

Privilege—Mr. Mackasey

Member in his capacity as a Member it is not moved by concern for the injury to the Member's reputation, nor is its object to secure reparation therefor . . .

No, the reason for treating libels on Members in their capacity as Members as contempts is their tendency to obstruct Members in the performance of their functions by bringing them into hatred, contempt or ridicule . . .

Bearing in mind the dilatoriness and uncertainty of litigation, the possibility of the defamed Member's succeeding in an action for defamation cannot be regarded as an adequate substitute for the summary infliction of punishment by the House itself as a means of preventing Members from being obstructed in the performance of their functions.

On the face of it, this argument would appear to be conclusive justification for a finding that a prima facie case of breach of privilege exists following the submission of the Hon. Member for Lincoln. However, against this the Chair must take into account the full scope of parliamentary privilege and weigh the special rights of Members of Parliament against the rights of their fellow citizens.

The effect of parliamentary privilege is to place a Member of Parliament above the law in circumstances where it provides his only protection in the fulfilment of his duties as a Member. It is not designed to create a privileged class of citizens as such. The Member enjoys his privileges on behalf of those he represents, not for his personal advantage. Defamation of a Member of Parliament certainly falls within the ambit of privilege. However, where a Member has a remedy which would be available in similar circumstances to other citizens, he would as a general rule be well advised to seek that remedy rather than invoke parliamentary privilege.

I should like to read an extract from the report of the British Select Committee on Parliamentary Privilege to which I have already referred. Referring to cases which defame a Member or an identifiable group of Members in respect to their parliamentary duties, the report had this to say:

This has in recent times been one of the more publicized occasions for the exercise by Members of their right to invoke Parliament's penal jurisdiction. Your Committee cannot, however, accept that in normal cases it is an essential protection for the House or its Members that they should be able to invoke this jurisdiction when it is open to them, as it is to any other citizen, to take proceedings for defamation in the courts of law. Libels of the character described are, it is true, often couched in intemperate language. But the grosser the libel, the heavier the damages which the courts are likely to award; and if the libel is likely to be repeated, the courts have ample power to prevent the repetition by injunction and, if need be, by committal. Your Committee recommend that in the ordinary case where a Member has a remedy in the courts, he should not be permitted to invoke the penal jurisdiction of the House in lieu of or in addition to the exercise of that remedy.

The report goes on to say:

For example, a Member who has been libelled may be met in the courts by a defence of "justification" or "fair comment upon a matter of public interest". In Your Committee's opinion it would be an indefensible abuse of power if a Member could evade such a defence by invoking the penal jurisdiction of the House.

The citizen has prima facie a right to make fair comment upon such activity of a Member as is a matter of public interest; his right is even stronger to speak and publish the truth of a Member's conduct. These rights should not in the normal way be defeated by the use of the penal jurisdiction of the House. The exceptions to this general principle are likely to be rare. But if the rights of a citizen, though enforceable in the courts of law, are so exercised as to be likely improperly to obstruct the Member in the performance of his Parliamentary duty, it must be within the power of the House to restrain him.

The question for the Chair to determine, therefore, is whether the Hon. Member for Lincoln should seek his remedy through the courts, or whether, in order to bring the matter to

a swifter resolution, the Chair should accord this question of privilege precedence over other business.

I should like to quote from a ruling of my predecessor given on July 23, 1977, which conforms to the main thrust of the British Select Committee Report. He said:

I have said many times that the intent and clear purport of the language—the language referred to being that of the Select Committee Report I have just cited—is that the protection of an elected person against unwarranted or intemperate publicity, even abuses or defamatory publicity, is precisely that which is enjoyed by every citizen before our courts. No more, no less.

Searching further into our own precedents I find that on July 24, 1975, my predecessor found a prima facie case to exist as a result of an article, also published in the *Montreal Gazette*, which claimed that an Honourable Member had leaked budget information to certain businessmen.

In another case raised on April 22, 1980, another Hon. Member raised a question of privilege concerning his interest in a Winnipeg hotel and certain transactions which had taken place relating to it. In that case, although the Chair had not rendered a decision on the issue of prima facie, the subject matter of the question was referred to the Standing Committee on Privileges and Elections with the unanimous consent of the House.

One point I think should be emphasized. If this matter is referred to the Standing Committee on Privileges and Elections, whatever its findings they would in no way prejudice the rights of the litigants in a possible action for defamation.

On March 17, 1983 the Hon. Leader of the Opposition (Mr. Nielsen) drew the attention of the Chair to the possibility of the matter raised by the Hon. Member for Lincoln being sub judice because of certain bankruptcy proceedings currently before the courts. While I appreciate the point raised by the Hon. Leader of the Opposition, I would point out that the House has never allowed the sub judice convention to stand in the way of its consideration of a matter vital to the public interest or to the effective operation of the House and its Members.

Given the precedents I have studied, it is clear to me that while the Hon. Member could seek a remedy in the courts, he cannot function effectively as a Member while this slur upon his reputation remains. The process of litigation would probably be very lengthy and there is no knowing how long it would take before the issue was finally resolved.

I have therefore decided, in spite of the reservations I have expressed, that this complaint should be given precedence as a prima facie case of privilege in order to provide the Hon. Member with the speediest possible route toward the re-establishment of his reputation. I am prepared to entertain a motion to refer this matter to the Standing Committee on Privileges and Elections.

● (1510)

Hon. Bryce Mackasey (Lincoln): Madam Speaker, I move, seconded by the Hon. Member for Don Valley East (Mr. Smith):