the Chair, two or more items are substantially the same if, first, they have the same purpose and, second, they obtain their purpose by the same means.
>
> Accordingly, there could be several bills addressing the same subject, but if they took a different approach to the issue the Chair would judge them to be sufficiently different so as not to be substantially the same.
>
> The intent… was to give Members an opportunity to put before the House items of concern to them, but to prevent a multiplicity of identical bills being submitted….

As Mr. Speaker Fraser explained, this interpretation had the practical effect of giving a Member an opportunity to bring forward a legislative proposal on any subject, regardless of what other Members might be doing. This practice has served Members well until the present case.

The current Standing Orders, which were first adopted provisionally in May 2003, provide for a single draw of the names of all Members at the beginning of a Parliament. On the 20th sitting day following the draw, the first 30 Members on the list who have introduced a bill or given notice of a motion on the *Notice Paper*, constitute the Order of Precedence. Following the draw, the Subcommittee on Private Members' Business needs to determine if any of the items should be designated non-votable pursuant to Standing Order 91.1. In determining whether any of the items should be deemed non-votable, the Subcommittee considers whether or not any of the bills or motions are

substantially the same as ones already voted on by the House of Commons in the current session.

In the case at hand, a careful examination of both Bills reveals that they have exactly the same objective, that is, to prohibit employers under the *Canada Labour Code* from hiring replacement workers to perform the duties of employees who are on strike or locked out. The following minor differences distinguish them: First, Bill C-257 provides for a fine not exceeding $1,000 for each day that an offence occurs, whereas Bill C-295 provides for a fine not exceeding $10,000; second, Bill C-257 contains subparagraph (2.1)(*f*) in clause 2 concerning prohibitions relating to the use of replacement workers, text that is not found in Bill C-295; and third, subclause (2.2) in Bill C-257 appears as subclause (2.9) in Bill C-295.

Other than these three differences, both Bills are identical in terms of their legislative and procedural impact. The only concrete difference between them relates to the sum of the fines. While this is an important matter, it does not make the Bills into distinctly different legislative initiatives. The Chair must therefore conclude that both Bills are substantially the same and achieve their objectives through the same means.

The question then becomes, should the second Bill, Bill C-295, be allowed to proceed?

It seems to the Chair that there is considerable risk involved in allowing bills that are substantially the same to be debated. It puts at risk a key principle of parliamentary procedure, namely, that a decision once made cannot be questioned again, but must stand as the judgment of the House.

House of Commons Procedure and Practice, at page 495, explains that the principle exists for very good reason.

> This is to prevent the time of the House from being used in the discussion of motions of the same nature with the possibility of contradictory decisions being arrived at in the course of the same session.

In the present case, we have an unusual convergence of circumstances. Not only were the Bills sponsored by the hon. Members for Gatineau and Vancouver Island North both placed on the *Notice Paper*, their names were also among the first 30 drawn for the Order of Precedence. Moreover, the Subcommittee on Private Members' Business faced with the fact that debate had yet to begin on items of Private Members' Business could not deem one of the Bills to be non-votable since the House had not yet taken any decisions on such business.

Today, the Chair has found itself in an unprecedented situation. I have concluded that Bill C-295 is substantially the same as Bill C-257. Ordinarily, I would order Bill C-295 to be dropped from the *Order Paper* in conformity with this Standing Order. However, given that this situation has never arisen before, I am reluctant to make a final ruling since this may be the only opportunity in this Parliament that the hon. Member for Vancouver Island North gets to have an item on the Order of Precedence. At the same time, the Chair cannot allow the Bill to go forward for its last hour of debate and the vote that would follow.

So, instead, in accordance with Standing Order 94(1), which provides the Speaker with the authority to make all arrangements necessary to ensure the orderly conduct of Private Members' Business, I am ordering that Bill C-295 be dropped to the bottom of the Order of Precedence.

This delay in the consideration of Bill C-295 is designed to provide the Standing Committee on Procedure and House Affairs with sufficient time to examine this matter and suggest some resolution to the situation for the sponsor of the Bill. The Committee should also consider whether our practices in relation to the application of Standing Order 86(4) continue to serve the House in an effective manner given that our rules respecting Private Members' Business have changed since this Standing Order was first adopted.

In the absence of a solution to the predicament of the sponsor of Bill C-295, the Chair will have no option when the Bill next reaches the top of the Order of Precedence; I will order that debate not proceed, that the Order for the Bill's consideration be discharged and that the Bill be dropped from the *Order Paper*.

Once again, I thank the hon. Members for Scarborough–Rouge River and for Vancouver East for having brought this situation to the attention of the

Chair and of the House. It is an important contribution to the evolution of Private Members' Business.

I believe the effect of the ruling will be that there will be no Private Members' Business taken up this evening.

Postscript: The Standing Committee on Procedure and House Affairs recommended in its Twenty-Third Report, presented to the House on November 27, 2006 and concurred in the same day, that Ms. Bell be given a choice among three options: to withdraw Bill C-295 and do nothing further; to have Bill C-295 debated in the House of Commons for a second hour but then be declared non-votable; or to advise the Speaker, in writing, within five days of the adoption of the Committee's Report, that she wished to have Bill C-295 withdrawn and the Order for second reading discharged, following which she would be given 20 sitting days from the adoption of the Report to specify another item of Private Members' Business for consideration. The item, notwithstanding any other Standing Order to the contrary, would be immediately placed at the bottom of the Order of Precedence and, subject to the application of Standing Orders 86 to 99, would be debated for up to two hours and be votable.[3]

On December 6, 2006, the Speaker announced that Ms. Bell had requested that the Order for second reading of Bill C-295 be discharged and the Bill withdrawn, and that in its place, pursuant to the recommendation made by the Standing Committee on Procedure and House Affairs in its Twenty-Third Report, Ms. Bell had placed on notice another item of Private Members' Business (Motion No. 262), which was placed at the bottom of the Order of Precedence.[4]

Editor's Note: On May 1, 2007, Peter Van Loan (Leader of the Government in the House of Commons and Minister for Democratic Reform) rose on a point of order to ask that Bill C-415, *An Act to amend the Canada Labour Code (replacement workers)*, standing in the name of Mario Silva (Davenport), not be allowed to proceed on the grounds that it was substantially the same as Bill C-257. Among other arguments, the Government House Leader referred to the ruling on the similarity between Bill C-257 and Bill C-295.[5] On May 7, 2007, the Speaker ruled that consideration of Bill C-415 could proceed as it contained a provision related to essential services, and was therefore broader in scope than Bill C-257. He concluded that debate on Bill C-415 would not engender the same difficulties that would have occurred had Bills C-257 and C-295 both been allowed to proceed.[6]

1. *Debates*, November 1, 2006, pp. 4544-5.
2. The published *Debates* of November 7, 2006 at page 4785 have "involved" for "invoked."
3. Twenty-Third Report of the Standing Committee on Procedure and House Affairs, presented to the House and concurred in on November 27, 2006 (*Journals*, p. 810).
4. See *Debates*, December 6, 2006, p. 5697.
5. *Debates*, May 1, 2007, pp. 8934-5.
6. *Debates*, May 7, 2007, pp. 9131-2.

