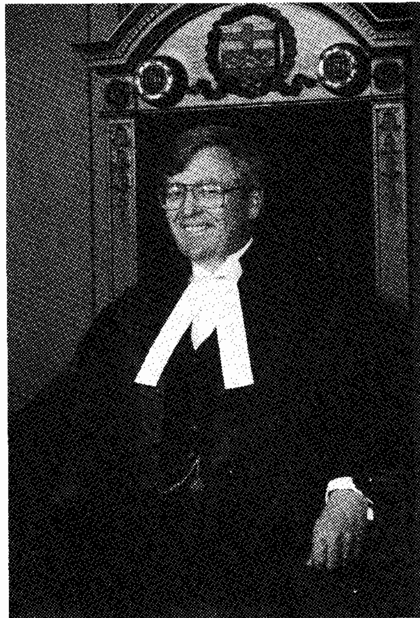
"As it is an essential part of the constitution of every court of judicature, and absolutely necessary for the due execution of its powers, that persons resorting to such courts, whether as judges or as parties, should be entitled to certain privileges to secure them from molestation during their attendance; it is more peculiarly essential to the Court of Parliament, the first and highest court in the Kingdom, that the Members, who compose it, should not be prevented by trifling interruptions from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call, not so immediately necessary for the great services of the nation; it has been therefore, upon these principles, always claimed and allowed, that the Members of both Houses should be, during their attendance in Parliament, exempted from several duties, and not considered as liable to some legal processes, to which other citizens, not intrusted with this most valuable franchise, are by law obliged to pay obedience".

Now, the Chair underlines *and not considered as liable to some legal processes.* The difficulty, of course, that has been raised is with respect



David Carter

to the serving of notice and then whether or not the place of notice came into effect and whether or not molestation means a physical assault upon a person's person or whether impeding of progress is indeed a form of molestation.

Another matter was raised, that I would quote no precedent in this House, and the Chair agrees. There has indeed been no precedent of this nature in this House and perhaps because of the seriousness of the actions which have taken place.

With respect to the matter at issue, the disbursement or the discussion of lottery funds, indeed, with regard to the statement of claim as served, there obviously is indeed another way of access to the courts, which the Chair is quite certain the Member for Calgary Buffalo is entirely familiar with, so that the statement of claim could indeed be processed but indeed via another route rather than the one that was taken.

So it is that having listened carefully, the Chair decides that indeed there is a *prima facie* case of privilege involved here, as raised. The Chair also takes note that the Provincial Treasurer gave notice that a motion would be forthcoming in the very near future.

Motions to Supersede Routine Proceedings, Ruling by Speaker John Fraser, House of Commons, April 14, 1987

Background: In recent years, regardless of the government in office, opposition parties have resorted more and more to procedural devices to block debate. Most of these occur during routine proceedings such as petitions, tabling of documents, reports of committees etc. A motion to supersede routine proceedings represents an opportunity for the government to avoid many potential pitfalls. The decision to allow such a motion poses great difficulty for the Chair. On April 13 the Parliamentary Secretary to the President of the Privy Council, Doug Lewis, moved a motion to supersede routine proceedings and move to government debate of Bill C-22, an amendment to the *Patent Drug Act* which had been before the House for many months. After listening to arguments over the admissability of the Motion the Speaker reserved his decision until the following day.

The Ruling (Speaker John Fraser): A number of Hon. Members dealt with the importance of protecting the fundamental rights Members have under Routine Proceedings. However, the fundamental rights of Members can be violated by the tactics of obstruction as well as by the unreasonable restriction of debate. The Hon. Member for Cochrane-Superior (Mr. Penner) went to the heart of the matter when he stated that the procedural tactics which the House has witnessed have little to do with the content of Bill C-22. As I made clear yesterday, the Chair is not the least bit interested in the content of the Bill. The Chair is, however, gravely concerned with the effect of these tactics by either side on the well-being of the House of Commons.

The House has had before it for almost six months a highly controversial piece of legislation, namely,Bill C-22, an *Act to amend the Patent Act.* This is not the first time the House has had to deal with controversial legislation, neither will it be the last. It is essential to our democratic system that controversial issues should be debated at reasonable length so that every reasonable opportunity shall be available to hear the arguments pro and con and that reasonable delaying tactics should be permissible to enable opponents of a measure to enlist public support for their point of view. Sooner or later every issue must be decided and the decision will be taken by a majority. Rules of procedure protect both the minority and the majority. They are designed to allow the full expression of views on both sides of an issue. They provide the Opposition with a means to delay a decision. They also provide the majority with a means of limiting debate in order to arrive at a decision. This is the kind of balance essential to the procedure of a democratic assembly. Our rules were

certainly never designed to permit the total frustration of one side or the other, the total stagnation of debate, or the total paralysis of the system.

