

HOUSE OF COMMONS

Tuesday, March 1, 1966

The house met at 2.30 p.m.

PRIVILEGE

MR. NIELSEN—RIGHT OF MEMBER FOR
MONTMAGNY-L'ISLET TO VOTE
IN HOUSE

Mr. Speaker: Order. The Chair made reference yesterday to the question of privilege raised by the hon. member for Yukon (Mr. Nielsen) some time ago, and indicated I would make a statement today, hoping both hon. members would be in their places. Today we have the opposite situation to that which obtained yesterday in that the hon. member for Yukon is in the house and the hon. member for Montmagny-L'Islet (Mr. Berger) is not, but in view of the fact that notice was given by the Chair yesterday I propose to deliver an opinion about the matter at this time.

On February 21 last the hon. member for Yukon rose in the house on a matter of privilege as to the right of the hon. member for Montmagny-L'Islet to have sat in the house and to have voted on three occasions, the dates of which were subsequent to the date on which the return of his election expenses should have been filed. The hon. member continued his presentation by stating that he simply wanted to draw my attention and that of hon. members to the possible breach of privilege that exists, and ended by seeking the Speaker's guidance in this connection.

The Minister of Public Works (Mr. McIlraith) intervened to make the point that section 63 of the Canada Elections Act provides that if members fail to carry out the provisions of the act, there is a remedy provided in the courts, and that therefore this would be a matter for the courts to consider.

I have already brought to the attention of the house the terms of the judgment delivered on February 24 last by Chief Justice Dorion, and perhaps I should not repeat that at this time. I have looked into the matter raised by the hon. member for Yukon and, with a view to being of some assistance to the house, may I be permitted to submit the following comments.

In referring to page 60 of May's seventeenth edition it will be seen that one of the privileges of parliament is for each house to be the sole judge of the lawfulness, or the legality, of its own proceedings, and that:

—this holds even where the procedure of a house or the right of its members or officers to take part in its proceedings is dependent on statute.

As will also be seen at page 61 of the same edition, Mr. Justice Stephen, in his judgment in the Bradlaugh case, defined the relation between the jurisdiction of the courts and that of the House of Commons, and is reported as follows:

—I think that the House of Commons is not subject to the control of Her Majesty's court in its administration of that part of the statute-law which has relation to its own internal proceedings . . . It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned;

And further on we read:

—for the purpose of determining on a right to be exercised within the house itself, and in particular the right of sitting and voting, the house, and the house alone could interpret the statute but . . . as regarded rights to be exercised out of and independently of the house, such as the right of suing for a penalty for having sat and voted, the statute must be interpreted by this court independently of the house.

Bourinot's fourth edition, at page 390, reads as follows:

If it should be decided that a member has no right to sit or vote in the house, the votes he may have given during the period of his disqualification will be struck off the Journals.

Dawson in his book "Procedure in the Canadian House" under the heading "The disallowance of votes" says at page 186:

Occasionally it is necessary to strike out the vote of a member who has participated in a division. The rules surrounding this practice are not clear.

Later on, at pages 190 and 191, he again refers to the matter and says:

A formal challenge of a vote by another member of the house must be done by a substantive motion that the vote be struck off the division list. This procedure was established in Canada in 1900 when the votes of three members were challenged. At that time the Speaker ruled that he himself had no authority to alter the division lists and that the only remedy was in the hands of the house; any member could make a motion to disallow a vote, the accused member should be heard, and the house could make its decision.