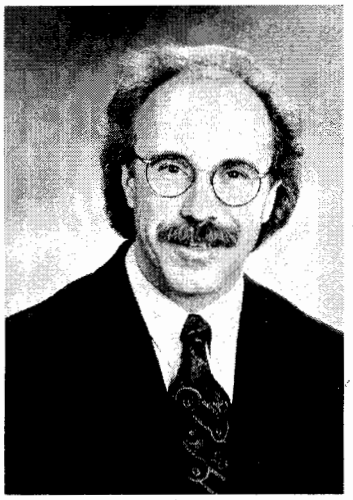
Speaker's Ruling

The right to petition the National Assembly, President Jean-Pierre Charbonneau, February 1, 2001



Background: On three occasions in recent months, the matter of the exercise of the right to petition the National Assembly has been brought before the Assembly. The President identified four questions. all of which concern the impact of the codification of the right to petition in the Quebec *Charter of human rights and freedoms* on the procedure to be followed in exercising that right in the context of parliamentary debate. (Section 21 of the Charter provides that every person has a right to petition the National Assembly for the redress of grievances.)

The first question is: May the President of the Assembly block the tabling of a petition which puts the conduct of a Member in issue? The second is: May a person petition the National Assembly directly, that is, without the intermediary of a Member? The third is: Does section 21 of the *Charter of human rights and freedoms* require parliamentarians as a group to dispose of the redress petitioned for? And the fourth is: Must a follow-up - answers in particular - be given to a petition addressed to the National Assembly?

The Decision (President Charbonneau): At the origin of the question of whether the President may block the tabling of a petition which puts a Member's conduct in issue are the following facts. On May 23, 2000, I refused to allow a non-conforming petition to be presented in the National Assembly by an MNA from the Government Party. A group of citizens had asked the Member to present a petition whose contents impugned the legitimacy of the mandate given to another MNA by the electorate in the riding concerned.

The second question and third questions arose from the same facts. On June 2, 2000, a citizen of Quebec instructed his attorneys to request the President of the National Assembly to place a petition on the Order Paper praying the Assembly to adjudge his contentious claim against the Government.

In so acting, this person did not avail himself of the provisions of Standing Order 62 and the following, which establish the procedure for presenting petitions to the Assembly, as he is of the opinion that section 21 of the *Charter of human rights and freedoms* allows him to petition the Assembly directly and without being required to follow the procedure set out in the Standing Orders. The procedure specifies, among other things, that a petition is presented through a Member of the Assembly. On requesting that the petition be placed on the Order Paper, the petitioner also demanded that the Assembly hold a debate and a vote on the subject-matter of the petition, for it is his contention that the *Charter of human rights and freedoms* imposes on the Assembly, as a constitutional duty, a function in the administration of justice.

The fourth question was raised by the Member for Nelligan. In a letter dated September 18, 2000 the honourable Member asked me whether any action had resulted from a petition concerning the damage insurance industry which he had laid before the Assembly on the preceding May 30 on behalf of a constituent. The Member for Nelligan suggested in his letter that all petitions should be given an official response. In his opinion, a letter could be addressed to the Minister, department or body directly concerned and the reply could be forwarded to the Member who presented the petition.

Principles of Parliamentary Law

We learn from writings in British parliamentary law that the right to petition the Crown or Parliament for the redress of grievances is a fundamental right that dates back to be-

fore the reign of King Edward I, in the thirteenth century.

The right to petition, as it is known today in England, found expression in two resolutions passed by the House of Commons in 1669. On reading those resolutions, it is clear, however, that the right to petition is counterbalanced by the privilege of the chamber of deputies to determine on what conditions a petition may be received.

In Quebec, the right to petition existed and was exercised long before it was codified in the *Charter of human rights and freedoms* in 1975. Although this codification enshrined the importance of the right to petition, it did not alter its nature. Certainly, the right exists and is recognized in a fundamental law that has precedence over any Act that does not override it expressly, but its exercise remains subject to the privileges of the Assembly. This is why although the right to petition is established by law in Quebec, its procedural framework is determined in the Standing Orders of the National Assembly. As a matter of fact, the *Charter of human rights and freedoms* is absolutely silent on the manner of presenting a petition to the National Assembly.

