might require that no one betray to the King what had transpired in the House.[5]

In Canada, the early years of parliamentary life were marked by suspicion of strangers, and unwillingness to permit full disclosure or publication of parliamentary proceedings. In 1808, by way of illustration, a motion in the Upper Canada Legislative Assembly to permit members free access to the Journals of the House and to take abstracts from them was defeated.[6] In the same year, the King's Printer was granted permission to publish the debates, but was not granted access to the Journals.[7] A few years later, the House voted down a motion to give a person jailed for breach of privilege a copy of the House proceedings relating to his arrest.[8] Instances were recorded of the House closing its doors and evicting strangers during certain proceedings.[9] In 1818, one Bartimus Ferguson, the editor of the *Niagara Spectator* was prosecuted for seditious libel for his reports of the proceedings in the Assembly.[10] It is fair to add that such occurrences owed more to the political squabbles of the day than to any great constitutional principle, yet the implications for public and press access to Parliament were no less profound.

As parliamentary reporting became more regular and professional during the nineteenth century, and as matters of privilege and parliamentary independence came to rise above partisan considerations, Canada's Parliament became more accessible to the people and to the press. Still, the control of Parliament over publishing its proceedings is absolute as is its ability to order strangers to withdraw. The House of Commons for some years after Confederation regularly passed a motion forbidding anyone not appointed by the Speaker to publish the *Votes and Proceedings*. In 1960 a company was judged by the House to have breached parliamentary privilege for having published a portion of Hansard for advertising purposes.[11] Technically, it remains a breach of privilege in Canada for anyone, including a member, to publish parliamentary debates.[12]

It might well be asked whether long-settled constitutional battles are sufficient justification for a prohibition against taking notes in the public galleries today. Municipal councils permit spectators not only to take notes, but also to applaud and to heckle during debates – also strictly forbidden in Parliament. Although removal of the ban against writing in the public galleries would hardly constitute a major change in our system of parliamentary government, three reasons may be cited for maintaining the practice even today: First, given its origins in the power of Parliament to exclude strangers and to prohibit publication of its proceedings, it serves as an important reminder of the awesome, near-absolute power possessed by Parliament. Secondly, by comparison with the forebearance shown of reporters in the Press Gallery to take notes, it recalls the trials and tribulations of early reporters who were fined and imprisoned for publicizing what was transpiring in Parliament, and thus emphasizes that freedom of the press was not easily won and is not to be lightly regarded. Finally to cite the practice in the Australian House of Representatives, "Admission to the galleries is a privilege extended by the House and people attending must conform with established forms of behaviour. People visiting the House are presumed to do so to listen to debates, and it is considered discourteous for them not to devote their attention to the proceedings. Thus photographs are not permitted to be taken in the Chamber and visitors are required to refrain from writing, conversing, applauding and so on".[13]

NOTES

[1]Josef Redlich, *The Procedure of the House of Commons* Archibald Constable and Co. Ltd., London, 1908, vol. II, p. 36.

[2]Strathearn Gordon, *Our Parliament*, Hansard Society, London, 1963, revised and enlarged edition, p. 130.

[3]*Ibid.*, p. 129

[4]Quoted in A. Aspinall, "The Reporting and Publishing of the House of Commons Debates 1771-1834," in Richard Pares and A. J. P. Taylor eds., *Essays Presented to Sir Lewis Namier*, Macmillan, London, 1956, p. 237.

[5]*Ibid.*, p. 227.

[6]Assembly of Upper Canada, *Journals*, 1808, p. 198.

[7]*Ibid.*, p. 203.

[8]*Ibid.*, 1812, p. 78.

[9]*Ibid.*, 1816, p. 260.

[10]John Ward, *The Hansard Chronicles*, Deneau and Greenberg, Ottawa, 1980, p. 36.

[11]Alistair Fraser, G. A. Birch and W. F. Dawson, *Beauchesne's Rules and Forms of the House of Commons of Canada* 5th Edition Carswell, Toronto, 1978, p. 17.

[12]Joseph Maingot, *Parliamentary Privilege in Canada*, Butterworths, Toronto, 1982, p. 36.

[13]J. A. Pettifer, ed., *House of Representatives Practice*, Australian Government Publishing Service, Canberra, 1981, p. 146.

A Little Known Aspect of Parliamentary Immunity

Maurice Champagne

To carry out their duties federal and provincial legislators enjoy a number of rights and immunities known as "privileges". In some legislatures these are spelled out in legislation or standing orders while in others they are left to custom. Perhaps the best known parliamentary privilege is immunity from prosecution for anything a member says in the House. Related to this, but less well known, even among parliamentarians, is that a member cannot be expelled from a private club or union for statements or actions in the course of duties in the House. An example of this privilege came to light recently in Quebec.