Bill C-22 was first introduced on November 6, 1986 and given first reading on November 7, following a division in both cases. The strong opposition to the Bill led to the use of procedural tactics for purposes of delay to which the Government responded with procedural tactics of their own. Seven divisions took place prior to the introduction of the Bill, most of them resulting from the moving of dilatory motions during Routine proceedings. Fourteen more divisions, most of them again resulting from the moving of dilatory motions during Routine Proceedings, took place before the Bill obtained a second reading on December 8, 1986.

The Bill was referred to a Legislative Committee which reported it back to the House with amendments on March 16, 1987, after 24 meetings and 82 hours of debate as the Deputy Prime Minister pointed out. Numerous amendments were proposed at the report stage to which four days have so far been devoted.

On April 7, the Hon. Minister of Consumer and Corporate Affairs (Mr. Andre) gave notice of an allocation of time motion in terms of S. O. 117. This Standing Order was adopted by the House in 1968 and has been regularly used ever since. It is a legitimate procedure provided it is not abused and it has been employed by governments both Liberal and Progressive Conservative without any procedural challenge to their right to do so.

As the House knows, dilatory tactics prevented the House from reaching motions on two successive days last week. On the third day, Friday, the Government undertook not to proceed with its allocation of time motion respecting Bill C-22 and by mutual agreement Routine Proceedings did not take place. The tactical battle has unfortunately become a substitute for debate. Opponents of the Bill have used various devices to delay the passage of this Bill at its successive stages. The Government has countered by using superseding motions having the opposite effect. To the viewing public, these tactics must be totally meaningless. Our procedures are being used for purposes for which they were never originally intended, and the public could be pardoned for believing that our rules have no logical basis at all.

In the kind of situation which faces us, I have no doubt that negotiation provides the only route to a satisfactory solution. However, when negotiations fail there comes a time when the Chair is obliged to consider what its own responsibilities are. One of the functions of the Speaker is to ensure that the House is able to transact its business. This does not mean that the Chair plays any part in assisting the Government in the management of its business agenda. I want to repeat that; this does not mean that the Chair plays any part in assisting the Government in the management of its business agenda.

Considerable debate has already taken place on this Bill. It cannot be argued that the opportunities for airing objections to it have been unreasonably restricted. There has been considerable disruption of Routine Proceedings which, as I have said, has given me very great concern.

John Fraser

I might point out that I invited Hon. Members last Wednesday, if they chose at that time, to give any advice they might have for the Speaker.

Routine Proceedings are an essential part of House business and if they are not protected the interests of the House and the public it serves are likely to suffer severely.

The moving of dilatory motions during Routine Proceedings is a very recent practice which originated in the early 1980s. I share the doubts expressed by some Hon. Members yesterday as to its procedural validity. It is a practice which can supersede the presentation of petitions, delay indefinitely the introduction of Bills--those of Private Members as well as those of the Government--and completely block debate on motions for concurrence in committee reports as well as on allocation of time motions. These arguments were made very effectively by Hon. Members in the course of their contributions yesterday. The Hon. Member for Ottawa-Vanier (Mr. Gauthier) argued very strongly that during Routine Proceedings a Member should be recognized only for the purpose contemplated by the particular rubric under which he or she rises. Since Routine Proceedings have been moved to the morning on three days of the week, these problems have been aggravated. However, this is a broader issue which will need to be addressed at another time.

The immediate question which faces the Chair is whether the motion moved yesterday by the Hon. Parliamentary Secretary to the President of the Privy Council is acceptable or not. I recognize that if we are to adhere rigidly to recent precedents, including my own ruling of November 24, 1986, the motion would have to be ruled unacceptable. The House is nevertheless facing an impasse which it has been unable to resolve for itself. There comes a time when the Chair has to face its responsibilities. When circumstances change and the Rules of Procedure provide no solution, the Chair must fall back on its discretion in the interests of the House and all its Members. This may require the Chair to modify or vary an earlier decision.

In using my discretion, I believe I am supported by the centuries-old tradition which attaches to the Office of Speaker Lenthall who, in the reign of Charles I, declared in the presence of the King that the Speaker's first duty lay to the House of Commons. It was Speaker Brand who in 1881 ended the paralysis of the British House by imposing closure of his own initiative.

An eminent parliamentary authority, Josef Redich, has written that it is the duty of the Speaker to serve the majority and the minority: "-by maintaining the rules and the usage of centuries, and by taking care that both majority and minority are not impeded in the use of the forces and the weapons which the order of business provides for strong and weak". Protection of a majority

against obstruction and protection of a minority against oppression are both alike functions of the Chair.

When interpreting the rules of procedure, the Speaker must take account not only of their letter but of their spirit and be guided by the most basic rule of all, that of common sense.