Private Members' Business

Votable and Non-votable Items

Item not designated as votable

March 22, 2002 *Debates*, p. 10037

Context: On March 18, 2002, Mauril Bélanger (Ottawa–Vanier) rose on a question of privilege in connection with Bill C-407, *An Act to amend the Canada Health Act (linguistic duality)* standing in his name, which had not been deemed votable in the Forty-Eighth Report of the Standing Committee on Procedure and House Affairs presented to the House on March 15, 2002.[1] Noting that he had appeared before the Subcommittee on Private Members' Business and had presented documentation demonstrating, in his view, that Bill C-407 met all five of the criteria that the House had approved for an item to be votable, he expressed surprise that his Bill had not been so designated. As the Subcommittee had arrived at its decision behind closed doors, Mr. Bélanger argued that it was a breach of his privileges as a Member to be unable to ascertain the reasons for the Subcommittee's decision and to be unable to appeal that decision. After hearing from other Members, the Speaker took the matter under advisement.[2]

Resolution: On March 22, 2002, the Speaker delivered his ruling. He declared that the concern raised by Mr. Bélanger was not a question of privilege but was, rather, a procedural matter which required a procedural solution. Referring to an earlier ruling by Mr. Speaker Fraser, the Speaker indicated that the House itself had delegated to the Standing Committee on Procedure and House Affairs the authority to decide on the votability of relevant items. The Speaker also noted that previous attempts to resolve difficulties like those raised by Mr. Bélanger and other Members, in particular by the Committee on Procedure and House Affairs and the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons, had been unsuccessful. Noting that Ralph Goodale (Leader of the Government in the House of Commons and Federal Interlocutor for Métis and Non-Status Indians) had spoken of "a general desire in the House to find a better way of dealing with these matters", the Speaker urged the Government House Leader and all Members to continue their efforts in this regard.

Decision of the Chair

The Speaker: I am now prepared to rule on the question of privilege raised by the hon. Member for Ottawa–Vanier on March 18, 2002, concerning the selection of votable items by the Standing Committee on Procedure and House Affairs.

I thank the hon. Member for Ottawa–Vanier for drawing this matter to the attention of the Chair, as well as the hon. Member for Yorkton–Melville and the hon. Government House Leader for their contribution on this question.

The hon. Member for Ottawa–Vanier in raising the matter argued that the Bill he sponsored, Bill C-407, *An Act to amend the Canada Health Act (linguistic duality)*, should have been selected as votable since it met all the criteria (approved by the House) in order to be considered eligible for "votable" status.

The Member expressed himself very clearly and conveyed a deep sense of dissatisfaction and frustration with the way that Private Members' Business currently operates, especially with the fact that he was not able to obtain an explanation as to why his Bill was not selected as a votable item.

As all hon. Members know, the Standing Committee on Procedure and House Affairs has the mandate to select votable items from the items placed on the Order of Precedence as the result of a draw. The Committee must determine, in accordance with a set of criteria that it has adopted, the selection to be made.

I refer the House to a decision by Mr. Speaker Fraser on December 4, 1986 (*House of Commons Debates*, p. 1759) with respect to the responsibility that the House has delegated to the Procedure and House Affairs Committee relating to the selection of votable items.

He said:

> —its decision in regard to the selection of items of business which must come to a vote cannot be challenged. When embodied in a report which is presented to the House, that report is deemed adopted by the House.

> The Committee, therefore, plays a very important role in safeguarding the rights of private Members.
>
> —It is not for the Chair to dictate to the Committee how it should take care of its responsibilities.

I want to emphasize that the Chair takes this matter very seriously even though, after careful examination, the case raised by the hon. Member cannot be considered a question of privilege. It is a procedural matter which requires a procedural solution.

As hon. Members know, several attempts at finding such a solution have been made and continue to be made. To begin with, a number of recommendations were made by Members, in particular during the procedure debates in the House on March 21, 2001 and May 1, 2001.

These suggestions were taken into consideration by the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons and there is a reference to the issue in the Committee's Report as adopted by the House on October 4, 2001.

While acknowledging the dissatisfaction with Private Members' Business as it currently operates and recognizing the need for changes, the Special Committee could not find consensus on the nature of specific reforms.

Following the Report of the Special Committee the Standing Committee on Procedure and House Affairs further considered the question of improving procedures for the consideration of Private Members' Business and concluded in its Report presented to the House on December 14, 2001, that:

> —changes to the Standing Orders for the consideration of Private Members' Business, including a workable proposal allowing for all items to be votable, cannot be achieved at this time.

This leaves the door open for the Committee to consider the matter once again in the future.

The hon. Government House Leader in his response to the hon. Member for Ottawa–Vanier reflected the opinion of many Members when he said that "this subject matter has expressed itself in frustration on all sides of the House of Commons" and that he thinks "that there is a general desire in the House to find a better way of dealing with these matters".

I can only urge the hon. Government House Leader to follow up on his suggestion that an attempt be made to find another way of solving these issues to the satisfaction of all Members so that our procedures may be improved in this regard. I am sure that, with the help of interested Members, like the Member for Ottawa–Vanier, the Member for Yorkton–Melville and others, including the members of the Standing Committee on Procedure and House Affairs, a solution will be found.

I thank the hon. Member for Ottawa–Vanier for having drawn this very important matter to the attention of the House.

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1. Forty-Eighth Report of the Standing Committee on Procedure and House Affairs, presented to the House on March 15, 2002 (*Journals*, p. 1180).
2. *Debates*, March 18, 2002, pp. 9762-5.

Private Members' Business

Votable and Non-votable Items

Bill designated votable: adoption of an amendment to discharge the Order for second reading and refer the subject matter of the bill to committee

May 9, 2002 *Debates*, pp. 11457-8

Context: On February 18, 2002, during debate on the motion for second reading of Bill C-344, *An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act (marihuana)*, standing in the name of Keith Martin (Esquimalt–Juan de Fuca), John Maloney (Erie–Lincoln) moved an amendment to discharge the Order for second reading and to refer the subject matter of the Bill to the Special Committee on Non-Medical Use of Drugs[1]. Ken Epp (Elk Island) immediately rose to object to the proposed amendment, arguing that a Member on the Government side should not be allowed to "hijack" a private Member's bill.[2] At the conclusion of Private Members' Business for that day, the Speaker ruled that the amendment was in order. It was agreed to by the House on April 17, 2002 and the Order for second reading of Bill C-344 was accordingly discharged, the Bill was withdrawn and the subject matter was referred to committee.[3]

On May 9, 2002, Réal Ménard (Hochelaga–Maisonneuve) submitted to the Chair a letter signed by 81 Members which maintained that when a private Member's bill deemed votable is not voted on, a breach of parliamentary privilege has occurred and an unfortunate precedent has been set.[4]

Resolution: The Speaker ruled immediately, reiterating that the amendment and the majority decision of the House approving that amendment had been in order. He indicated that he would forward the letter to the Chair of the Standing Committee on Procedure and House Affairs, with the suggestion that the Committee examine the proposals contained in the letter with a view to modifying the rules governing Private Members' Business. He noted that Mr. Ménard and his co-signatories could appear before the Committee to present their arguments. He concluded by reminding all Members that his role as Speaker was to implement the rules the House makes for itself, not to change them.

Decision of the Chair

The Speaker: Order, please. This is not debate. This is a point of order. The Chair is ready to put an end to this discussion at this time.

The hon. Member for Hochelaga–Maisonneuve has submitted a letter to the Chair. I have received it and read what it said.

However, the issue raised in the letter really concerns Private Members' Business.

Mr. Réal Ménard: It concerns the Speaker and the Members.

The Speaker: The hon. Member says that it concerns the Speaker and the Members. But the Speaker has already ruled on the admissibility of the amendment to this Bill that was put to a vote in the House.

The Member for Hochelaga–Maisonneuve knows full well that the Speaker always has to draw the line between the rights of various groups of Members, on either side of the House or in [a][5] party.

In this case, it has been suggested that the decision of the majority on the question put to the House regarding the amendment to the motion at second reading stage of this Bill was somehow out of order.

I have already ruled otherwise. I think that the important thing here is that, if some Members insist that this type of amendment is out of order, then other Members will make the argument that it is in order. The Speaker is always in the middle of these arguments and has to decide.

Based on the precedents that I have examined in order to rule on this matter, I have come to the conclusion that such an amendment to any bill before the House is in order.

A study on Private Members' Business is currently underway at the Standing Committee on Procedure and House Affairs. The Government House Leader strongly suggested that the Committee undertake this kind of study, and the study will continue.

