

Some Thoughts on Parliamentary Debate in Ontario

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A full-scale review of the procedural rules of our parliamentary institutions, federal and provincial, is manifestly necessary, to enable us to come to grips effectively with the many complex issues that our current technical society expects to have dealt with on a daily basis.

In March, 1982 a controversy that, whatever the motives behind it, centred directly on the interpretation of the House of Commons' rules for the conduct of its business brought the House to a standstill. The opposition felt that the government's proposed *Energy Security Act 1982* did not restrict itself to energy. It was an omnibus bill which not only amended a number of existing laws, but created several new ones. The opposition expressed its exasperation by refusing to attend the Commons to vote on it.

In Ontario, when the Minister of Revenue attempted to introduce legislation in connection with the May 1982 provincial budget, a vote on first reading was requested. The official opposition left the Chamber, and the bells rang for two and a half days until their return. These two incidents brought forcibly to the attention of the man in the street the importance of the Speaker and of the rules of procedure. The smooth functioning of legislative business is generally taken for granted until catastrophe strikes. Then there is usually no time for a studied and calm review of the particular problem, and certainly none for a general review of the rules as a whole.

The Reason for Parliamentary Procedure

To anyone who has attended a large contentious meeting unregulated by rules of procedure, the necessity for such rules becomes strikingly obvious. Issues cannot be discussed intelligently if certain procedures for debate are not followed. Rules of procedure are essential to preserve order and decency. Rules must not only exist, they must also be understood and followed. Further, such rules must be applied judiciously to each particular situation as it arises; and that is the role of the Speaker.

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Parliamentarians, quite rightly, are fiercely independent people both in fulfilling their party allegiances and in their more personal role as the representative of their constituents. Understandably, they are very sensitive to being controlled by the Speaker.

It is essential to note that although the Speaker, before election to the chair, must be a member of the House, he need not be a member of the party in power. Once appointed he must, while discharging his duties, disavow any political affiliations. The Speaker must apply the rules to all members without taint of political bias. He must be fair, impartial and effective. He should be loathe to use the office to solve a political deadlock, because that would involve the resolution of a substantive political confrontation by the exercise of procedural power. The importance of the Speaker, both federally and provincially, is a subject about which I predict we will hear a great deal in the next few years.

Parliamentary Privilege

Historically, in the United Kingdom, privilege originated to protect the Commons from interference when engaged in the King's business. Privilege was expanded later to protect the Commons from interference by individuals as it carried on the nation's business. It is noteworthy that privilege originated in an early period of parliamentary development, when the independence of members and of the House from the Monarch could not be taken for granted. Originally, privilege had a very narrow and specific meaning in Parliament, and was intended to reinforce and safeguard the basic rights and freedoms of members both individually and collectively. Individual rights included freedom of speech, freedom from arrest for civil actions, and freedom from threats and bribery attempts. The privileges of the House as a whole also included, among other things, control over its own proceedings and its own members. A member may assert the rights of privilege simply by standing, obtaining the Speaker's attention, and announcing, "Point of privilege, Mr. Speaker".

Over the years the traditional, restricted meaning of privilege has been expanded in Canadian parliaments. Privilege is

now taken (not always correctly) to include such matters as protesting the noise made by members crunching peanuts, correcting erroneous quotations in newspapers, and pointing out another member's contravention of the Standing Orders. Political scientist W. F. Dawson, who has written extensively on procedure in the House of Commons, has observed that privilege on Parliament Hill "is recognized as a magic word which may be used to excuse the most flagrant irrelevancies.¹ In recognition of this situation, many Speakers have tried repeatedly "to draw distinctions between privilege and fraudulent points raised under the same name."² It is hardly surprising that "these attempts have met with strong resistance from the House. A convenient instrument is not to be surrendered easily."³ Certainly privilege is a convenient instrument.

To take one example, some time ago, the current Leader of the Opposition was waiting, at the start of Question Period, for particular ministers to arrive. Not seeing them, he asked the Speaker, "Could we engage in some spurious points of order and privilege for a while in order to delay and give them time to come in?"

