

Amendment to Standing Orders

House thereof immediately, before putting the question thereon, and quote the standing order—

In that connection, one must refer to citation 67 of Beaudesne's Parliamentary Rules and Forms dealing with the historical background of that question and particularly to citation 13 which says, and I quote:

A statute regulation—

such as section 49 of the British North America Act,

—supersedes, and cannot be abrogated by, any order of the House to which it applies.

Mr. Speaker, I suggest you refer to such citations as well as to page 228 of Sir Erskine May's 17th edition. Certain precedents are given and then it says:

[English]

A statute overrides, and cannot be superseded by, an order or regulation of one House or of both jointly.

And there follows an explanation of that principle.

Now, Mr. Speaker, I contend that the motion in its present form is absolutely void, that it should be declared out of order and rejected by the Chair as contrary to section 49 of the British North America Act which stipulates that decisions in the House of Commons are not made by a 75 or 90 per cent majority but should be made by a majority of members.

Mr. Knowles (Winnipeg North Centre): Mr. Speaker, I should like to say a few words on the point of order that has been raised by the Parliamentary Secretary to the President of the Privy Council (Mr. Forest). I may say at the outset that in this party we have different views and I might not be 100 per cent in favour of my hon. friend's motion, but I certainly defend his right to present it to the House for the consideration of hon. members. The Parliamentary Secretary relies for his objection to the motion on section 49 of the BNA act, but then goes on to say that the Speaker must advise the House of anything that is contrary to the rules and regulations of the House. I noted in particular, when he read that rule, that there is no reference there to the BNA act.

On the other side of the coin I draw Your Honour's attention to citation 71(5) which appears at page 61 of Beaudesne's fourth edition, and which reads as follows:

The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

[Mr. Forest.]

That seems to give the Parliamentary Secretary every right to raise this point of order and to have it discussed, but it seems to me that if, as he himself has said, the issue is a constitutional one then you, Sir, are barred by citation 71(5) from making a ruling on it.

I know that section 49 of the BNA act seems rather clear when it says:

Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote.

But it does not say what kind of majority, and I can see lawyers, who get more concerned over details than of course I would—

Some hon. Members: Oh, oh.

Mr. Knowles (Winnipeg North Centre): I hoped that remark would not go unnoticed. I can see them arguing over the fact that there can be different kinds of majorities. There can be simple majorities, two-thirds majorities, three-quarter majorities and so on. Then we have, right in the BNA Act itself, in section 91, a provision with respect to entrenched clauses that departs somewhat from the usual majority rule. In this, Mr. Speaker, I am not purporting to say what section 49 means but I am asserting that it is open to legal argument, and that that is precisely the reason for Beaudesne's citation 71(5) which protects the Speaker from having to make decisions on a constitutional point.

I draw Your Honour's attention to the fact that a few years ago we had a bill, or a resolution, in the name of the then hon. member for Lotbinière, Mr. Choquette, who wanted to make some change in the monarchy or in parliament's relation to the monarchy. The former hon. member for Winnipeg South Centre (Mr. Churchill) objected on a point of order. If I recall correctly there was a debate on the point of order, and Mr. Speaker took the position then that this was a constitutional issue on which Parliament could make a decision if it wanted to, but it was not the prerogative of the Chair to decide on a constitutional question, so the motion was allowed.

Therefore, Mr. Speaker, irrespective of whether we want to go along with the 75 per cent rule suggested by my colleague and friend, it does seem to me he has the right to present the motion and that the House has the right, if it wishes, to decide by a majority vote on a three-quarters majority rule. If someone thinks that that is unconstitutional