The hon. Member for Hochelaga–Maisonneuve may have attended the Committee meeting last week. I do not recall the date though. There will certainly be other opportunities for the Committee to examine this issue.

What I can do—and will do so immediately this afternoon—is to send this letter to the Chair of the Standing Committee on Procedure and House Affairs, suggesting that the Committee examine the proposals contained in this letter to change the rules concerning Private Members' Business, as suggested by the Member for Hochelaga–Maisonneuve.

I am certain that the hon. Member and his colleagues who signed the letter can appear before the Committee to encourage it to rule on that point and, perhaps, recommend changes to the Standing Orders of the House.

These are the rules that the Speaker has to enforce here in the House. I do not have the authority to change them. I have to follow the rules and be the servant to the House.

The rules whereby amendments are deemed in order or out of order are made by the House. If the House wants to change the rules, as Speaker of the House, I will be happy to implement the changes.

I can assure the hon. Member that I will immediately send the letter to the Chair of the Committee.

Editor's Note: At this point, Mr. Ménard rose to ask whether the Speaker would ensure that remedial action was taken for the benefit of Mr. Martin. The Speaker replied immediately.

The Speaker: I have indicated that the amendment to the motion at second reading stage of the Bill put forward by the hon. Member for Esquimalt–Juan de Fuca was in order and admissible. The House decided to adopt it. I am not the one who came to that decision, but the majority of Members, in a division in this House.

If the hon. Member wishes to see a vote on the motion at second reading stage, the majority can reject that motion and refer the whole matter to committee. The majority, however, decided otherwise. As the hon. Member knows very well, it is hard for the Chair to change this.

The matter will therefore be reviewed in the Standing Committee on Procedure and House Affairs. I am sure that the hon. Member, who has some very persuasive arguments, can go before the Committee in order to persuade the Members that his position is the right one, the accurate one, and the one the House needs to adopt.

Postscript: The Standing Orders of the House of Commons were subsequently amended and Standing Order 93(3) thereafter specified that "amendments to motions and to the motion for second reading of a bill may only be moved with the consent of the sponsor of the item".

The subject matter of Bill C-344 was referred to the Special Committee on Non-Medical Use of Drugs, which presented its final report (*Policy for the new Millennium: Working Together to Redefine Canada's Drug Strategy*) to the House on December 12, 2002.[6]

In the Second Session of the Thirty-Seventh Parliament, Mr. Martin introduced Bill C-327, *An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act (marihuana)*, on December 5, 2002.[7]

Editor's Note: At the time of the deferred division on Mr. Maloney's amendment on April 17, 2002, Mr. Martin attempted to remove the Mace from the Table in protest. He subsequently apologized to the House for his action.[8] See *Debates*, October 31, 1991, pp. 4271-8, 4279-80, 4309-10; *Journals*, October 31, 1991, p. 574, for another instance of a Member attempting to touch the Mace.

1. *Debates*, February 18, 2002, p. 8897.
2. *Debates*, February 18, 2002, p. 8898.
3. *Debates*, April 17, 2002, p. 10525.
4. *Debates*, May 9, 2002, pp. 11456-7.
5. The word "a" is missing from the published *Debates*.
6. *Journals*, December 12, 2002, p. 302.
7. *Journals*, December 5, 2002, p. 262.
8. *Debates*, April 17, 2002, pp. 10526-7.

Private Members' Business

Votable and Non-votable Items

Item dropped to the bottom of the Order of Precedence: no report on votability of item

May 29, 2007 *Debates*, p. 9912

Context: On May 29, 2007, pursuant to Standing Order 94(1)(*a*), the Order for second reading of Bill C-415, *An Act to amend the Canada Labour Code (replacement workers)*, standing in the name of Mario Silva (Davenport), appeared on the *Order Paper* for consideration that day. However, as no report on the votability of the Bill had been presented to the House by the Standing Committee on Procedure and House Affairs, as required by Standing Order 92, the Speaker ordered that the item be dropped to the bottom of the Order of Precedence until the Standing Committee reported on its status.

Statement of the Chair

The Speaker: Pursuant to Standing Order 92, a private Member's item may only be considered by the House after a final decision on the votable status of the item has been made.

Although the House was to consider Bill C-415, *An Act to amend the Canada Labour Code (replacement workers)*, today, no report on the votability of the Bill has been submitted or passed, as required before a bill can become the subject of debate.

I am therefore directing the Table Officers to drop this item of business to the bottom of the Order of Precedence and accordingly Private Members' Hour is suspended today.

Postscript: Bill C-415 remained in the Order of Precedence and, after the prorogation of the First Session and opening of the Second Session of the Thirty-Ninth Parliament, it was reinstated on October 16, 2007. It was debated for a first hour at second reading on December 3, 2007, and then remained on the Order of Precedence (having been exchanged on several occasions) until all Private Members' Business then under consideration came to an end with the dissolution of the Thirty-Ninth Parliament on September 7, 2008.

Private Members' Business

Votable and Non-votable Items

Item dropped to the bottom of the Order of Precedence: no report on votability of item

June 18, 2008 — *Debates*, pp. 7136-7

Context: On June 18, 2008, Michael Savage (Dartmouth–Cole Harbour) rose on a point of order with respect to Bill S-204, *An Act respecting a National Philanthropy Day*, standing in his name, and scheduled for consideration later that day. Mr. Savage pointed out that the Standing Committee on Procedure and House Affairs' Report on the status of the Bill had not yet been presented and concurred in, and he sought and failed to obtain unanimous consent for the Bill to be deemed votable.[1]

Resolution: When Private Members' Business was called later in the sitting, the Acting Speaker (Andrew Scheer) ruled that since the Standing Committee on Procedure and House Affairs had not yet presented a report on the votable status of the item, the Order for second reading of Bill S-204 would be dropped to the bottom of the Order of Precedence and Private Members' Business would be suspended for the day.

Decision of the Chair

The Acting Speaker (Mr. Andrew Scheer): Pursuant to Standing Order 92, a private Members' item may only be considered by the House after a final decision on the votable status of the item has been made.

Although Bill S-204, *An Act respecting a National Philanthropy Day*, is scheduled for debate in the House today, no report on the votable status of the Bill has been presented and concurred in as is required before the Bill can be debated.

I am therefore directing the Table Officers to drop this item of business to the bottom of the Order of Precedence. Accordingly, Private Members' Business Hour is suspended today.

1. *Debates*, June 18, 2008, p. 7121.

Private Members' Business

Reinstatement Following Prorogation

Reinstatement of Private Members' Business following prorogation

February 2, 2004 *Debates*, pp. 10-1

Context: On October 29, 2003, the House concurred in the Fiftieth Report of the Standing Committee on Procedure and House Affairs. The effect of this was to extend the provisional Standing Orders relating to Private Members' Business adopted by the House on March 17, 2003 until June 23, 2004 or until the dissolution of the Thirty-Seventh Parliament, whichever came first. In addition, Standing Orders 68(4)(*b*) and 68(7)(*b*) (whereby a private Member and not only a Minister of the Crown could present a motion to have a committee prepare and bring in a bill) were to remain suspended for the same trial period.[1] On November 12, 2003, the Second Session of the Thirty-Seventh Parliament was prorogued. On February 2, 2004, the first sitting day of the Third Session, the Speaker made a statement to clarify the practical effect of the extension of the Standing Orders on pending House business, particularly the effect of Standing Order 86.1 which provided for the reinstatement of items of Private Members' Business from the previous session as they had stood prior to prorogation.

Statement of the Chair

The Speaker: Members will recall that on October 29, 2003, the House concurred in the Fiftieth Report of the Standing Committee on Procedure and House Affairs which had the effect of extending provisional Standing Orders in relation to Private Members' Business until the earlier of June 23, 2004, or the dissolution of the Thirty-Seventh Parliament.

To ensure that Private Members' Business will be conducted in an orderly fashion, the Chair wishes to clarify some of the provisions resulting from Standing Order 86.1, the Standing Order that deals with the reinstatement of all items of Private Members' Business originating in the House of Commons.