Members seek a point of privilege with increasing frequency precisely because the meaning of privilege is ambiguous. Standing on a point of privilege automatically captures the attention of the whole Parliament, not to mention the press gallery and the public galleries. In most cases, it makes little difference whether the Speaker decides that the issue so raised by a member is *prima facie*, a point of privilege. By making his point in the chamber, the member has ensured that his remarks are noted and become part of the official record of the House. Since points of privilege may be raised at any time and not, as in Ottawa, restricted to after question period, members sometimes use alleged matters of privilege to pre-empt or to extend question period. A cynical observer might suggest that privilege is used at times as a mechanism for halting debate, deflecting attention, and otherwise disrupting the orderly conduct of the business of the House. If members insist on attacking matters of concern to them but not relevant to the immediate debate, then a specific time should be put aside during the course of House business to allow for it.

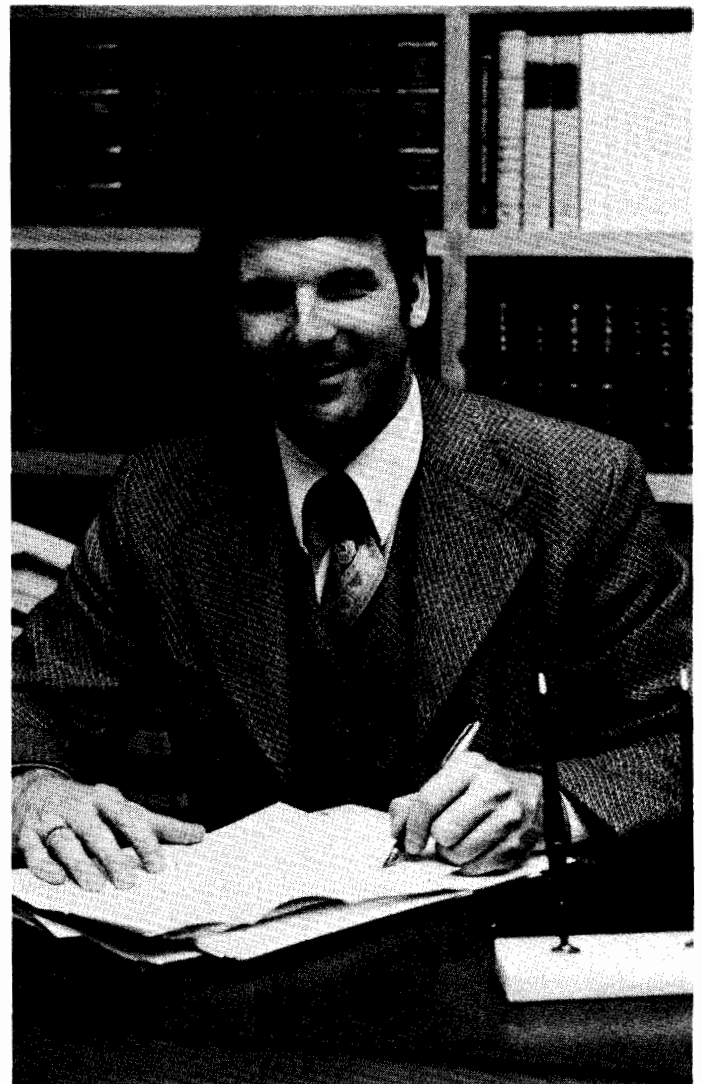
In practice, two factors complicate the Speaker's role in determining what constitutes a *prima facie* point of privilege. First, there is the wide divergence that we have already noted between the original parliamentary meaning of privilege and the conventional or operational use of privilege in the House on a day-to-day basis. Second, points of privilege are not as carefully defined as they might be in the Ontario Standing Orders. This lack of definition in turn leads to confusion between points of privilege and points of order. For example, allegations and charges against another member are points of order. Section 19(d)(8) of the Standing Orders provides that a member shall be called to order by the Speaker if he makes allegations against another member. In the event of the Speaker's inaction, the offended member is entitled to stand up on the floor of the House and shout to the Speaker (to gain attention) that he has a point of order in that another member has made allegations against him. However, members routinely raise such issues as points of privilege.⁴ As a result, the Speaker frequently has an awkward choice. He must decide whether to allow the member to continue or to call him to order because he is technically not abiding by the rules.

EXAMPLE:

Member X On a point of privilege, Mr. Speaker, I want to emphasize the gravity of a situation that confronts me. The Honourable member Y has stated that I lied and misled the House in the speech that I gave yesterday in these chambers and I request that the member withdraw the statement.

Under the Standing Orders of the Ontario Legislature Member X should have stood up and got the Speaker's attention on the following basis.

