

HOUSE OF COMMONS

Thursday, April 29, 1971

The House met at 2 p.m.

PRIVILEGE

MR. HOWARD (SKEENA)—RIGHT OF MEMBERS TO VISIT PENITENTIARIES

Mr. Frank Howard (Skeena): Mr. Speaker, I should like to rise on a question of privilege that affects the House and all members. By way of a preliminary perhaps I ought to say that yesterday the hon. member for Broadview, the hon. member for Moose Jaw, the hon. member for Timiskaming and I took the occasion to visit Millhaven penitentiary, which has received some publicity lately. When we arrived we were received with cordiality and friendliness by the warden and deputy warden, who were in no way hesitant about our right to visit the institution during reasonable hours of the day. Actually, I understand that there are some internal memos within the department on the matter which indicate that Members of Parliament may receive courtesies and opportunities not available to anybody else.

It has been a longstanding British tradition going back to long before Canada was founded and it has been a Canadian tradition as well that Members of Parliament, as the elected representatives of the public, should have the right to have access to those areas where the public invests its money in order to determine matters involving administration and also to assist in developing public policy relating to penitentiaries as a result of their understanding of the situation concerning penitentiaries. Thus they can assist in developing public policy. Such visits in the past have certainly brought about a greater appreciation of the desire and need to make changes in the penitentiary system.

● (2:10 p.m.)

After about three and a half or four hours in the institution and at a time when we were speaking with one of the inmates in Millhaven, there was an interruption by the warden who carried with him the following message:

The minister has asked me through the Deputy Commissioner that the M.P.'s be asked to leave the institute right away. A legal opinion has been obtained that they have no statutory right to be in the institute. The minister's request is made because the whole matter is under review by a commission of inquiry and also because of a police investigation into a murder.

I assume that was the Solicitor General (Mr. Goyer). There was no indication that it was any other minister, and penitentiaries come under the jurisdiction of the Solicitor General.

The phrase in that message about a legal opinion having been obtained with regard to the statutory right of members to visit such institutions is in reality a sub-

terfuge. In activities of this sort, and I hope the Solicitor General feels this way, we should not be concerned about legal opinions but about moral rights and obligations.

Some hon. Members: Hear, hear!

Mr. Howard (Skeena): Although this is not directly a part of the question of privilege, the reference in the message to the matter being under review by a commission of inquiry and about a police investigation into a murder is somewhat offensive in that it implies that we may have been intent upon impeding or in fact were impeding either of these inquiries. Such is not the case.

Members of Parliament are the elected representatives of the public. In that sense they have certain rights and privileges that are not available to other citizens. In the pursuit of their duties and obligations they have an obligation to visit areas where public money is being expended. There should be no consideration on the part of the cabinet of interference in the normal course of events with those examinations and studies, especially by one who has so little sensitivity to British and Canadian traditions in this field. It is the right of Parliament and Members of Parliament to review the administration of the cabinet. It is not a right of the cabinet to abrogate that review.

Some hon. Members: Hear, hear!

Mr. Howard (Skeena): It is not only a traditional right but at one time in our Canadian statutes it was in fact a statutory right. Prior to the session of 1960-61 the Penitentiary Act contained a provision in section 45 which read as follows:

The following persons may visit any penitentiary during business hours, that is to say—

Then it lists a number, including the Governor General of Canada and "any member of the Parliament of Canada".

When the Penitentiary Act was revised in 1960-61 the Hon. Davie Fulton was Minister of Justice and the right hon. member for Prince Albert (Mr. Diefenbaker) was Prime Minister. The point was raised about leaving out of the proposed new Penitentiary Act the provision containing the right of Members of Parliament to visit penitentiaries during business hours. We were assured by the then Minister of Justice that this action had the endorsement and approval of the then Prime Minister. He said that it was considered appropriate because of the legal construction of statute law not to have that provision carried forward into the new act but that it would be contained within the regulations and that there would not be any interference with that particular right. This has been the course followed by every warden of every penitentiary which has ever been visited since that time by any Member of Parliament; they have respected the