

*Privilege*

surround the desire of a member who may wish to call into scrutiny the conduct of another member in the House.

The hon. member for Northumberland-Durham, in answer to my reference to the precedents, clearly and unequivocally withdrew that remark from Thursday night's record, and I left intentionally the word "deliberately" in his notice of a question of privilege in order to bring the matter further into scrutiny to see if I could be of some assistance to members in the apparent dilemma, and I am happy to say the dilemma is more apparent than real.

There has been, quite naturally, confusion in matters of this sort. Since under the precedents it is clearly unparliamentary to accuse a member of deliberately misleading the House, obviously an action of deliberately misleading the House would have to be looked upon as being a most serious action indeed. If a member is suspected of that kind of action, the dilemma becomes: how does a member call that conduct into scrutiny without using the words "deliberately misleading the House", since in fact the use of the language is in itself unparliamentary and therefore prohibited. It appears on the surface of it to give rise to a rather frustrating situation.

I have taken the time to examine some of the precedents, which I would like to give hon. members now. I think these precedents may be of assistance to hon. members in their further examination of this matter which, I hope, will leave open a possible course, if it is the desire of the hon. member for Northumberland-Durham or of any other member, now or at any other time, to pursue it.

My first reference is to the nineteenth edition of Erskine May at pages 367 and 428. At page 367, under the heading "Rules Governing Subject-Matter of Motions", it is stated that certain matters cannot be debated save upon a substantive motion which admits of a distinct vote of the House. Among these is the conduct of members of either House of Parliament. I am summarizing that slightly, but the reference is there.

At page 428 of May's nineteenth edition, under the heading "Reflections on the Sovereign, etc.", it is stated that unless the discussion is based upon a substantive motion, drawn in proper terms, reflections must not be cast in debate upon the conduct of the sovereign, etc, and among those enumerated are members of either House of Parliament.

There are two other rather important precedents to which I would like to refer for the benefit of hon. members. I have them here and would be glad to have them copied and distributed to any members who might be interested in the discussion. One of them refers to a case in our own *Journals* which is reported on March 11, 1890, when Sir Richard J. Cartwright moved a motion of criticism of another member of the House which contained in it, first of all, an allegation of directly misleading the House and, finally, concluded by saying that the conduct of a certain member in the premises was and had been discreditable, corrupt and scandalous. That matter was debated by the House as a substantive motion, and after debate the decision was taken that the matter would be referred to a committee for further examination.

[Mr. Speaker.]

In addition, there is a very useful precedent from the British House which occurred on June 15, 1965. At page 242 of the Official Report and the following page there are some very informative comments by the Chair relative to a comment that was made in the debate about a member being involved in racist propaganda. On being called to order by the Chair and, after discussion in which it was indicated that the withdrawal of those remarks was necessary in those circumstances, the clear indication was given by the Chair that if it was the intention to proceed to criticize the conduct of the member, it would have to be done by a substantive motion drawn in proper terms.

This does raise a very slight question as to whether or not in a substantive motion, since it is the very intention of the motion, language can be used which appears otherwise to be prohibited. My preliminary decision is that since the motion directs itself to that kind of criticism, obviously that language would have to be embodied in a motion and certainly would have to be permitted during the course of the debate, because I cannot see how the House could address itself to a substantive motion making that kind of allegation and complaint unless it was prepared to deal with it in specific terms. That question seems to remain partly open, but in any case that is my preliminary opinion.

The last area of guidance which the hon. member for Northumberland-Durham sought related to my own ruling of April 19, 1977, in which I indicated that, in order to found a question of privilege, the allegation would have to be not simply that the House had been misled, but had been deliberately misled. Whether or not in fact that necessarily constitutes a question of privilege, what I was endeavouring to say on that occasion was that certainly an allegation that the House had been misled without deliberateness does not constitute privilege on the face of it. If the action was deliberate and was then the subject of a substantive motion as required by the precedents, it might be argued by the mover of that substantive motion that rather than having the substantive motion dealt with in its regular place under private members' notices of motions, for example, it ought to enjoy the precedence accorded to privileged motions. Under certain circumstances that argument might prevail. In other words, once the matter is properly embodied in a substantive motion, it can be argued that it touches the privileges of members of the House. Whether that argument would prevail would depend on the original circumstances. What I was attempting to put forth in that ruling of April 19 was precisely that.

Certainly an allegation that the House has been misled unintentionally does not raise a question of privilege. Whether it would do so when the allegation in a proper substantive motion is that it was done deliberately, would be subject to argument, and I think possibly would accord to such a substantive motion. Certainly that has been the practice in the past where such a substantive motion has been put forward; obviously the House has been readily motivated to deal with it as a matter of privilege and give it the priority that privileged motions do enjoy. Therefore I think it was quite proper on