First of all, the List for the Consideration of Private Members' Business, established on March 18, 2003, continues from last session to this session notwithstanding prorogation.

This List is available for consultation at the Private Members' Business Office and on the Internet.

The items themselves, either in or outside the Order of Precedence, whether Motions, Notices of Motions (Papers) or Bills, will keep the same number as in the Second Session of the Thirty-Seventh Parliament. However, considering that he is no longer a Member of this House, all the items standing in the name of Mr. Harb will be dropped from the *Order Paper*.

Ministers and parliamentary secretaries who are ineligible by virtue of their office will be dropped to the bottom of the List for the Consideration of Private Members' Business, where they will remain as long as they hold those offices. Consequently, the item in the name of the Member for Don Valley West is withdrawn from the Order of Precedence.

Standing Order 86.1 states that at the beginning of the second or subsequent session of a Parliament, all items of Private Members' Business originating in the House of Commons that have been listed on the *Order Paper* during the previous session shall be deemed to have been considered and approved at all stages completed at the time of prorogation and shall stand, if necessary, on the *Order Paper* or, as the case may be, referred to a committee and the List for the Consideration of Private Members' Business and the Order of Precedence established pursuant to Standing Order 87 shall continue from session to session.

So, pursuant to this Standing Order, the items in the Order of Precedence are deemed to have been considered and approved at all stages completed at the time of prorogation. Thus they shall stand, if necessary, on the *Order Paper* in the same place or, as the case may be, referred to committee or sent to the Senate.

There were five private Members' bills originating in the House of Commons referred to committee. Therefore, pursuant to Standing Order 86.1, Bill C-231, *An Act to amend the Divorce Act (limits on rights of child access by*

sex offenders), is deemed to have been introduced, read the first time, read the second time and referred to the Standing Committee on Justice and Human Rights.

Bill C-338, *An Act to amend the Criminal Code (street racing)*, is deemed to have been introduced, read the first time, read the second time and referred to the Standing Committee on Justice and Human Rights.

Bill C-408, *An Act to amend the Parliament of Canada Act (oath or solemn affirmation)*, is deemed to have been introduced, read the first time, read the second time, and referred to the Standing Committee on Procedure and House Affairs.

Bill C-420, *An Act to amend the Food and Drugs Act*, is deemed to have been introduced, read the first time, read the second time and referred to the Standing Committee on Health.

Bill C-421, *An Act respecting the establishment of the Office of the Chief Actuary of Canada and to amend other acts in consequence thereof*, is deemed to have been introduced, read the first time, read the second time and referred to the Standing Committee on Finance.

(Bills deemed introduced, read the first time, read the second time and referred to a committee.)

The Speaker: May I remind hon. Members that a time limit is placed on the consideration of private Members' bills. Indeed, pursuant to Standing Order 97.1, committees will be required to report on these reinstated private Members' public bills within 60 sitting days of this statement.

At prorogation, five private Members' bills originating in the House of Commons had been read the third time and passed. Therefore, pursuant to Standing Order 86.1, the following Bills are deemed adopted at all stages and passed by the House: Bill C-212, *An Act respecting user fees*; Bill C-249, *An Act to amend the Competition Act*; Bill C-250, *An Act to amend the Criminal Code (hate propaganda)*; Bill C-260, *An Act to amend the Hazardous Products Act (fire-safe cigarettes)*; and Bill C-300, *An Act to change the names of certain electoral districts.*

(Bills deemed adopted at all stages and passed by the House)

The Speaker: The Special Committee on the Modernization and Improvement of Procedures of the House of Commons, in its First Report, encouraged the Speaker, during the transition period, to take all reasonable measures to facilitate this pilot project. I have been mindful of this recommendation in making all these various decisions.

Honourable Members will find at their desks an explanatory note recapitulating these remarks. I trust that these measures will assist the House in understanding how Private Members' Business will be conducted in the Third Session. The Table can answer any other questions you may have.

Postscript: In its Twelfth Report, presented to the House and concurred in on October 29, 2004,[2] the Standing Committee on Procedure and House Affairs charged the Subcommittee on Private Members' Business with reviewing the provisional Standing Orders and concluded that following its review the provisional Standing Orders should be made permanent. The Subcommittee concluded that the vast majority of Members were in favour of the new regime, and, given that there appeared to be a significant degree of satisfaction with the provisional Standing Orders, and no major problems had been identified, they would recommend the permanent adoption of the rules. The Standing Committee agreed with the Subcommittee's recommendation and reported this to the House, which concurred in the Report on May 11, 2005.[3] Accordingly, the provisional Standing Orders were adopted as permanent, effective June 30, 2005.

1. Fiftieth Report of the Standing Committee on Procedure and House Affairs, presented to the House and concurred in on October 29, 2003 (*Journals*, p. 1196).
2. Twelfth Report of the Standing Committee on Procedure and House Affairs, presented to the House and concurred in on October 29, 2004 (*Journals*, pp. 170-1).
3. *Journals*, May 11, 2005, pp. 738-9.

Chronological Table

Chronological Table

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Not authorizing any spending of public funds, royal recommendation not required, Chair expressing concern to the repeated similar points of order that come close to an appeal of the Chair's decisions, (Van Loan, Peter) 908-11

Not extending the incidence of a tax, ways and means motion not necessary, (Lukiwski, Tom) 918-21

Order of Precedence, first, establishment, 885-90, 900-4, 915-7

Tax deferral not considered as an increase of tax, ways and means motion not necessary, (Nicholson, Rob) 905-7

Motion of instruction, empowering a committee to divide a bill and imposing deadline for reporting one of the two new bills back

Permissive instruction, Speaker states that the motion containing the portion with the reporting deadline is contingent on the main proposition, in order, (Lukiwski, Tom) 445-9

Bills, Private Members'… Continued

Report stage, report stage motions

Grouping together for debate, amendments could not have been presented during the Committee's consideration of the Bill, the Chair selected the motions for debate at report stage, (Comartin, Joe) 480-3, (McKay, John) 484-5

Speaker declined to put the question on the concurrence in the Bill since it was deleted of all content in Committee and motions to re-establish the content defeated, report stage discharged and bill dropped from the *Order Paper*, Chair's ruling, 474-5

Similar items on the *Order Paper*

Chair expressing reluctance to withdraw second bill, dropped it to the bottom of the Order of Precedence and if the bill next reached the top of the Order again it will be discharged and withdrawn, (Lee, Derek) 927-33

Removal of an identical bill, 926

Votable and non-votable items, no report of the Standing Committee on Procedure and House Affairs on votability of item

Bill dropped to the bottom of the Order of Precedence, 943

Senate bill dropped to the bottom of the Order of Precedence, (Savage, Michael) 944

See also Privilege—Rights—Votable; Division, recorded—Casting; Supply motions—Adoption of a private Members' bill

Bills, Senate

Infringement on the financial initiative of the Crown, requiring royal recommendation or requiring ways and means motions

Levy provided for, constitutes a tax, first reading null and void and bill withdrawn, (Boudria, Don) 503-13

No obligation for spending of public funds in bill, no need for royal recommendation, (Abbott, Jim) 641-4

Bills, Senate… Continued

Infringement on the financial initiative of the Crown, requiring royal recommendation or requiring ways and means motions… Continued

No tax imposed, bill properly before the House, (Abbott, Jim) 514-5

Not authorizing new spending of public funds, bill characterized as departmental operational costs that will be approved through an appropriation act, royal recommendation not required, (Redman, Karen) 897-9

See also Bills, Private Members'—Votable

Blues *see* Members' remarks—Misleading *and* Personal

Closure *see* Routine motions by a Minister—Used as a means to limit debate

Committee of the Whole

Debate, rules, 589-90

Motion, debate, appeal of the Chair's ruling

Speaker ruled that the motion was debatable and accordingly he sustained the decision of the Chair of the Committee of the Whole, (Johnston, Dale) 874-6

