

That is not, that is not an assurance the RCMP is giving to the minister at all and as a matter of fact the practice was, in matters of this kind, the practice was very often ministers' letters were not exactly drafted on precise statements of fact.

On the basis of this evidence the hon. member alleges that a deliberate attempt was made to obstruct him in the performance of his duties to the extent that the minister's letter to him, dated December 4, 1973, was not exactly drafted on precise statements of fact.

The law of privilege in this regard is stated in Erskine May in the nineteenth edition at page 136:

It may be stated generally that any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.

More specifically, under the heading "Presenting Forged, Falsified or Fabricated Documents to Either House or Committees of Either House", May goes on to say:

It is a breach of privilege to present or cause to be presented to either House or to committees of either House, forged, falsified or fabricated documents with intent to deceive such House or committees or to subscribe the names of other persons or fictitious names to documents intended to be presented to either House or committees of either House or to be privy to, or cognizant of, such forgery or fraud.

That appears in the nineteenth edition at page 141. At the same page May deals with conspiracy to deceive either House or committees of either House, as follows:

It has already been seen that the giving of false evidence, prevarication or suppression of the truth by witnesses while under examination before either House or before committees of either House is punished as a contempt; and that persons who present false, forged or fabricated documents to either House or to committees of either House are guilty of a breach of privilege. Conspiracy to deceive either House or any committees of either House will also be treated as a breach of privilege.

The very interesting debate on this question of privilege which took place on Friday last has left me with a number of issues to resolve. The first of these, of course, is whether or not the hon. member, within the classic definition of the law of privilege, has in fact a matter of contempt or a matter of privilege.

In addition, there were a number of ancillary items which I felt arose during the course of debate. I will enumerate five of those now. The first deals with whether the complaint was raised at the earliest possible moment. The second is whether a letter from the Solicitor General to a member can be treated as a proceeding in parliament in order, therefore, to qualify for consideration under our rules of privilege. Third, can a contempt committed during one parliament be dealt with in another? The fourth point which I want to bring before the House now is: does the sub judice convention impose any constraints upon the House in this case? Fifth, does the constitutional doctrine of ministerial responsibility affect in any way the law of privilege?

Privilege—Mr. Lawrence

I have no difficulty in disposing of the first three of these ancillary items. I am prepared to find that, first, the complaint was raised at the earliest possible opportunity. It was before the McDonald commission that Commissioner Higgitt acknowledged for the first time that the letter in question was "not exactly drafted on a precise statement of fact". Nothing said before the Keable inquiry earlier in the year would lead to that conclusion, and what was said in the House on November 9 by the then solicitor general indicated that the RCMP opened mail only in certain very distinct cases and circumstances. Furthermore, in connection with certain questions put by the hon. member to the solicitor general in respect to that pronouncement on November 9, I am satisfied that the hon. member can draw a relationship between the letter and his questions on that particular occasion.

His questions were directed to the Solicitor General at that time on the grounds of asking whether the Solicitor General was sure that these were the only categories in which mail openings were conducted by the RCMP, and I therefore accept the hon. member's argument that there was a direct relationship between his letter and his conduct on specific occasions in the House. I find, therefore, in that relation the letter does become a proceeding in parliament for the purposes of privilege.

I can also easily deal with the problem about this House dealing in this parliament with a contempt committed by an earlier parliament. I would refer hon. members to the nineteenth edition of May at page 161, where it is stated:

—a contempt committed against one parliament may be punished by another;

The matter is obviously put to rest by that quotation.

The last two ancillary issues, however, give me greater difficulty. I want to indicate to the House at once my own preliminary analysis of these two problems and also of the form of the motion, which is the third matter which I want to leave for the House, because we did not have argument directed to that question.

● (1542)

I want to refer hon. members to paragraph 24 of the recent report to this House of the Standing Committee on Rights and Immunities of Members on the sub judice convention, which reads as follows:

Your committee recommends that the Speaker should remain the final arbiter in the matter, that he should retain the authority to prevent discussion of matters in the House on the ground of sub judice, but that he should only exercise this discretion in exceptional cases where it is clear to him that to do otherwise could be harmful to specific individuals. In exercising this discretion your committee recommends that when there is a doubt in the mind of the Chair, a presumption should exist in favour of allowing debate and against the application of the convention. In the view of your committee prejudice is most likely to occur in respect of criminal cases and civil cases of defamation where juries are involved.

My preliminary analysis of the question of matters sub judice is, in the first place, that this touches privilege, and