

this side who are speaking to this order have maintained that our privileges as members of Parliament have been seriously violated. We are maintaining that our privileges have been trampled upon.

● (1640)

In the various actions taken by Senator Charbonneau, I would say that he trampled on our privileges in an important way. This question of privileges, honourable senators, is something that has troubled legislatures in colonial countries. For example, in Canada the term "House of Commons" is used to describe the lower house. It is the only lower house in all of the Commonwealth countries and empires that actually uses the name "House of Commons." There were reasons why the Imperial authorities agreed that the House of Commons could be so named and titled.

The question of our privileges in this chamber are not determined by the Speaker of this chamber; they are not determined by the wish or whim of any government. They are determined by the Constitution Act of 1867. I will put section 18 of the Constitution Act on the record. Under the heading "Legislative Power" it states:

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, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.

To some in this chamber that might seem esoteric, but to others it seems inexorable and inevitable. The fact of the matter is that the question of the privileges of the members of the Parliament of Canada was one of tremendous conflict and problem. It was thought to have been resolved by section 18 of the Constitution Act. In other words, Speaker Charbonneau, as has this government for some time, keeps trying to amend and alter the Constitution and the powers of the Senate at their own wish and whim. This matter was settled.

I would like to put another piece of information on the record. Sometimes these things may seem intellectually trying. They are not. They are there for all of us. I would like to put on the record a quotation that I took from a legal opinion which was given to Lord Bathurst in the year 1815 from His Lordship's most obedient servants, Garrow and Shepherd. This legal opinion is entitled "The Opinion on the Privileges of the House of Assembly and on the Casting Vote of the Speaker of the Legislative Council." Honourable senators should remember that the issue I am discussing is the question of the privileges of senators and the attempts to resolve those unsettled questions by including them in the Constitution Act. I quote from this legal opinion to Lord Bathurst as follows:

In answer to the second question, "Whether the Assembly is entitled to all the Privileges to which the House of Commons of the imperial Parliament are entitled under their own peculiar Law, the *Lex Parliamentaria*".

We beg to report, that we think they are not so entitled. The Privileges of the High Court of Parliament composed of the King, The Lords spiritual and temporal, and Commons of the Realm, are founded on the ancient law and Custom of Parliament and we conceive arise from the supremacy, or as it is sometimes called, the omnipotence of this High Court when the Parliament or great Council of the Nation thus composed sat together in one Assembly; Tho' the period when the two houses separated in their sittings, is not ascertained, yet whenever that event took place, each house retained certain privileges and powers; The Lords the judicial power; the Commons the power of accusation and impeachment.

It goes on and on. This legal opinion, on which Lord Bathurst relied heavily, clearly delineates the position that legislatures in the colonies did not have the privileges of the legislatures of England.

I think it is important to continue that train of thought because during that time in history—this is pre-Confederation—the legislatures were preoccupied with these questions, just as they were preoccupied with the questions of the "financial powers" of the upper chamber.

Hon. Eymard G. Corbin: Senator Cools, please forgive me for interrupting. Honourable senators, I should like His Honour the Speaker to apply Rule 16(c), please.

The Hon. the Speaker *pro tempore*: I have been asked by an honourable senator to apply Rule 16(c), which reads:

... if senators have occasion to speak together, they shall go below the Bar, otherwise the Speaker shall stop the business under discussion.

Senator Doody: Hear, hear!

The Hon. the Speaker *pro tempore*: I remind honourable senators of Rule 16(c).

Senator Cools: I thank honourable Senator Corbin for his intervention. I was so preoccupied that I had not noticed that other activities were taking place.

Returning to my point, Lord Bathurst and others at the time relied on these opinions. At the time of the discussion of Confederation detente, so to speak, these matters were thought to have been resolved by the express articulation of the Constitution Act, 1867, the then BNA Act.

● (1650)

In respect of Speaker Charbonneau's activities and behaviour, one matter that has perturbed me very deeply is that the Speaker, like this government, has been reluctant to obtain the advice of the Senate. Every bill that comes before us states that passage is with the advice and consent of the Senate. I have done a little work trying to ascertain the precise meaning of "advice", the definition of responsible government, and the