About *Stockdale v. Hansard*, Sir Erskine May said:

> The judges admitted that, when a matter is a proceeding of the House, beginning and terminating within its own walls, it is obviously outside the jurisdiction of the courts..

This case speaks eloquently on the relationship between Parliament and the courts of law. The Right Honourable Bora Laskin, former Chief Justice of the Supreme Court, spoke insightfully when he said:

> The probable end of the matter would be an assertion of the respective independence of courts and legislatures...when respectively called upon to exercise their functions. Law at this point dissolves into politics.

Most recently, here in Canada, Parliament's privilege of control over its internal processes has been upheld in two cases, being the *New Brunswick Broadcasting Co. v. Arthur Donohoe*, and *Southam Inc. v. The Senate of Canada*.

In 1993, in the *Donohoe* case, Arthur Donohoe, Speaker of the Nova Scotia Legislative Assembly, was sued by the New Brunswick Broadcasting Co. In the appeal from the Nova Scotia Supreme Court, Appeal Division, the Supreme Court of Canada Justices La Forest, L'Heureux-Dubé, Gonthier, McLachlin and Iacobucci, with Justice Cory dissenting, held that:

> The Charter does not apply to the members of the Nova Scotia House of Assembly when they exercise their inherent privileges, since the inherent privileges of a legislative body such as the Nova Scotia House of Assembly enjoy constitutional status.

In 1990, in the *Southam* case, in the Federal Court, Appeal Division, Chief Justice Iacobucci, Justices Stone and Décary, overturned the Trial Division ruling by Justice Strayer. They said that the Federal Court had no jurisdiction to entertain an action by a newspaper publisher seeking access to Senate committee *in camera* meetings. They also overturned the trial judge's grant of leave to Southam Inc. to sue the members of the Senate committee individually.

Chief Justice Iacobucci of the Federal Court, Appeal Division, stated in overturning:

> Nor could it be accepted that in enacting the *Federal Court Act*, Parliament intended to assign to the Federal Court a supervisory judicial review jurisdiction over the Senate, the House of Commons or their committees.

He also stated:

> That approach is appropriate herein because the review of parliamentary proceedings is not a matter to be taken lightly given the history of curial deference to Parliament and respect for the legislative branch of government generally...

Honourable senators should know that these statements on Parliament were the conclusions of the highest courts of Canada. However, three lower courts, being the Federal Court, Trial Division, the Nova Scotia Supreme Court, Trial Division, and the Nova Scotia Supreme Court, Appeal Division, found differently. Justice Strayer of the Federal Court, Trial Division, and Justice Nathanson of the Nova Scotia Supreme Court, Trial Division, both found against parliamentary privilege. Their findings deserve study. The justices even articulated a novel view:

> ...our Constitution in this respect is no longer 'similar in principle to that of the United Kingdom'.

These two cases involved discussion of the written versus the unwritten Constitution of Canada. The discussion even questioned the very definition of the term "the Constitution of Canada," as per sections 52(1) and 52(2) of the Charter of Rights and Freedoms.

Professor Hogg is quoted on this matter as follows:

> ...Canada's gradual evolution from colony to nation has denied it any single comprehensive constitutional document.

Honourable senators should be mindful that most of the *lex parliamenti* and the law of privilege is recorded in the rolls and debates of Parliament and is not recorded in the written constitution.

Regarding the similarity in principle of Canada's Constitution to that of the United Kingdom, and the written versus the unwritten, Madame Justice McLachlin, in the *Donohoe* case, writing for the majority in overruling the Nova Scotia Supreme Court, Appeal and Trial Divisions, stated:

> The Parliamentary privilege of the British Parliament at Westminster sprang originally from the authority of Parliament as a court. Over the centuries, Parliament won for itself the right to control its own affairs, independent of the Crown and of the courts. The courts could determine whether a parliamentary privilege existed, but once they determined that it did, the courts had no power to regulate the exercise of that power. One of those privileges, held absolutely and deemed to be constitutional, was the power to exclude strangers from the proceedings of the House.

The Hon. the Speaker: Honourable senators, I am sorry to interrupt but the honourable senator's time is up. Is leave granted to allow her to complete her comments?

Hon. Senators: Agreed.

Senator Cools: Honourable senators, moving now to the relationship between Parliament and the courts regarding Parliament's first privilege, its right to the attendance of its members and the concomitant right of members to attend, the United Kingdom's House of Commons Select Committee, in 1967 and again in 1977, comprehensively examined, concluded, and reported on parliamentary privilege that:

> ...they are conscious that the requirements of both civil and criminal process may on occasions conflict with the duty of attendance owed by a Member to the House. They are strongly of the opinion that the courts, whether civil or criminal, should give appropriate weight, when exercising their discretion over such matters as the fixing of dates...to the importance of the Parliamentary function of a Member who may be involved.

Further it is stated:

> They believe, however, that the ultimate power to decide between the claim of the House and the claim of the court must remain with the House.