Committees

Exceeding their mandate

Given the long held-practice, Speakers do not intervene in the proceedings of committees and do not decide the business of committees, (Szabo, Paul) 774-81, (Hill, Jay) 787-90

In camera testimony, making public, House Order, seeking

Committee master of its own proceedings, the Speaker has no power to substitute his judgment for that of a committee, (Reynolds, John) 817-21

Meetings

Committees continuing to sit while division bells ringing during recorded division

Committees… Continued

Meetings… Continued

No restriction in the Standing Orders preventing committees from sitting during ringing of division bells, Speaker suggesting that committees might wish to adopt their own rules to deal with this issue, (Rajotte, James) 828-31

Organization meeting, 48 hours' notice requirement not met

Chair ordering rescheduling, (Johnston, Dale) 810-1

Report

Admissibility questioned for exceeding mandate of the Committee

Committee overturning procedurally sound rulings and presenting procedurally unacceptable reports, the report is deemed withdrawn, Chair's ruling, (Lukiwski, Tom) 791-5

Committee usurping the mandate and the powers of another committee, the report is deemed withdrawn, Chair's ruling, (Hill, Jay) 782-6, (Szabo, Paul) 796-800

Adoption during meeting held in Parliamentary Restaurant, procedural acceptability

No evidence presented to suggest a committee exceeded its authority to conduct its proceedings as its members see fit, report properly before the House, (Boudria, Don) 857-62

Chair, signature on a report viewed as a conflict of interest

No suggestion that the Member received any monetary gain, Chair of a committee signing a report is a routine practice that serves to validate the text of the report and not a vote in favour of, (Reynolds, John) 852-6

Motion to move concurrence

Amendment found in order, House requested to consider the same question twice, rules and practices of the House have been respected, Chair rules the amendment to be in order, (Valeri, Tony) 276-83

Committees… Continued
Report… Continued

Conflict of interest, issue in which Committee Chair has direct pecuniary interest, notice of concurrence motion given, admissibility

Committee Chair not voting on motion, no grounds for ruling motion out of order, (Reynolds, John) 370-2

Numbers of motions per sitting, limiting, report had been adopted by unanimous consent, motion in order, (Lukiwski, Tom) 384-5

Similar items on the *Order Paper*, Chair indicated that it would be a violation of the principle behind the rule of anticipation to allow the proceedings on the concurrence motion to continue and requested that the motion be removed from the *Order Paper*, (Lukiwski, Tom) 298-300

Conflict of interest *see* Committees—Report; Members of Parliament; Privilege, *prima facie*—Rights—Report; Oral Questions—Regarding

Conflict of Interest Code for Members of the House of Commons *see* Privilege, *prima facie*—Contempt of the House—Ethics *and* Rights—Report; Oral Questions—Regarding

Contempt of the House *see* Privilege; Privilege, *prima facie*

Contempt of Parliament *see* Privilege

Debates of the House of Commons

Printed and electronic versions, discrepancies

Speaker agrees with Member that the omission of the word "finally" from the edited version of the Minister's answer was significant, and instructed the editorial staff to restore that word to the final transcript, (Cotler, Irwin) 291-2

See also Members' remarks—Misleading

Decorum *see* **Order and decorum**

Division, recorded

Casting vote, Chair casting deciding vote in negative, Member informing Table that he had not voted but had been counted as voting

Chair deciding decision cannot stand, Private Members' motion agreed to, Chair directing the Table to correct *Journals* to reflect true decision, 411-13

Chair deciding decision stands, Private Members' bill agreed to, Chair directing the Table to correct *Journals* to reflect true decision, 417-8

Members being recorded as having voted twice

Past practice unclear as to how such situations should be handled, unanimous consent had not been granted, Chair rules that Members who had voted twice would remain on the record, (Cuzner, Rodger and Godin, Yvon) 419-22

Members moving about during taking of vote

Requested to remain in seat until division is complete, the vote struck from the record, (MacKenzie, Dave) 415-6

Members rising to request a deferred recorded division not in their assigned seats

Rule does not impose such a restriction, (Plamondon, Louis) 409-10

Members seeking to record their votes after voting took place

Unanimous consent would be required when Members wished to record their votes outside the usual sequence, (Blaikie, Bill) 407-8

See also Committees—Meetings; Order and decorum—Members yelling; Supply motion—Votable

Documents, tabling

Minister of Industry attempting to make a statement while tabling a document

Not in order to make a statement while tabling a document, 351-2

Documents, tabling… Continued

Quoted by Minister

Exception when contrary to public interest dealing with national security measures, (Bélanger, Mauril) 333-5

Tabling by Minister at any time

During oral question period, within rules of the House, in order, (Epp, Ken) 319-22

Tabling with the Clerk of the House of Commons

No breach of procedure, in compliance with rules and practices of the House, (Layton, Jack) 353-4

Emergency debates

Accepted

Devils Lake diversion project, timing of the debate determined by unanimous consent, (Smith, Joy) 750-1

Livestock industry, concurrence in committee report on the same matter prevented due to a request for a Government response, (Bellavance, André) 755-6

Softwood lumber, job losses, (Duncan, John) 740

Sri Lanka, crisis, situation in the northern part, humanitarian assistance, (Layton, Jack) 759-60

Rejected

Atlantic fisheries, Grand Banks nose and tail, Flemish Cap, foreign overfishing, emergency debate already granted on the same subject a few months earlier, (Hearn, Loyola) 747

Automotive industry, American situation, Canadian cooperation, other opportunities for debate, (Sgro, Judy) 757-8

Gasoline prices, increases, debate held by unanimous consent, (White, Randy) 752

Emergency debates… Continued
Rejected… Continued

Human embryo research, other opportunities for debate, (Merrifield, Rob) 743-4

Maher Arar, inquiry, matter deemed not an emergency, (Comartin, Joe) 753-4

Mandatory long form census, withdrawal, Government's decision, other opportunities for debate, (Layton, Jack) 761-2

Red fish, quota, Canso, Nova Scotia, fish plant, potential closing, matter deemed to be exclusively local or of regional interest to a specific community, (MacKay, Peter) 745-6

Softwood lumber, job losses, other opportunities for debate, (Casey, Bill) 741-2, (Stoffer, Peter) 748-9

Government motions *see* Motions from the Government

Hansard *see Debates of the House of Commons*

Main Estimates

Amendments, Minister of Finance not informing the House, announcements made outside the House

Government within rights to change policy, ways and means motion must reflect changes in policy, (Hearn, Loyola) 619-22

Supply, votes

Motion to restore item reduced by the Standing Committee on Transport, acceptability, clarification

Not in order, (Reynolds, John) 604-5

Spending authority, Parliament, no legislative approval

Charge against vote of wrong Department, disagreement between the Minister and the Auditor General not to be decided by the Chair, not in order, (Williams, John) 575-9

Funds duly authorized, not in order, (Williams, John) 630-5

Main Estimates… Continued
Supply, votes… Continued

Overspending of the Privacy Commissioner, special report by the Auditor General, no infringement of the rules and the practices of the House, a correction will be set out in the *Public Accounts* later in the year, Chair's ruling, (Williams, John) 636-40

See also Privilege—Misleading—Main

Members of Parliament

Conflict of interest, investigation by Ethics Commissioner, moratorium on comments

Chair has no power to prohibit comments outside the House and to address the issue of a potential conflict of interest on the part of the Ethics Commissioner himself, (White, Randy and Epp, Ken and Blaikie, Bill) 326-9

Presence or absence in the House, social networking site, use

Impossible for the Chair to monitor Members' use of personal digital devices in the House, suggested that the matter be referred to the Standing Committee on Procedure and House Affairs, (Paquette, Pierre) 293-7

Members' remarks

Corruption, accusations

Accusations against party and not individual Members, remarks were acceptable, (Szabo, Paul) 691-2

