

I am aware that it has often been said that it is not the role of the Speaker to interpret or to enforce the law. In this regard, Mr. Speaker, I want to emphasize that I am not asking you to interpret the Customs Tariff. There is no need for any interpretation here. The law is clear and the only matter you are called upon to decide is whether the facts confirm that the order respecting the suspension of privileges granted under the free trade agreement was not laid before Parliament by April 21, 1989 as required by law. This is a question of fact rather than a question of law.

I also emphasize that the duty imposed by subsection 59(5) of the Customs Tariff is a duty that is owed to this House in its collective capacity. Any legal duty gives rise to a corresponding right. In this case it is the right of this House to have a copy of the order tabled in the House for the information of members and for review by one of its committees.

The courts of this country are not the proper forum before which the Commons can enforce this right. In the first place, the House of Commons does not have the legal capacity to initiate court proceedings.

Second, even if this was not the case, I submit that it would not be in keeping with the position of the House of Commons and our system of government for the House to appear as a plaintiff before the courts of justice over which it enjoys pre-eminence in any event.

A right which cannot be enforced is no right at all. For the reasons I have mentioned, it is not possible for the House of Commons to ask the courts to enforce its right to have the order tabled, nor would this course of action be in keeping with the constitutional position of this House. I submit the remedy lies with the House itself. The Minister of Finance was under a legal obligation to furnish this House with a copy of the order made by the Governor in Council within the time prescribed by statute.

I submit that the House has the ability to sanction the non-observance of a legal obligation established for the collective benefit of its members. I believe that the appropriate sanction for any failure to obey a tabling requirement is found in the contempt powers of the House.

In deciding whether there is a prima facie justification for an eventual decision of the House on this question,

Privilege

the Chair is not asked to enforce the law. The Chair is asked to decide whether the failure to obey the law has consequences in terms of the collective privileges of the House and in terms of the members' ability to discharge their duties as legislators. In short, does the omission to table a document, legally required to be tabled, impede or obstruct the House and its members in the discharge of their functions or does it have the tendency to do so. As stated in the 20th edition of Erskine May, contempt of the House includes any case of disobedience, whether or not intentional, to a legitimate command of Parliament.

It is difficult to conceive of any command of this House that can have more legitimacy than one contained in a law passed by this House. I am confident that the minister's disobedience to that command was not intentional. This, however, does not change the situation.

Nowhere can I find authority for the proposition that this House can only deal with intentional contempt. In fact, in the recent incident involving the member for Port Moody—Coquitlam, the Chair found that a prima facie case of contempt existed even though the hon. member had expressly stated to the House that he did not intend to show contempt for the House or for the Speaker. I submit that intention is not a consideration at this stage and that the House should be permitted to deal with any facts that amount to contempt regardless of whether there was an intention to show contempt for the House. The question of intent is for the House itself to consider at a later stage.

In closing, allow me to reiterate that if this matter cannot be raised on the floor of this House in the way I have, then it can be raised nowhere else. There is no other forum outside of this House which is competent to pronounce or to enforce a legal duty that is owed to the House of Commons in its collective capacity. Subsection 59(5) of the Customs Tariff creates such a duty and the House has the right and responsibility to sanction the non-observance of that duty.

Mr. Speaker, if you do rule that there is a prima facie case in this instance, I am prepared to move the appropriate motion. I have forwarded to the member opposite two drafts of such a motion. We have not had an opportunity at this stage to discuss the appropriateness of either.