In this connection, we all know that by virtue of the collective privileges of Parliament, the Assembly has the exclusive power to regulate the conduct of its proceedings, free from outside interference. This privilege is codified in section 9 of the Act respecting the National Assembly, which provides that the rules of procedure of the Assembly are established by the Assembly, and that it alone has authority to see that they are observed. It is essential to specify that the Assembly's exclusive right to manage its internal affairs is not contingent upon its legislative codification. Rather it is an inherent parliamentary privilege of the National Assembly that enjoys constitutional status. The constitutional status of inherent parliamentary privileges was recognized by the Supreme Court of Canada in 1993, in its ruling on *New Brunswick Broadcasting Co. v. Nova Scotia*, commonly referred to as the Donahoe decision. Because of their constitutional status, parliamentary privileges have precedence over laws in the hierarchy of the sources of law.

In any case, it could hardly be otherwise seeing that the Supreme Court ruled, in that decision, that freedom of expression, including the freedom of the press guaranteed by the *Canadian Charter of Rights and Freedoms*, which is part of the formal Constitution of Canada, cannot have precedence over inherent parliamentary privileges because parliamentary privileges enjoy the same constitutional status as the rights guaranteed by the Canadian Charter.

Parliamentary privileges protect the Assembly and its Members from being hindered or impeded in any manner in the exercise of their functions. In other words, debates in the Assembly may not be subjected to outside interference. It is a matter of public interest. If it were otherwise, the proceedings of the Assembly could be brought to a standstill, which, we will all agree, is not desirable. This is the reason why the courts do not intrude into parliamentary business.

Moreover, and this has a great deal of relevance to this decision, the courts recognize the exclusive right of parliamentary assemblies to apply certain legislative provisions if they concern their functioning. For instance, section 54 of the *Constitution Act, 1867* provides that no bill having financial implications may be passed by the Assembly unless it has first been the subject of a royal recommendation. Even if all legislative assemblies in Canada are subject to section 54 of the *Constitution Act, 1867*, it appears that the provision is applied differently from one assembly to the next. On this subject, the Supreme Court has ruled that "The formulation and introduction of a bill are part of the legislative process with which the courts will not meddle. So too is the purely procedural requirement in section 54 of the *Constitution Act, 1867*."

One finds, on reading this passage, that even though section 54 of the *Constitution Act, 1867* is part of the Constitution, the Supreme Court has recognized the exclusive power of parliamentary assemblies over its application. Although the provision embodies an important constitutional principle in the functioning of a Westminster-model State, that is the financial initiative of the executive power, the Supreme Court clearly has concluded that the application of that principle falls within the internal affairs of parliamentary assemblies.

Since the right to petition has a direct impact on the functioning of the National Assembly and since the functioning of the Assembly, by virtue of parliamentary privileges, is entirely within the purview of the Assembly itself, the right to petition entrenched in the *Charter of human rights and freedoms* must be conditioned by the rules of procedure of the Assembly. The applicable rules of procedure could have been provided for in the Charter itself. Indeed, it does happen that the legislator chooses to establish rules of parliamentary procedure in an Act, rather than in the Standing Orders.

As the Parliament did not consider it expedient, when it adopted the Charter, to include a procedure to regulate the right to petition, it fell upon the Assembly, by virtue of its constitutional right to manage its internal affairs, to establish the

rules. Thus, the right to petition is governed by Standing Orders 62 to 64, which establish requirements as to form and contents for a petition to be found to be in order and to be admissible in the Assembly. These rules are not incompatible with the right to petition provided for in the *Charter of human rights and freedoms*. Certainly, the right is recognized in the Charter, but the manner of exercising this right is provided for in the Standing Orders of the National Assembly. As mentioned earlier, it could have been otherwise if the Charter had provided special rules.

That being said, the enforcement of the rules of procedure of the Assembly does not make section 21 of the Charter merely academic. Actually, these rules can very well coexist with section 21. It must be understood that the fact that the right to appeal to the National Assembly is established by an Act, be it the *Charter of human rights and freedoms*, does not mean that the right may be exercised in any manner whatever. A framework is needed. After all, Members who wish to address the National Assembly are themselves restricted by the rules of parliamentary debate, even though their freedom of speech is protected by constitutional privilege. In other words, it is not because the right to petition is a Charter right that the petitioning procedure is beyond the authority of the Assembly.

However, and I must reiterate this, the existence of procedural rules in no way denies citizens their right to present petitions to the Assembly. The Parliament of Québec is respectful of the right to petition which it has itself entrenched in the Charter. The right to petition is open to all citizens, subject of course to the rules of procedure.