Misleading and false statement

Chair reviewing "blues", matter of debate, not point of order, (Sauvageau, Benoît) 670-2

Chair reviewing *Debates*, unable to find that there has been an attempt to mislead the House, (McDonough, Alexa) 721-3

Members' remarks… Continued

Misleading and false statement… Continued

Matter referred to Ethics Commissioner, Chair putting matter aside until the conflict of interest process has run its course, (Grewal, Gurmant) 673-6

Not out of order to say that a Member had misled the House, not a point of order, (Angus, Charlie) 682-3

Personal attacks

Chair interrupting a statement by a Member in stating that attacks on individual Members are out of order, (Duncan, John) 310-1

Comments falling within parameters of the freedom of speech, out of order, (Minna, Maria) 684-6

Inappropriate allegations, Chair reviewing "blues", dispute over interpretation of events, matter of debate, (Szabo, Paul) 677-81

Inappropriate use of a statement made pursuant to Standing Order 31, Member asked to withdraw comments, (Lee, Derek) 312-4

Remarks intended to be provocative and create disorder, Chair urges Members to refrain from using similar language, (Guimond, Michel and Plamondon, Louis) 704-8

Misleading and false statement *see* Members' remarks; Privilege

Motions from the Government

Division requested for complicated questions

Issues related to the reinstatement of business from the previous session will be debated together but voted on separately, the portion of the motion on pre-budget consultations will be debated and voted on separately, (Skelton, Carol) 263-7

During late night sittings, notice embargoes, access denied until after midnight, delaying debate

Notice given according to rules and practices of the House, open to Government House Leader to move motion at appropriate time the next day, (Hill, Jay) 284-6

Motions from the Government… Continued

Preamble of a motion, admissibility due to its length and content

Chair cannot rule the motion out of order but suggest that the Standing Committee on Procedure and House Affairs might wish to consider the matter, (Davies, Libby) 655-8

Ratification of international treaties

No rule or practice of the House required the prior passage of enabling legislation, power to ratify is strictly a prerogative of the Crown and not conditional on first adopting implementing legislation, Chair's ruling, (Harper, Stephen) 268-72

Violation of motion approved earlier during supply motion debate, motion directed that action should be taken, not must be taken, Chair proceeding with putting the motion to the House, (Harper, Stephen) 553-4

Relating to suspension of certain Standing Orders for the duration of the consideration of a bill which had yet to be introduced in the House

House may dispense with the application of the rules by unanimous consent and the Standing Orders may be suspended by motion for which appropriate notice has been given, in order, (Comartin, Joe) 651-4

Timetabling passage of a bill, House is free to adopt changes to the Standing Orders both temporarily and permanently, in order, (Siksay, Bill) 659-61

Motions of instruction *see* Bills, Private Members'

Motions under Standing Order 56.1 *see* Routine motions by a Minister

Opposition motions *see* Supply motions

Oral Questions

Beyond administrative responsibility of the Government

Election expenditures of a political party, out of order, (Easter, Wayne) 336-7

Member asking the Minister of an opinion on the actions of other Members, out of order, (Robinson, Svend) 315-6

Questions dealing with internal matters of a political party, out of order, (Ablonczy, Diane) 317-8

Transfer of election campaign funds, out of order, 330

Chair of committee, answer to questions

Answered by Government House Leader, role of the Chair to look for Members who are standing to answer and choose the appropriate Member to answer, (Goodale, Ralph) 338-40

Must be on organization of committee and its agenda and not on committee evidence, specifications of relevant Standing Orders concerns content of questions and not that of answers, (Adams, Peter) 323-5

Question must not be on Committee evidence but on its agenda or schedule

Question dealt with the schedule and agenda, in order, (Stanton, Bruce) 341-43

Response argued to be inappropriate, not within Chair's authority to judge of the nature of a response, out of order, (Van Loan, Peter) 344-7

Order of questions, allotted time for each party

Standing ovations depriving opposition parties of questions, order of question not set out in the rules but agreed between parties, out of order, (Guimond, Michel) 348-50

Oral Questions… Continued

Regarding an inquiry under section 27 of the *Conflict of Interest Code for Members of the House of Commons*, admissibility

Question regarding conflict of interest mandated under section 26 of the Code which governs opinions and not under section 27 which governs inquiries, (Hill, Jay) 331-2

See also Documents, tabling—Tabling by Minister

Order and decorum

Members yelling during a recorded division

No Members shall make any noise or disturbance when Speaker is putting a question, (Nicholson, Rob) 414

Points of order *see* Bills, Private Members'—Infringement—Committee

Political parties

Party status, Progressive Conservative Party/Democratic Representative Caucus Coalition, recognition as single entity

Chair unable to recognize as single entity and to grant full party status to group which disavow title and is clearly an amalgam of a party and a group of independent MPs, (MacKay, Peter) 250-8

Private Members' Business

Bills and motions, reinstatement from the previous session pursuant to Standing Order 86.1, List and Order of Precedence continuing from session to session, 945-8

Private Members' motions

Amendment, relevance, acceptability

Expanding and introducing propositions broader than the original motion, not in order, (Bélanger, Mauril) 662-3

Within the scope of the original motion, amendment relevant, in order, (Szabo, Paul) 664-6

See also Division, recorded—Casting

Privilege

Contempt of the House

Allegation of intimidation of witnesses appearing before a special committee

No direct attempt to influence the testimony of witnesses, not a question of privilege, (Lee, Derek) 81-105

Disclosure of the Canadian Human Rights Commission annual report to media prior to being tabled in the House

Matter best raised at Standing Committee on Justice and Human Rights at this time, not a question of privilege, (Williams, John) 14-6

Failure of the Minister of Justice to table draft regulations for review prior to enactment nor providing explanations for not tabling draft regulations under *Firearms Act*

Missing documents tabled in imperfect condition soon after question raised in the House, conditions of Act complied with, Chair encouraging Minister of Justice to exhort officials to exercise duties with due diligence, not a question of privilege, (Grewal, Gurmant) 21-4

Failure of the Minister of National Revenue to comply with legislative requirement of tabling report regarding fraudulent refund claims of Goods and Services Tax (GST) in the *Public Accounts of Canada*

Not the role of the Chair to rule on points of law and difference of opinion on the facts, matter concerning Members' right to require complete and accurate information in a timely fashion, they may wish to pursue the matter through the Standing Committee on Public Accounts, not a question of privilege, (Reynolds, John) 36-9

Government advertisement promoting Kyoto Protocol prior to Parliament making decision

Privilege… Continued

Contempt of the House… Continued

Advertising did not indicate decision had already been made, not a question of privilege, (Clark, Joe) 32-5

Government advertisements placed by the Department of Citizenship and Immigration alleging to have anticipated a decision of the House, unauthorized expenditure

Expenditure not a procedural matter and advertisements not misrepresenting or presuming decisions of the House, not a question of privilege, (Karygiannis, Jim and Chow, Olivia) 71-6

Government decision to terminate funding for the Law Commission of Canada in effect dissolving the Commission which could be done only by Parliament

Not within Chair's authority to rule or to decide on points of law, prerogative of the Government to manage public funds, not a question of privilege, (Comartin, Joe) 64-8

Government disregarding Parliament and the legislative process by implementing measures contained in Government bills despite their defeat in the House, departments will continue to operate separately without Parliament's blessing

Not within Chair's authority to rule or to decide on points of law and the bills aiming to confirm executive action already taken by Orders in Council, not a question of privilege, (Hill, Jay) 46-53

Leader of the Government in the House of Commons charging a Member with complicity in the disturbance in the gallery, the Member disavowing any responsibility

Long-standing tradition of the House of taking Members at their word, (Hill, Jay and Layton, Jack) 77-80

Letter written by Privacy Commissioner to Information Commissioner containing accusatory language

Privilege… Continued

Contempt of the House… Continued

Letter does not interfere with Information Commissioner's ability to carry out his mandate, not in Chair's mandate to comment on points of law, not a question of privilege, (MacKay, Peter) 17-20