Member X On a point of order Mr. Speaker, Section 19(d)(8) of our Standing Orders, states that a member should be called to order where he "makes allegations against another member." The Honourable member Y has stated that I lied to and misled the House. As a result, I would ask you to call member Y to order and ask him to withdraw those remarks.



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Question Period

Anyone who regularly observes question period in the Ontario Legislature knows that both the member asking a question and the minister answering frequently take advantage of the occasion by speaking at unnecessarily great length.

Some questions and answers, of course, require a rather detailed preamble. But lengthy questions and lengthy answers have seemingly become the norm. This defeats the purpose of the exercise. Question Period is supposed to be a time of day when private members make specific enquiries of members of the Executive Council, to which Council members can respond in an informative manner.

The Speaker is hard put for a solution. His role is not only to keep question period orderly, but to attempt to allow all members an opportunity, within time restraints, to ask questions. The Standing Orders are vague on the issue of time for questions and responses. The vagueness suggests, however, that the presiding officer is given some discretion in calling a member to order because he is using up too much time. Another possibility would be, in the case of a minister, to add extra time to the question period because of a lengthy response. But should the Speaker lengthen the question period because a private member has taken up too much time in asking a question? The logical outcome of this procedure is clearly unsatisfactory. To be fair and consistent, the Speaker must call any member to order if, in his opinion, too much time is being used in asking or answering a question. Recently, Mr. Speaker Turner announced to the House that, in order to encourage more questions, he would no longer allow members to ask multiple-part questions (or ministers to answer them).

Disciplining Members

The Speaker's discretion should not apply to situations in which one member states that another member is misleading, or lying to the assembly. His guidelines on this issue state that a member may be expelled from the assembly for the remaining part of the day. There is no clear authority as to when that member may return, except that a motion may be made to expel the member for up to two weeks. When one member states that another member is lying, the rules should be clear beyond a doubt. Lying is contempt of the House; and the member adjudged to be lying should be expelled from the assembly until he is willing to retract his statement.

Recommendations

When the rules no longer reflect the realities of the House, it is time to consider changing them. After some discussion with colleagues in all three political parties the following general consensus emerged. Questions of procedure relating to privilege are technical and anything that can be done to improve the understanding of problems of privilege is worth considering through the Procedural

Affairs Committee which reviews the rules of the Ontario Legislature.

Possibly all that is required is a clear definition of points of privilege in the Standing Orders. Some provinces, such as New Brunswick, indicate that incorrect statements in the press can be raised as a point of privilege. Manitoba, by contrast, defines privilege both in terms of what is and what is not a legitimate point. (Appendix D of their Standing Orders)

A further improvement of the use of privilege, might be made by distinguishing points of traditional privilege (meaning points of privilege so urgent as to require the immediate attention of the House) from points of privilege (which could be confined to a specific time-slot for consideration by the House). Where members seek the Speaker's attention on a point of privilege in order, for example, to correct misquotes in a newspaper, the matter could be allocated to a fifteen minute time slot immediately after statements by ministers and before oral questions. The European Parliament of the Common Market recognizes the legitimacy of personal statements and confines them to three minutes at the end of debate on a specific issue. The new, experimental rules in the House of Commons, making provision for 90 seconds statements by members before Question Period and for comment and rebuttal after speeches are also worth looking at.

The Legislature might also consider clearly separating points of privilege and points of order, not only by definition, but by a separate listing in the Standing Orders. Perhaps the format of the Standing Orders could be revamped by adopting a loose-leaf, hard covered binder, such as is currently used by other provincial jurisdictions. The binder could be tabbed for easier reference by all members, and amendments on sections would simply require the reprinting of several pages, and not the whole booklet. Finally, an attractive and functionally bound format would add dignity and presence to the Rules of the House.

Many other aspects of our rules and procedures need to be re-evaluated. I might mention in particular the need for a parliamentary calendar and the possibility of eliminating night sittings.

I hope the Procedural Affairs Committee of the Ontario Legislature can take up these questions at a future date, and give some thoughtful consideration to both the wide and narrow issues involved. The framing of effective rules involves striking a satisfactory balance between the need for disciplined proceedings and the right to full and wide-ranging debate in our democratically-elected Parliaments.

NOTES

¹W. F. Dawson, *Procedure in the Canadian House of Commons*, (Toronto: University of Toronto Press, 1962). p. 54.

²Ibid.

³Ibid.

⁴Roderick Lewis, *A Note on Privilege and Order in Ontario*, this Review, V (Winter, 1982-83), p. 11.