The practice of using dilatory motions as a means of obstruction is undoubtedly sanctioned by our parliamentary practice. However, many parliamentary jurisdictions in the Commonwealth place restrictions on the extent to which they can be used. For example, in the British House of Commons the Speaker has the power to refuse a dilatory motion if he believes it to be an abuse of the rules of the House. By the same token, he is empowered to allow them if he believes them to be justified.

I repeat my conviction that the entire question of the use of dilatory motions during Routine Proceedings needs to be examined and that no procedures should be sanctioned which permit the House to be brought to a total standstill for an indefinite period. Division bells are no substitute for debate.

This Parliament has been a Parliament of reform. We have seen important changes implemented designed to facilitate the flow of business, increase the powers of committees, improve the opportunities of Private Members, and increase the effectiveness of our procedures.

The decision of the House to change the manner of electing its Speaker is indicative of the fact that the House of Commons has matured enough to confer upon its Presiding Officer the discretionary powers necessary to control abuse and resolve deadlocks that the British House of Commons gave its own Speaker over a century ago? I believe it has.

Having given serious consideration to all of the arguments that have been made, I have decided that I can best serve the interests of the House by allowing the motion moved yesterday by the Hon. Parliamentary Secretary to the President of the Privy Council. In doing so, I make it clear that this will not be regarded as a precedent for all time, and that in other circumstances the Chair might well disallow such a motion.

I hope all Hon. Members realize that the spirit of my decision has nothing to do with the content of Bill C-22. I am concerned only with the procedures of this House and the implications for the future of what we may do today. There are circumstances in which obstructive tactics can be an abuse of the rules of the House. Equally, notice of time allocation motions after only a few hours of debate at any stage of a Bill can also be an abuse. However, when such notice is given in the face of a lengthy report stage, after detailed consideration of a Bill has taken place during a long period of time in committee, I submit that this is a legitimate use of Standing Order 117. Both time allocation motions and dilatory motions are open to abuse. When such tactics are entered upon by either Government or Opposition the balance of democratic parliamentary government can be easily upset. The maintenance of that balance is a fundamental responsibility of the Speaker.

I wish to make it clear to all Hon. Members that if this ruling is resorted to as a precedent, the Chair will interpret it in the light of the prevailing circumstances with a view to maintaining that essential balance to which I have just referred.

I wish to make some additional comments. I have not enjoyed making this ruling. Nonetheless, that is the responsibility that, in the circumstances, Hon. Members have imposed upon me. I have accepted that responsibility with due regard to the traditions of this place which I have tried to adequately express in my ruling. The ruling which I have just made was made after intense considerations of not only our rules and our precedents but also with regard to as much common sense as I could bring to the present situation.

However, I want something to be clearly understood by all Hon. Members wherever they sit in this Chamber. I expect every Hon. Member to take my ruling in the spirit in which it is intended. It is simply this. In the absence of any clear direction according to the standing rules I have had to make a decision.

I want to address a particular concern that was made by some Hon. Members during argument on this important matter. Simply stated it is this. The result of my ruling might be that the right of Private Members to present their concerns under Routine Proceedings could be prevented and, if so, their rights as parliamentarians would be unfairly and wrongfully restricted or, indeed, extinguished. Let me answer that concern. If anyone on either side of the House tries to take what could be considered unfair advantage of my ruling, I serve clear notice that as long as I am Speaker I will not tolerate such a proposition. I have had to make a decision. It is a decision circumscribed by events. No one should presume for a moment that it ought to be used as justification of abuse of whatever form against or violence to the principles of fair play.

My ruling, admittedly, has left some discretion to the Speaker. Until there are some rule changes that help resolve the need for the Speaker to exercise, in the interests of the Chamber, this discretion as Speaker, I shall strive mightily to find an acceptable resolution of the disputes. I believe that the resolution of these inevitable and legitimate disputes should be on the basis of our traditions, our rules, our precedents, and something else as well. By this I mean what is essential to this House of Commons, that is, that well accepted but not always definable thing upon which our whole constitutional history is based. It is fair play and, perhaps I can add as I have already mentioned, common sense. I should immediately remark that common sense, like beauty, is in the eye of the beholder. Nevertheless, there is a basic common sense that those of us who have to get elected understand only too well. It is, when all is said and done, the profound sense of what is appropriate under certain circumstances and which is acceptable to reasonable people.

I have tried to give Hon. Members an intellectually reasoned ruling. I have also tried to support it with a rationale that stands the test of common sense. I want to assure all Hon. Members that their Speaker will not be receptive to any abuse of either the intellectual or common basis of this ruling. I would hope that the difficulties of the Speaker in this situation will encourage Hon. Members to reconsider the present rules with a view to making changes which would secure the sanctity of Routine Proceedings and the legitimate interests of all Members of the House of Commons.

I want to thank all Hon. Members for their diligence and the sincerity with which they put their arguments. I hope that this ruling, while not satisfactory to all, will be accepted in the interests of this place.