It must be pointed out that the great majority of petitions presented to the National Assembly do not meet the admissibility requirements set out in the Standing Orders. The reason why most of those petitions are found not to be in order is that they are not addressed to the Assembly or do not ask for the intervention of the Assembly. Except with the unanimous consent of the Assembly, a petition that does not satisfy the requirements of the Standing Orders may not be tabled, even if the right to petition is provided for in the *Charter of human rights and freedoms*. There are instances of this at practically every sitting of the Assembly. This clearly shows that the Members have never allowed the right to petition to be exercised just anyhow.

In order to fulfil its functions efficiently and in an orderly fashion, the Parliament simply must establish the rules of the game that are applicable within its precincts. If the right to petition was not regulated by rules of procedure, parliamentarians would have to allow the presentation of just any petition, no matter what its form or contents. It stands to reason that the Assembly must not be deprived of the initiative of its proceedings simply because the right to petition is provided for in the *Charter of human rights and freedoms*.

In any case, as we have seen earlier, the Assembly's right to manage its internal affairs without outside interference stems from a constitutional privilege which, in parliamentary law, may not be disregarded. In short, a legislative provision that frames a right generally, without setting out the manner in which it may be exercised, may not operate to nullify the Parliament's constitutional right to manage its internal affairs. This is why the presentation of a petition must be in compliance with the rules provided in the Standing Orders.

In addition to the above-mentioned criteria determining the conformity of petitions with parliamentary procedure, petitions must of course be in compliance with the other provisions of the Standing Orders. Though they have a fundamental right to petition, petitioners cannot be allowed, any more than the MNAs themselves, to circumvent the rules of procedure that govern parliamentary proceedings.

Among such rules are those which deal with the privileges of Parliament and the conduct of its Members. As we know, the conduct of a Member cannot be impugned during a parliamentary debate except by means of a motion impugning that conduct.

Given the principles of parliamentary law I have just set out – somewhat lengthily I am afraid – I will now give specific answers to the four questions that are the subject-matter of this decision.

The Four Questions

The first question I will answer in the affirmative. Yes, the President of the Assembly was justified in preventing a Member from presenting a petition that called the conduct of a fellow Member into question, regardless of whether the Assembly would have given its consent to the tabling of the petition. The petition raised a doubt as to the legitimacy of the mandate of the MNA and called on him to stake his seat on the matter.

Of course, according to the parliamentary doctrine set forth earlier, the Assembly could have made an exception to the applicable provisions of the Standing orders and allowed presentation of the petition even though it was not in order because it impugned the conduct of a Member. However, that would have been tantamount to asking the President to set aside his fundamental duty to see to it that the rights and privileges of the Assembly and its Members are upheld.

Let me immediately reassure the Members of the Assembly in that regard, for I have no intention whatsoever of renouncing that duty, which in some measure constitutes the very basis of the functions attached to the speakership. Therefore, for as long as I am the President of the National Assembly, I will never agree to the tabling of a petition that puts the conduct of a Member in issue or questions the legitimacy of the mandate given to a Member by the electorate. In such circumstances, I will not allow consent to be given to a departure from the Standing Orders.

The orderly conduct of parliamentary business would be jeopardized if the legitimacy of electoral mandates were to be constantly challenged. In any case, our democracy has a system of checks to ensure that electoral law is properly applied. Unless a decision to the contrary is made by the competent authorities or a motion is presented in the Assembly, in accordance with the Standing Orders, clearly impugning the conduct of a Member, every Member without exception must have the full benefit of the confidence of the people that entitles him or her to sit among us and participate in the proceedings of the Assembly. No Member, on either side of the House, would have anything to gain from things being otherwise: the very credibility of our institution is at stake. Those are the reasons for which I refused the tabling of the petition by the Government party Member.

As for the second question, that is, whether the Assembly may be petitioned directly by an individual, the answer is no. It is through a Member that a petition must be addressed to the National Assembly. This is what was decided by Parliament and, for as long as the rule of procedure stands, this will be the manner of presenting a petition.

We come now to the third question, as to whether the Assembly is required to debate and vote on the contents of the petitions that are presented to it. Here, too, the answer is no, for reasons similar to those warranting the answer to the second question. Nothing in the rules of procedure of our Assembly, adopted by virtue of its constitutional privilege to regulate its internal affairs, obliges the Assembly to hold debates on petitions and dispose of them as if it were a dispute arbitration tribunal. The Assembly could, of course, decide otherwise.