Minister of Transport's statement about Government policy outside the House, question of privilege, time of raising and notice requirements

Minister able to make statement outside the House, not a question of privilege, (Reynolds, John) 234-5

Prime Minister ignoring decision of the report of the Standing Committee on Environment and Sustainable Development, concurred in by the House, to reject a nomination at the National Round Table on the Environment and the Economy

Chair cannot compel Government to abide by Committee recommendations or a decision of the House, not a question of privilege, (Mills, Bob) 54-8

Senior departmental officials instructing employees not to reply to a Member's electronic survey relating to bilingualism in the Public Service, volume and size of messages interfering with the House system

Survey not conducted in context of proceedings of the House, parliamentary privilege does not apply, Chair urging Members to adhere to new guidelines governing mass electronic communication, not a question of privilege, (Pankiw, Jim) 137-41

Contempt of Parliament

Minister of Justice releasing cost estimates and details of supplementary funding request of Firearms Registry Program to the media instead of the House

Privilege… Continued
Contempt of Parliament… Continued
Information classified as briefing note, disclosure of this information does not constitute a breach of privilege, (Williams, John) 598-603
Premature disclosure of the Speech from the Throne to the media prior to its reading by the Governor General
Sources of the leak was not certain, secrecy associated with the release of important documents is a convention of Parliament and not a matter of privilege, (Goodale, Ralph) 69-70
Prime Minister Martin failure to keep commitment made to the House to hold debate on Canada's participation in ballistic missile defence system
Not up to the Speaker to impose his own interpretation of the Address in Reply to the Speech from the Throne, matter of debate, not a question of privilege, (Hill, Jay) 735-9
Language, inappropriate/improper
Canadian Alliance Web site document concerning allegedly conflicting statements made by the Minister of National Defence, Members, freedom of speech, limitations on comments made outside the House
Chair cautioning Members to be careful of choice of words used in dissenting opinions, not a question of privilege, (Jordan, Joe) 132-6
Member accusing other Members of being the equivalent of modern-day Klansmen
Unparliamentary language, withdrawal requested and Member refusing to do so, while he would not be named, he would not be recognized to speak until he had done so, (Godin, Yvon) 687-90

Privilege… Continued

Language, inappropriate/improper… Continued

Minister of Citizenship and Immigration referring to Member making treasonous remarks

Remarks in question not clearly directed at Member personally and remarks made outside the Chamber, not a question of privilege, (Forseth, Paul) 126-8

Minister of Foreign Affairs alleged to have made disrespectful comments towards another Member

Not the duty of the Chair to resolve the dispute, contradiction over interpretation of events, (Coderre, Denis and Stronach, Belinda and Goodale, Ralph) 185-9

Members' reputation impugned

Casting aspersions on a Member, complaint with allegations of theft and embezzlement

Document concealing names of complainants while the Member's name remained included, Royal Canadian Mounted Police closed the file, not a question of privilege, (Casey, Bill) 209-14

Improper use of House resources

E-mail sent to media releasing inaccurate information about a Member

Not distorting the Member's position on a specific issue, not the role of the Chair but rather of the Members to monitor the contents of e-mails, not a question of privilege, (Hoeppner, Candice) 225-9

Member's statements regarding Liberal Member of Parliament under criminal investigation, besmirching reputation of all Liberal Members

Reference made to criminal investigation not charges and the ability of Liberal Members to carry out duties not impaired, not a question of privilege, (Boudria, Don) 158-60

Privilege… Continued

Misleading/false statements

Former Minister of Public Works and Government Services statements concerning his involvement or interference in hiring practices of a Crown corporation

Matter of disagreement as to the interpretation of events, statement made outside the House, not a question of privilege, (Goldring, Peter) 129-31

Main Estimates, Government tabling, intention to table revised Main Estimates

Members unable to properly examine Main Estimates, rendered unreliable, not a question of privilege, Chair's ruling, (Hearn, Loyola) 613-8

Member alleged to have given a misleading response to a question with respect to Maher Arar's incarceration in Syria

Matter of disagreement as to the interpretation of events, not a question of privilege, (Graham, Bill) 181-4

Minister declaring that he will appear before a committee despite saying the opposite in a letter to the Committee Chair

Matter of disagreement as to the interpretation of events, Chair requesting that the Minister clarify the facts at an early opportunity, (Godin, Yvon) 724-5

Solicitor General misleading the House concerning funding of Canadian Firearms Program in the Supplementary Estimates (A) 2003-2004

Funds are a carryover from the previous year although the wording proved unclear in the Supplementary Estimates, not a question of privilege, (Breitkreuz, Garry) 606-12

Privilege… Continued

Procedure for dealing with questions of privilege arising from a committee report, clarification as to when to give notice needed

Report must be presented to the House before a Member can give notice related to its contents, (Davies, Libby) 236-8

Rights of Members breached

Access to a Member's computer files by Canadian Alliance official without Member or representative present, breach of security and privacy

Errors honest mistake, remaining disputed files ordered to be returned to Member and new protocols to be established for storing data, not a question of privilege, (Grey, Deborah) 120-5

Committees

Ad hoc committee reviewing *Access to Information Act*, Government ordering officials not to appear

Ad hoc committee not sanctioned by the House, possessing no powers, not a question of privilege, (Bryden, John) 867-9

Committee Chair refusal to allow questions to a witness

Concerning his time as Minister of Public Works and Government Services during examination of qualifications as Canadian Ambassador to Denmark, Committees are masters of their own proceedings, not a question of privilege, (Lalonde, Francine) 806-9

Interrupting a motion to summon witness before Committee in order to move that the question be now put, committee to conduct business before it, matter remains within committee to deal with, not a question of privilege, (Godin, Yvon) 812-6

Privilege… Continued
Rights of Members breached… Continued

Disclosure, premature and unauthorized disclosure of parts of a Special Committee report before being presented in the House

None of remarks quoted in media constitute direct disclosure of contents of report, not a question of privilege, (Ménard, Réal) 848-51

Expert advisors hired by the Committee already paid by the Department of Canadian Heritage, neutrality and objectivity doubted in violation of principle of comity

Chair does not interfere in Committee affairs and comments from the advisor are not unparliamentary, not a question of privilege, (Gallaway, Roger) 870-3

Intimidation of a public servant appearing before a committee

Decision to determine whether privileges of the Committee or those of its Members had been breached, Speaker cannot rule on the matter without a report from the Committee, (Harris, Jack) 844-7

Intimidation of a witness prior to his testimony before a committee, parliamentary immunity override, guidelines related to a question of privilege in committee report

Report failed to meet requirements of current practice, Chair ruled that he could not determine whether there had been a breach of privilege, (Dewar, Paul) 863-6

Member making public *in camera* testimony from a committee following the rejection of a draft report by the majority

Committee having decided to not report possible breaches of privilege to the House, Speaker concluded matter had been dealt with in a procedurally acceptable manner, (Gauthier, Michel) 822-7

Privilege… Continued

Rights of Members breached… Continued

Termination of employees after appearance before a House committee, testimony protected by parliamentary privilege

Dispute between employees and management was both longstanding and ongoing, Speaker could not conclude that their termination was a direct result of that appearance, not a question of privilege, (Gallaway, Roger) 832-8

Witness tampering, manual for Chairs of committees

Document suggesting that Chairs of committees should meet with witnesses did not constitute tampering and, in the absence of evidence, not a question of privilege, (Davies, Libby) 839-41

Criminal justice omnibus bill, reflecting several unrelated principles, impeding rights of Members to debate and vote responsibly, requesting Chair divide bill

Not in Chair's authority to divide bills, not a question of privilege, (Toews, Vic) 516-8

Failure to reprint a Government Bill reflecting numerous and significant changes at report stage

Not a practice of the House to have bills reprinted at third reading, unanimous consent of the House sought and denied, not a question of privilege, (Szabo, Paul) 486-7

