

# Speaker's Ruling

## Jurisdiction Over The Precincts Of The Legislature, Speaker John Reynolds, British Columbia Legislative Assembly, April 9, 1987

**Background:** In April, the Leader of the Opposition, Mr. Skelly, raised a question of privilege relating to the public's right to demonstrate, by way of residency, on the grounds of the Legislative Building.

**The Ruling (Speaker John Reynolds):** Yesterday afternoon, the Honourable the Leader of the Opposition rose under the provisions of Standing Order 26 relating to a matter of privilege and described recent events which had taken place on the lawn in front of the Legislative Building.

Firstly, I wish to thank the Honourable Member for his courtesy in advising the Chair of this matter, prior to his raising it in the House. Honourable Members will appreciate that privilege belongs to Members of the Legislature, individually and collectively. The individual privileges are:

a) freedom of speech in debate; and

(b) freedom from arrest

The collective privileges are:

(a) access to the Crown;

(b) the right to provide for its due composition;

(c) the right to regulate its own proceedings;

(d) the power to punish for contempt;

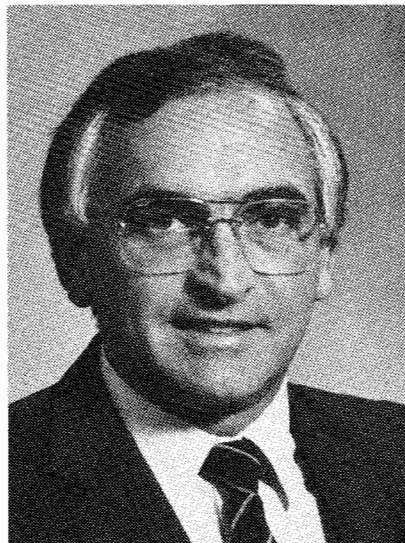
(e) the power to summon witnesses; and

(f) those privileges enumerated in the *Legislative Assembly Privilege Act*

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are (and I stress) "absolutely necessary for the due execution of its power." They are

enjoyed by individual Members because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity. The question the Chair must address is whether or not the privileges enumerated above have been breached by the actions described by the Honourable the Leader of the Opposition yesterday.

The Chair must also observe that the Speaker's jurisdiction in British Columbia has never been clearly defined and the problems relating



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thereto were placed before this House in a report filed under the *Legislative Procedure Review Act* in 1984. In that report, at page 41, it was recommended that the legislative precinct be defined as the land the buildings bounded by Belleville, Government, Superior and

Menzies Street, and further recommended that that definition be included in an Act establishing an Internal Economy Board.

The Chair feels the matter raised yesterday by the Honourable the Leader of the Opposition could have been examined by such a board and the experience in other jurisdictions of the Commonwealth lends support to that conclusion.

The right to demonstrate and protest are integral parts of a parliamentary democracy. The question the Chair, and indeed this Assembly, must address is whether or not they wish to circumscribe limits to these rights, particularly when the actions in question directly impact upon the precinct of this Legislative Assembly. The Speaker is, and will remain, the servant of this Assembly, but is placed in an invidious position when the extent of his jurisdiction remains uncertain. It is hoped that the Premier's statement relating to the formation of a Board of Internal Economy will hasten the resolution of many of these uncertainties.

The matter raised by the Honourable the Leader of the Opposition has brought into sharp focus these jurisdictional problems but the matter described does not, under the authorities, qualify as a prima facie breach of privilege.

For the further assistance of all Members, I refer them to a comprehensive treatment of this matter contained in *Parliamentary Privilege in Canada* by Joseph Maingot, and Sir Erskine May's *Parliamentary Practice*, 19th edition, at page 92, and Beauchesne's *Parliamentary Rules and Forms*, 5th edition, at page 11.

The Chair must make a further comment in relation to a fresh incident reported by the Honourable the Leader of the Opposition during

this morning's sitting which, as the Chair understands it, amounted to a repeat of yesterday's incident on the lawn of the Legislative Assembly. As a result of this last-mentioned incident, the Speaker has issued instructions to the Sergeant-at-Arms that neither he, nor any of his staff, are to become involved in the

forcible removal of persons or articles from the grounds of the Legislative Building. These instructions will remain in place until the Chair has been given different instructions by this House, or by a duly constituted Board of Internal Economy. Let me emphasize, this in no way derogates

from the Chair's acknowledged responsibility for security matters within the walls of the Legislative Building, which will continue in accordance with the Standing Orders of this House and well-established custom and usage.

### Protection of Members Against Civil Actions, Speaker David Carter, Legislative Assembly of Alberta, May 4, 1987

**Background:** On April 30, 1987, the Minister of Career Development and Employment (Mr. Orman) and the Provincial Treasurer (Mr. Johnson) were served with statements of claim by the Member for Calgary Buffalo (Mr. Chumir) and signed by the three other members of the Liberal caucus. The plaintiffs charged that the ministers were acting contrary to law in failing to cause some \$110,000,000 in monies held by the Western Canadian Lottery Corporation to be placed into the General Revenue Fund. The ministers argued that service of such a notice in the legislature constituted a breach of the traditional privileges and immunities accorded to members in civil proceedings. They claimed the subject had been discussed in committee and on the floor of the Assembly and the government had responded. The attempt to focus debate in another place i.e. the courts was a breach of the privileges of the entire Assembly.

Mr. Chumir said he had looked in vain for anything in the primary authorities governing the rules of the House which suggest that the manner of service or the statement of claim itself violated any of the privileges of the House. He quoted Section 66 of *Beauchesne* which states that "neither the House nor its members have ever made any specific claim to be free from the service or process within the precincts..."

The Speaker had to decide if the action constituted a *prima facie* case of privilege.

**The Ruling (Speaker David Carter):**

A number of comments would be made by the Chair. First, I would deal with a comment that was made that the strongest authority is *Beauchesne*. One really needs to keep in perspective that the strongest authority really should be the Standing Orders of this House or the *Legislative Assembly Act* as it deals with this particular Assembly. So while some reference had indeed been made to *Beauchesne*, that should be kept in a certain perspective. The perspective certainly would be along this line to a section of the *Legislative Assembly Act* which has not been quoted this afternoon. It's section (9)(1), privileges, immunities, and powers generally, and I quote:

"In addition to the privileges, immunities and powers respectively conferred on them by this Act, the Assembly and its Members, and the committees of the Assembly and their members, have the same privileges, immunities and powers as those held respectively by the United Kingdom, the members of that House, the committees of that House and the members of committees of that House at the time of the passing of the *Constitution Act, 1867*."

Now, the Chair reads that into the record because additional references have been made throughout the

course of the afternoon with respect to the whole tradition of parliamentary practice and in particular *Erskine May*. The 20th edition, chapter 7 in particular, is one which forms most of the parameters for the discussion, with some references perhaps occurring in chapter 8.

The Chair would also read into the record a passage which occurs in chapter 7 of *Erskine May* under the heading "Origin and Scope of the Privilege." I'll proceed this way in quoting it:

It has been stated ... that parliamentary privilege originated in the King's protection of his servants but is now claimed as an independent right. The privilege of freedom from arrest or molestation of Members of Parliament, which is of great antiquity, was of proved indispensability, first to the service of the Crown, and subsequently to the functioning of each House.

I pause here because the word "molestation" indeed may well be necessary of further definition with respect to the matter of privileges raised today.

I also go on to quote further, "The principal reason for the privilege has also been well expressed in a passage by Hatsell", so this takes us to yet another parliamentary source. The quote follows, and this is page 97 of *Erskine May*, 20th edition.