

*Privilege—Mr. Shields*

had used the written question procedure to ask the Government certain questions. The Government then responded to those questions.

The Hon. Member stated in his argument that, in late February, as a result of the answer tabled in the House, he received a letter from a law firm in Edmonton, acting for Mr. Mel Hurtig, which intended to proceed with a defamation action against the Hon. Member. The Hon. Member further advised the Chair that he then received a second letter in late March from another firm acting for Hurtig Publishers Ltd., stating that their client intended to bring an action against him pursuant to the Defamation Act. There is of course in each province an Act which sets out the law of defamation in that province.

The Hon. Member expressed the view in this Chamber that both letters were based on the information he had received in reply to his question on the *Order Paper* and that these two letters advising him of the intention to proceed with the lawsuit were, and I quote the Hon. Member:

—a deliberate attempt to intimidate me from seeking further information with regard to grants given by the Government to Mel Hurtig or Hurtig Publishers.

I understand that the Hon. Member has now received a copy of the Statement of Claim in the action referred to, and of course a copy has also been obtained by the Chair.

● (1510)

In his remarks the Hon. Member for Athabasca argued that his “privilege to speak freely without fear” in the House had been violated by the action brought against him which “goes to the very heart of a Member’s obligation, a Member’s right, a Member’s privilege to ask questions in a free and unfettered way in the House of Commons”.

The position as put forward by the Hon. Member for Athabasca was supported by the Hon. Member for Peace River (Mr. Cooper) who stressed that freedom of speech is a fundamental privilege and that, in his words, “Hon. Members are also to be free from intimidation or threats that would try in some way to direct their actions”.

In the same vein the Hon. Member for Ottawa—Vanier (Mr. Gauthier) reiterated the principle that, as he said, “Nothing can impede the privilege of a Member to ask questions in the House, either by written deposition or orally during Question Period”. The Hon. Member for Ottawa—Vanier quoted from Beauchesne’s Fifth Edition, Citation 55, which reads in part as follows:

[*Translation*]

The privilege of freedom of speech is both the least questioned and the most fundamental right of the Member of Parliament on the floor of the House and in committee. It is primarily guaranteed in the British Bill of Rights . . .

There can be no question as to the relevance and appropriateness of the principles invoked by Hon. Members in their interventions. Indeed, as all Hon. Members very well know, the privilege of freedom of speech is so fundamental that this

House could not discharge its constitutional functions without it.

[*English*]

British parliamentary institutions, from which our own system was derived, were afforded the protection of the Bill of Rights three centuries ago. It is interesting that the Commonwealth Parliamentary Association is presently celebrating the three hundredth anniversary of the Bill of Rights at Westminster.

Article 9 of that Act clearly states:

The freedom of speech and debates, or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.

Careful reading of that provision raises at least one particular concern in relation to the matter now before us. Essentially the privilege of freedom of speech protects “proceedings in Parliament”. The question to be answered then is, what constitutes proceedings in Parliament?

This phrase has never been exactly and completely defined by statute, by the courts of law, or by the House itself. In its narrow sense the expression is used to denote the formal transaction of business in the House or in committee. Traditionally it covers both the asking of a question and the giving of a written notice of such question, and also includes everything said or done by a Member in the exercise of his or her functions as a Member of the House, either in the House or in any committee of the House in the transaction of parliamentary business. I refer to May’s Twentieth Edition, page 92.

In its wider sense “proceedings in Parliament” is used to include matters connected with or ancillary to the formal transaction of business. Obviously, written questions placed on the Order Paper are to be considered part of proceedings in Parliament. In effect, they are time-saving substitutes for speaking in the House. As stated in May’s Twentieth Edition, page 92:

While taking part in the proceedings of a House, Members, officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their actions by any authority other than the House itself.

I emphasize again, “while taking part in the proceedings of a House”. The insertion of the term “proceedings” in the Bill of Rights of 1688 gave statutory authority to the privilege of freedom of speech, which was later clearly recognized in the law case of *Dillon v. Balfour* reported in 1887, 20, Irish Law Reports at page 600. The judgment stated that words spoken by a Member of Parliament in the House of Commons are absolutely privileged and the court has no jurisdiction to entertain an action in respect of them. I cite *Halsbury’s Laws of England*, Fourth Edition, Volume 28, page 52 as follows:

When Parliament is sitting and statements are made in either House, the member making them is not amenable to the civil or criminal law, even if the statements are false to his knowledge, and a conspiracy to make such statements would not make the members guilty of it amenable to the criminal law.