

A Note on Privilege and Order in Ontario

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The distinction between a matter of privilege and a point of order seems to be a frequently recurring problem in the Ontario Legislative Assembly. Members often rise on what they know to be fictitious matters of privilege or points of order simply to gain the floor to make a point which is neither order or privilege; to get an immediate opportunity to answer the member who has the floor; or even to make a quip or facetious remark. A real confusion does exist.

Again and again a member will rise on what he alleges to be a matter of privilege if he feels that he has been insulted by another member. If his objection is valid, that is if the remark made by the other member is in fact a breach of the rules of order he has arisen quite properly on a *point of order*, but it is certainly not *privilege*. The current Standing Order 19(d) of the Ontario Legislature lists thirteen distinct actions which have been held to be out of order in debate. This list is not all inclusive but does set out the most glaring breaches of order such as making allegations against another member; imputing false or unavowed motives to a member; charging another member with uttering a deliberate falsehood; or using abusive or insulting language of a nature likely to create disorder. The important consideration to be noted in this respect is that a point of order must be raised immediately. It must at once be called to Mr. Speaker's attention so that he is in a position to rule as to whether or not there is a breach of order and deal with it. It is fair to say that many technical breaches of order slip by simply because they escape the Speaker's attention or because no objection is taken. However, if the Speaker hears a remark that is clearly out of order or such a remark is brought to his attention, it is, of course, his duty as presiding officer and protector of the rights of all members to insist on the immediate withdrawal of the offending remark.

Privilege, on the other hand, is entirely different. It must pertain to one of those special rights which the House as a whole and the members individually enjoy as members which other citizens do not. Standing Order 18(a) of the Ontario Legislature contains the following definition: "Privileges are the rights enjoyed

by the House collectively and by the Members of the House individually conferred by the *Legislative Assembly Act* and other Statutes, or by practice, precedent, usage and custom". The 19th edition of Erskine May's *Parliamentary Practice* defines privilege as follows: "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals". Members frequently rise to take objections to statements made in the public press which they consider to be breaches of privilege or, in some cases more properly contempts. The proper procedure in such cases, if fully carried out is to bring the offending article to the attention of the House and then move to have the offender or offenders brought before the bar of the House or a Committee thereof. In the Ontario assembly, however, for very many years the members' only real interest is "to set the record straight". Members never go even to the extent of moving the motion and letting it lapse, as is done in some jurisdictions.

Finally, members frequently rise on what they consider to be matters of privilege or even points of order which may or may not be valid and then demand that the Speaker investigate and report back or "take the necessary action". A succession of Speakers in Ontario have again and again pointed out to the House that the Speaker has neither the duty nor the right to investigate anything and report back. Should the matter raised appear to be a point of order the Speaker should rule on it and require the offending member to withdraw the remark complained of. In the case of an alleged matter of privilege the Speaker's sole prerogative is to determine whether or not a *prima facie* case of privilege has been made out. If he decides in the affirmative it is the House, not the Speaker, which must take the necessary action if it sees fit. In either case, he may reserve his ruling until there has been an opportunity to look into the authorities, but this is a far cry from "investigating and reporting back".

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