

Standing Committee on Privileges and Elections. These summaries, wherein are to be found various precedents relating to breach of privilege and contempt, are appended to this report.

MATTERS EXAMINED BY THE COMMITTEE

The purpose of parliamentary privilege is to allow Members of the House of Commons to carry out their duties as representatives of the electorate without undue interference. Privilege in the traditional parliamentary sense does not refer to personal benefits enjoyed by Members. It is defined by Erskine May as

“the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.” (Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, London, Butterworth, 1971, p. 64.)

The term privilege is likely to give rise to misconception on the part of the public, which is why the expression “rights and immunities” is to be preferred.

The rights and immunities of Members of the House of Commons are not frequently violated and it has not often been necessary to invoke the penal jurisdiction of the House of Commons. The Committee is of the view that the penal sanctions of the House should be used only when other remedies are not available. A question of privilege is a serious matter, when validly raised, although frequently resorted to when no real question of privilege is actually involved. Another mechanism might be devised to enable Members to challenge reports or correct statements.

A Member is in Parliament to carry out the functions of an elected representative. If a Member becomes involved in a matter of privilege it frequently encroaches upon his parliamentary duties to an extent that he cannot be fully effective as a Member of Parliament until the case is disposed of. It is obviously desirable that cases of privilege should be dealt with as swiftly as possible so that no Member should be unduly detained from his parliamentary duties.

Your Committee has examined the Report from the Select Committee on Parliamentary Privilege which was submitted to the British House of Commons in 1967. Even though Canadian parliamentary history is unique and not altogether similar to the British experience, the work of the British Select Committee is a useful tool. The British House of Commons has shown a greater tendency than its Canadian counterpart to refer matters to its Committee of Privileges. Unfair press criticisms of Members have been referred regularly to the British Committee, whereas the Canadian House of Commons has shown itself more tolerant even in the face of exaggerated criticism. The line between fair comment and a contempt of Parliament can be very thin, and the record shows that Canadian parliamentarians have preferred to tolerate considerable latitude in press reporting rather than insist on too rigid an interpretation of parliamentary privilege. (See for example

the attitude of the House to the extreme comments of a newspaper reporting on the activities of a committee investigating seal hunts. Debates of the House of Commons. Canada. June 9, 1969, p. 9855.)

MATTERS TO BE PURSUED BY THE COMMITTEE

Many rights and immunities of Members apply only when Members are physically within parliamentary precincts. The Committee will study the advisability of arriving at a precise definition of the term “parliamentary precincts”.

At times parliamentary committees hold hearings outside Parliament to gather evidence which cannot otherwise be obtained. The rights and immunities of a committee sitting outside Parliament are undetermined. The Committee will study the advisability of clarifying the situation of a committee which sits outside parliamentary precincts.

Parliamentary privilege attaches to “proceedings in Parliament”. The privilege exists for the protection of the freedom of speech and debate in Parliament. The 1973 judicial decision of Roman Corporation Limited and Stephen B. Roman and Hudson's Bay Oil and Gas Company Limited, The Right Honourable Pierre E. Trudeau and The Honourable John J. Greene (1973 Supreme Court Reports 820.) could be interpreted as extending “proceedings in Parliament” to statements made by Members outside the House of Commons. The Committee will study the advisability of making a clear distinction as to what constitutes a “proceeding in Parliament”.

In the recent past draft reports of parliamentary committees and other confidential documentation have been leaked to the media. The 1975 confidential draft report of the Special Joint Committee on Immigration Policy appeared in newspapers and the matter was raised in the House by one of the Committees' chairmen. (*Debates of the House of Commons, Canada*, October 21, 1975, pp. 8395-8397, October 22, 1975, pp. 8451-8452.) In Britain the precedents relating to such matters are clear and such a revelation is considered serious. (A Member of the British Parliament, Tam Dalyell, was severely reprimanded by the Speaker in 1968 for having given confidential evidence to a journalist. *British Parliamentary Debates*, July 24, 1968, pp. 587-666.) Premature publication of confidential reports can hamper the investigative work of parliamentary committees. This matter will be studied by the Committee.

Since your Committee was appointed to review the rights and immunities of Members, it has concluded that the application of the *sub judice* convention properly falls within its terms of reference as this is a matter which directly touches the rights of Members. The convention constitutes a voluntary restraint on the part of Parliament whereby it accepts an abridgment of its right to free debate in the interests of justice and fair play. The convention has developed over the years without the benefit of precise guidelines, although important precedents have been established. The interpretation of the convention traditionally lies within the discretion of the Speaker. This is an area, however, where the Chair has need of the guidance of the House in establishing the guidelines which should be