Improper use of House resources

E-mail sent to all Members by a Member exposing recipients to material that could be characterized as hate propaganda

Member apologized, not the role of the Chair but rather of the Members to monitor the contents of e-mails, matter should be considered closed, (Jennings, Marlene) 205-8

Privilege… Continued
Rights of Members breached… Continued

Individuals and groups blocking and cybersquatting fax lines in several Members' offices by sending massive volumes of communication

Matters could be taken up by the Standing Committee on Procedure and House Affairs, not a question of privilege, (Boudria, Don) 161-8

Letter sent by a Member encouraging candidates in the election for directors of the Canadian Wheat Board using franking privileges for political purposes

Issue best addressed through administrative channels, letter not defaming the Member, not a question of privilege, (Easter, Wayne) 201-4

Member casting aspersions on another Member over a matter before the Ethics Commissioner

Contrary to the practice of the House to raise a question on a matter referred to the Ethics Commissioner, not a question of privilege, (Flaherty, Jim) 179-80

Minister of Fisheries and Oceans allowing a Senator to use his department's resources to promote political activities

Not within Chair's authority to determine whether the Minister has followed the Government's communications policy, not a question of privilege, (Easter, Wayne) 215-7

Minister of Justice continuing to fund/operate gun registry in spite of denial of additional funding under supplementary estimates

Withdrawal of defeat of supplementary estimates request relating to Firearms Registry Program does not cancel Program, no procedural irregularities, not a question of privilege, (Gallaway, Roger) 591-7

Privilege… Continued

Rights of Members breached… Continued

Order in Council appointments, tabling in the House pursuant to publication in *Canada Gazette*, Government ignoring obligation, standing committees deprived of right to consider and examine appointments

30 sitting days permitted for the consideration in committee of the Order in Council appointments counted from the date of tabling, (Clark, Joe) 273-5

Question on the *Order Paper* left unanswered, matter being before the courts

Not up to the Chair to determine whether the Government had interpreted the *sub judice* convention properly, not a question of privilege, (Cummins, John) 169-73

Questions on the *Order Paper* from a previous Parliament, delays by Government in responding

Questions asked in one Parliament cannot be carried over to another, not within Chair's authority to order responses to be given by the Government, it is suggested that the matter be referred to the Standing Committee on Procedure and House Affairs, not a question of privilege, (Thompson, Greg) 386-9

Refusal of public servants to communicate with Members while Parliament is dissolved

During dissolution Members are only Members for purposes of allowances payable, not a question of privilege, (Wappel, Tom) 174-8

Sit-in of the Minister of Indian Affairs and Northern Development office by a Member, a delegation of First Nations and journalists, obstructing the Minister's staff

Privilege… Continued
Rights of Members breached… Continued
Member criticized for disregarding the various avenues to secure access to Ministers, in the absence of evidence suggesting that the staff were obstructed, not a question of privilege, (Duncan, John) 230-3
Time allocation for a Government bill, inappropriate use, excessive and unorthodox measures
Chair cannot refuse to put time allocation motion if all procedural requirements have been met, not a question of privilege, (Strahl, Chuck) 726-30
Votable and non-votable items
Government Member moving amendment to votable private Members' bill effectively making non-votable item, denying right of the House to decide on issue
Amendment ruled in order by Chair, Members free to reject amendment, original ruling stands, Chair sending letter of protest to the Standing Committee on Procedure and House Affairs for review, (Ménard, Réal) 938-42
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Privilege… Continued

Rights of Members breached and contempt of the House… Continued

Standing Committee on Justice and Human Rights exceeding authority by voting to refuse to hear Justice Department witnesses on the reasons for delay in answering questions on the *Order Paper*

Committees are masters of their own proceedings, Standing Orders do not prescribe how the committee will dispose of the matter but only that it must meet on the issue within five sitting days, not a question of privilege, (Toews, Vic) 801-5

Privilege, *prima facie*

Contempt of the House

Disclosure of information by department officials regarding a Government bill prior to its introduction in the House, Members of Parliament and staff denied access to briefing

Confidential information, although denied to Members, had been given to members of the media without any effective measures to secure the rights of the House, Member invited to move the motion, (Toews, Vic) 9-13

Ethics Commissioner not providing a Member with proper notice respecting an investigation for violating the *Conflict of Interest Code for Members of the House of Commons*

Not the role of the Chair to enforce the Code, but the House having to decide how it wished to proceed, Member invited to move the motion, (Obhrai, Deepak) 59-63

False and misleading testimony of Deputy Commissioner of RCMP to Standing Committee on Public Accounts

Member invited to move motion, (Murphy, Shawn) 842-3

Member attempt to remove Mace from the Table, the Leader of the Official Opposition responded that the Member having apologized and since the matter was not raised in a timely fashion, the matter should be considered closed

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Request by the Special Committee on the Canadian Mission in Afghanistan to access unredacted documents
Procedurally acceptable for the House to use such an order, within the powers of the House to access confidential information, Chair allowing two weeks to resolve the issue of trust between the Members and the Government, (Lee, Derek and Harris, Jack and Bachand, Claude and Layton, Jack) 81-105
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Members' reputation impugned
Bulk mailings of flyers (ten percenters) containing misleading statements sent to another Member's constituency
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Misleading/false statements
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Matters set out in the report of the Committee are sufficient to support finding of a breach of privilege, Member invited to move motion, (Lee, Derek) 40-3

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Minister of International Cooperation deliberately misleading the House as to funding application to the Canadian International Development Agency by KAIROS

Statement by the Minister causing confusion, sufficient doubt existing, Member invited to move motion, (McKay, John) 114-9

Minister of National Defence misleading the House as to when he knew that Afghan prisoners taken by the Canadian forces were handed over to the Americans

Chair accepts that Minister did not intend to mislead the House but two versions of events present, Member invited to move motion, (Pallister, Brian) 25-8

Rights of Members breached

British Columbia Court of Appeal, Ontario Superior Court rulings, denial of 40-day rule under Member's right to refuse to answer a subpoena to attend as witness before a court of law when the House is in session

Privilege of the House and Members well established as matter of parliamentary law and privilege in Canada today and must be respected by the courts, Member invited to move motion, (Boudria, Don) 142-51

Disclosure of confidential proceedings of a meeting of the Ontario Regional Liberal Caucus, abuse of Members' privileges within Parliamentary Precinct

Prima facie breach of privilege of the House and Members, Member invited to move motion, (O'Reilly, John) 152-5

Former Member of Parliament usurping title of Member of Parliament following electoral defeat

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Advertisement representing someone as a sitting Member of Parliament who is not a Member constitutes a *prima facie* breach of privilege, Member invited to move motion, (Guimond, Michel) 44-5

Members of Parliament denied access to Parliament Hill and Parliamentary Precinct by Royal Canadian Mounted Police during the visit of the President of the United States

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Report of the Conflict of Interest and Ethics Commissioner that a Member named as a defendant in a libel suit should not participate in debate or vote in the House

Conflict of Interest Code for Members of the House of Commons applied contrary to the original intentions of the House, Member invited to move motion, (Lee, Derek) 195-200

Questions on the *Order Paper*

Dividing of questions, number allowed, beyond administrative accountability of Government

For want of greater coherence, inadmissible in its current form, Clerk instructed to divide it and that the subquestions outside Government's administrative responsibility be deleted, (Lukiwski, Tom) 398-404

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Government failure to reply, referral of matter to a standing committee for review pursuant to Standing Order 39(5), (St-Julien, Guy) 390-1

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Number, amount of detail requested, failure to provide answers within 45 days, authority of the Clerk to reject excessive demands

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Bypassing usual decision-making process of the House, out of order ruling requested

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Constitution applying to questions of substance that are decided by the House, not on matters of internal procedure, motion in compliance with the Standing Orders, objection not in order, (Hill, Jay) 373-6

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