

Point of Order—Mr. H. Gray

very important that it be worded precisely and contain all the ingredients of an offence. When there is a defect, as Your Honour knows, the court strikes the indictment down. You will know from your own experience in the courts that when no application is made at the beginning of a trial, the trial goes through to completion. There is a rule that if you do not object at the earliest opportunity the defence is taken to have consented to the form of the indictment. With respect, Sir, I think that is the fundamental mistake of the Hon. Member who just spoke.

This Bill can go to committee where it can be perfected, if there is a defect in it.

Mr. Gauthier: No. Standing Order 108; it does not cure it.

Mr. Kilgour: It can be perfected at the committee stage or when it comes back for third reading. Doubtless it will be perfected. The point the Member makes that there has been a prejudice because there has been a fatal flaw is, in my respectful submission, nonsense. Nobody has been prejudiced by this. There has been lengthy debate on the Bill. Members have spoken on and on. But no one raised this point until about two and one half hours ago. The Deputy Prime Minister (Mr. Mazankowski) pointed out from Beauséjour that you must raise the point at the first available opportunity, which was not done in this case.

Mr. Gauthier: That doesn't cure the Bill.

Mr. Kilgour: In short, probably no Bill that comes into this House is perfect. I am told there is no precedent on what this term "imperfect" means in Standing Order 108. I respectfully submit that every Member in this House would look very foolish if we were to try to say that the Bill was void *ab initio* now, an argument by the other side. Bearing in mind the fact that the reputation of Parliament is a factor, and bearing in mind that there is no precedent of which I am aware as to what "imperfect" means or does not mean, I would respectfully ask you to rule that the Bill is sufficiently perfect, that there has been no prejudice and it can go ahead to a vote and committee stage, Mr. Speaker.

Mr. Dan Heap (Spadina): I wish to comment on only one point, Mr. Speaker. A number of other important points have been made, and I know you are taking them into account. You did raise the question for us, Mr. Speaker, as to what prejudice or what harm may have been done by the oversight, if it was an oversight, and we assume that it was. In that connection, I was quite surprised by the Hon. Parliamentary Secretary's argument in connection with the word "may" in Clause 3. He read, as it is:

In interpreting the schedule, recourse may be had to the Memorandum of Understanding—

The Member says that is permissive. My reading of the English of it—being more versed in the English language than I am in law and what we have to deal is the English text—is that any Member may have recourse to the memorandum. It

does not mean in the same permissive sense that the Government may make that recourse available. In other words, permissiveness is one way. Any Member may use that document—quote that document if he has it—have access to that document—that is implied—but it does not mean there is anything permissive on the part of the Government introducing the Bill. Members are not told the Government may or may not make it available. This means the Government shall. That is the clear intent although it is not worded so. The memorandum shall be available and any Member may make use of it.

In fact, in the business of the week after I got here I did not immediately become aware that there was this memorandum supposedly available. We were told, of course, that it was available to us in the Minister's office. That raises a very interesting point. It says here that it shall be tabled and it may be available, or we may use it. That is the rule of law, that it shall be tabled, that it shall be printed and available in a public way.

Not by any means is everything in a Minister's office public. There is a great deal that does not become public until the Prime Minister's (Mr. Mulroney) office or somebody leaks it. In this case, I do not think there is any question that the Minister would have withheld the document if anybody had asked for it or when people did ask for it. I do not think there was any question of withholding it. In fact, that is not the method prescribed by the Standing Orders for making available to all Members of Parliament and the public the basic document upon which this Bill rests.

The only reason for having this Bill was the agreement embodied in that memorandum. Not only the 282 Members of Parliament but a number of interested persons, therefore, have an interest in that memorandum being readily available. To say, "Well, we didn't table it; you could not have got it by asking the Clerk; it would not be distributed in the normal course to Members' offices as a tabled document, but if you had thought to ask the Minister for it, she would have given it to you", is not good enough, Mr. Speaker.

It is not only a matter of some potential injury to Members of Parliament who did not have it readily available, as I did not—nobody told me until today to ask the Minister for it—but to members of the public who know the rules even less than anybody here. They do not know that the document is available. They might guess, but they do not know. The Bill says it is available in the sense of a tabled document, which is simply not true. During this week when the matter has been in the newspapers and in other media every day, when a number of people outside this House of Commons were interested, that document has not been as available as the Standing Orders and this section required.

Therefore, I think there has been injury and there could be a great deal of injury in future were you to rule that this oversight makes no difference and the debate we have had is just as valid as if that document had been properly available to all Members of Parliament in both languages and properly available to the public, which it was not. If that were to be the