By the same token, under present rules, the Assembly could, for instance, decide to refer a petition to a committee. However, given Quebec parliamentary law as it now stands, I see no such obligation in the wording of section 21 of the *Charter of human rights and freedoms*. We all agree that the right to petition the Assembly is important but, with all due respect for opinions to the contrary, I believe that the right to petition, which incidentally is not a constitutionalized right under the *Charter of human rights and freedoms*, cannot operate to deprive the Assembly of the initiative of its proceedings. It is the Assembly that must determine on what conditions it may be seized of a matter. If section 21 of the Charter alone were to compel the Assembly to debate each of the petitions it receives for the redress of a grievance, parliamentary proceedings would be practically monopolized by such debates.

In adopting the wording of section 21, the Assembly surely was not choosing to paralyse its own proceedings. If the Assembly one day decided to afford such treatment to petitions, very clear and strict rules would be required to regulate the whole process, rules which, of course, would be established by the Assembly itself. In that connection, I will discuss, in my answer to the fourth question, an amendment to the Standing Orders which I proposed in April 1998.

As for the fourth question about the obligation to follow up on petitions, I share the preoccupations of our colleague. There is no provision at this time in our Standing Orders for the possibility of responding to petitions addressed to the Assembly. The treatment given to petitions, according to our rules of procedure, can be summarized as follows: at the appointed stage of the Orders of the Day, the Member acting as the petitioners' intermediary in the Assembly tables a document called an *Abstract of Petition*. The abstract indicates how many signatures are on the petition, the names of the petitioners, the material allegations it contains and the intervention requested by the petitioners. The Secretary General keeps the original of the petition for at least seven days. After that time, the Secretary General returns the original to the Member who presented the petition to the Assembly. Nothing else is provided in the Standing Orders concerning the follow-up to be given to petitions.

As I mentioned earlier, the Member for Nelligan has proposed that every petition laid before the Assembly be transmitted to the government department or body concerned and that the department or body's response then be forwarded to the Member having tabled the petition. However, for this to be possible, changes would have to be made to the rules of procedure of the Assembly. In April 1998, I presented a proposal on this subject as part of a parliamentary procedure reform project. The proposal was examined by the Committee on the National Assembly; unfortunately, the parliamentary groups decided on no further action. One of my suggestions was that the Government be obliged to respond to

petitions tabled in the Assembly, failing which the subject-matter of the petition would be debated by the Assembly. This is one example of a rule of parliamentary procedure that would allow petitions to be properly dealt with. It is interesting to note that similar procedures exist in other assemblies. Need I add that I personally am still in favour of ensuring that a response be given to citizens who take the trouble of petitioning their elected representatives?

Before I conclude, allow me to bring up certain other points that concern the petitioning of the National Assembly. First, if no Member is willing to present a petition, how could we ensure the exercise of the right to petition? Should the President of the Assembly get involved? Our parliamentary law does not allow the President to present a petition on the grounds that the President does not take part in debates and that, furthermore, he or she must rule on the admissibility of petitions. For that matter, how could the President be sure that no other Member wants to present the petition? Should the President be the person through whom all petitions are presented to the Assembly? One thing is sure, there is a procedural void which theoretically could prevent the exercise of the right to petition entrenched in the *Charter of human rights and freedoms* and, in my opinion, this void should be filled.

Another issue relating to petitions is the matter of their compliance with the Standing Orders. As I said earlier, most petitions tabled in the Assembly are found to be out of order. Even if this does not, in practice, entail the rejection of petitions since the Members generally consent to petitions being tabled, I made another reform proposal on this subject in April 1998, for which I have yet to receive an answer from the parliamentary groups. Having said this, I do not believe that it is up to the President alone to establish the procedural framework for the petitioning of the Assembly. We all recognize that it is a fundamental right. Concurrently, the National Assembly has a right of paramount importance, the right to manage the conduct of its internal affairs without outside interference of any kind. Therefore, I urge the Members, and the House Leaders in particular, to reactivate the reform process.

In closing, I must make it clear that this decision does not intend to trivialize the right to petition the National Assembly. The fact that it is possible for private citizens to express their views and call for redress before the assembly of their elected representatives, the supreme political institution of our society, is far from banal in a democracy, despite the fact that neither the rules of procedure nor the law require the MNAs to come to a decision on the matter.

Moreover, it must be emphasized that over and above the place it occupies in the legal hierarchy, the importance of the Charter lies first and foremost in the fact that it embodies the most important human values in our society. The inclusion of the ancestral right to petition in the Charter demonstrates how important this right is to the Parliament of Quebec. Yet, I believe that sooner or later we will have to ask ourselves whether our rules of procedure measure up to the legal recognition given to this fundamental democratic right.