

Privilege—Mr. Beatty

it brought it before Parliament that Parliament included in the statute a provision whereby an order made under the act would not come into force until 30 days after it was laid before Parliament underscores the importance in the minds of members of Parliament and of the government of the requirement to lay the order before Parliament. If Parliament had considered it a frivolous matter, we would not have required, and the government would not have recommended to Parliament in proposing the act, that the order could not come into effect until 30 days after it was laid before Parliament. This underscores the importance in the minds of Parliament and of the government of the day that it must be brought before Parliament.

It could also be argued by government that Parliament will still have the authority, if we choose at a later date, to put down a motion with 50 attached signatures and require that a debate be held on the consideration of the particular order, with the possibility of disallowance. It may very well be claimed the fact that may still be held at a later date means there will be no injury to the rights of Members of Parliament. I would say that is false. When the government has a positive onus put upon it by the law to act within a specified number of days, when the timetable of Parliament flows out of it, and Members of Parliament have a specified 20 days after the laying of the instrument before Parliament to put down a motion, and when within six days of that we must have a debate in the House of Commons, it is very clear that Parliament's ability to discharge its responsibilities is being obstructed at the present time.

No attempt by government to bring itself back into conformity with the law when it is breaking the law today rectifies the fact that today there is a grave impediment to Parliament's ability to discharge its responsibilities. In other words, it is false to suggest that if the government complies with the law at a later date, it makes everything all right, wipes the slate clean and there is no damage done to Parliament. Clearly Parliament has a responsibility to act and that ability is contingent upon the government's compliance with the law. If it obstructs Parliament today, the fact that it will remove the obstruction at a later date does not mean that there was not in fact at the time a bona fide breach of privilege.

I know it is a complex point, but I think it is a very important one for all Canadians, particularly for hon. members of the House. Parliament has a responsibility in protecting its rights and the rights of all Canadians to ensure that government sets an example of obedience to the law. When the government, with its own flagrant lawbreaking, takes an action which is clearly in breach of the rights and privileges of Members of Parliament, it sets a very sad example for other Canadians and it undermines respect for the rule of law in the country.

I thank Madam Speaker for the time to enable me to argue this complex case. If Your Honour finds that I have a prima

facie case of privilege, I would be prepared to move, seconded by the hon. member for Provencher (Mr. Epp):

That the government's failure to lay before Parliament an order made under Section 8 of the Safe Containers Convention Act, as required by Subsection (2), stand referred to the Standing Committee on Privileges and Elections for study and report.

Mr. David Smith (Parliamentary Secretary to President of the Privy Council): Madam Speaker, I am not particularly familiar with the facts of this case.

Mr. Epp: That never stopped you before.

Mr. Smith: But assuming that they are as set out by the hon. member for Wellington-Dufferin-Simcoe (Mr. Beatty), I do not see where it would draw the factual situation which he pointed out within the very narrowly defined ambit of what constitutes privilege. I have searched Beauchesne's and I do not see anything in Beauchesne's which would draw it within that ambit. It would seem to me that the only authority the hon. member was able to cite, which he felt would draw it within the ambit of privilege, is found on page 138 of Erskine May, which refers to disobedience to the orders of either House, whether such orders are of general application, etc. Then a number of examples of those types of orders are given on page 139. They include things such as neglecting to make a return, neglecting or refusing to withdraw from the House, etc.

I submit that there is a fundamental difference between an order of the House and the enforcement of the law in general. If the hon. member is suggesting, as it seems to me, that somehow Madam Speaker is to become the arbitrator as to whether or not the government, like any other citizen, must conform to the law, it would place the Chair in an impossible position. We would be really usurping the legitimate function of the courts. We would not be able, because of the rules of Parliament, to hear evidence provided by witnesses according to the strict rules of evidence, and things such as that.

What we really have here is something which belongs in the courts. There may or may not be jurisdiction in the courts, but who is to say until it has been tested? Certainly that is the place for an issue of this nature to be resolved, not in the House of Commons, taking up time we would like to use to pass important legislation.

Madam Speaker: I will reserve on this question. At first blush it looks like a matter of compliance with the law rather than compliance with an order of the House. The hon. member for Wellington-Dufferin-Simcoe (Mr. Beatty) gave a very structured argumentation, but I must remind him that his quotation of Erskine May related to orders of the House, not to compliance with the law. In this respect the quotation was not entirely helpful. He quoted a precedent at which I would like to look, although I have other precedents of decisions taken in similar matters where quite clearly the Speaker refrained from determining what is a matter to be complied with according to the law and what is a matter for the Speaker to deal with. In case the precedent of the hon. member is relevant, I want to look at it before I make a decision.