In January 1983, the *Syndicat des travailleurs de l'enseignement de la Haute-Yamaska* decided to expel from its ranks Jacques Beauséjour, the Parti québécois member for Iberville. One of the reasons given by the head of the Union for Mr. Beauséjour's expulsion was that he had voted repeatedly in support of Bills 62, 70 and 105 relating to wage cutbacks in the public sector.[1] However, according to a ruling of the Court of King's Bench dating back to June 21, 1917, an organization does not have the right to expel from its ranks a member on account of opinions expressed by him in the Assembly. The case, outlined below, illustrates this little known aspect of parliamentary privilege.

On January 13, 1916, during the debate on the Speech from the Throne, Armand Lavergne, a Nationalist member of the Quebec Legislative Assembly for Montmagny, spoke out passionately in the Assembly against the participation of French Canadians in the First World War.[2] In defending his stand, Lavergne even went so far as to say that he was prepared to set aside his parliamentary immunity and the government could arrest him for high treason if they wanted to.[3]

A few days later the members of the *Club de la garison de Québec* lodged a verbal complaint with their secretary, asking for Lavergne's expulsion from the club. On February 25, a written complaint signed by sixteen club members was forwarded to the committee and a special meeting of all club members was convened for March 13. The majority of club members supported the following resolution: "That the committee be instructed to request Mr. Lavergne to resign as a member of the club, and in default of his resigning within ten days

from such request, the committee do expel him from the club."[4]

Lavergne took his case to court on January 12, 1917. He sought to have annulled the resolution which had ordered his expulsion. He also sought from the club, a total of $999 in damages.

Judge Roy ruled that the resolution adopted by the club was illegal, *ultra vires*, and in violation of club rules and regulations and that, consequently, it must be quashed and reversed. The court issued a permanent injunction in this case and ordered the defendant to pay the plaintiff up to a maximum of $100 in damages. The club appealed the court's ruling and on June 21, 1917, the appeal was heard in the Court of King's Bench.

The judgment of the lower court was upheld. Four of the five judges of the appeal court arrived at two conclusions, one of which is of special interest to us and concerns the privileges of parliamentarians: "A resolution, adopted by a social club with a view to expelling one of its members by reason of something he said in the exercise of his duties as a member of the Legislative Assembly, constitutes a violation of the parliamentary privilege of freedom of speech and, as such, is null and void".[5]

Chief Justice Sir Horace Archambeault gave the following judgement:

> "On the first point, the respondent, in presenting the facts of his case, quotes section 133 of the Revised Statutes *(Legislature Act)* which stipulates that no member of the Legislative Assembly shall be liable to any action, arrest or imprisonment by reason of anything said by him before such House. The privilege of freedom of speech enjoyed by a Member of Parliament is not limited to the examples mentioned in this section. Moreover, no legislation was needed in order to establish this principle. The existence of this privilege is essential to every free legislature. Not only must a member of Parliament not be liable to any action or arrest, much less imprisonment, he must not be molested in any way by anyone outside of Parliament. Only Parliament has the right to censure one of its members for his contemptible conduct or disparaging or censurable remarks. The King himself could not intervene on the pretext that a member has made some seditious comments or proposed some measure which smacks of treason. The appellant maintains that only courts of justice are prohibited from censuring a member of Parliament and that this principle does not apply to a club wishing to expel one of its members for some derogatory remarks he made within the confines of Parliament. This claim is totally unfounded. The privilege of freedom of speech is universally applicable.
>
> Our Canadian author on parliamentary procedure, Sir John Bourinot, is a proponent of the same philosophy. He has the following to say about the privilege of freedom of speech (*Parliamentary Procedure*, pp. 47 and 48): "Among the most important privileges of the members of a legislature is the enjoyment of freedom of speech in debate, a privilege long recognized as essential to proper discussion and confirmed as part of the law of the land in Great Britain and all her dependencies. This freedom of speech, of debate and proceeding may not be impeached or questioned in any court or place out of parliament. This freedom of speech was originally intended as a protection against the power of the Crown, but naturally was extended to protect members against all attacks from whatsoever source."
>
> I can, without any hesitation whatsoever, state that the resolution adopted by the club is a violation of the parliamentary privilege of freedom of speech. A Member of Parliament must in no way be molested or prevented from exercising his right to speak openly and freely on any subject that may be debated in Parliament. A member must be able to exercise this privilege without fear or apprehension, since, as the authors of the various works on parliamentary procedure indicate, freedom of speech is an essential part of the constitution which governs us . . ."[6]

NOTES

[1]*La Presse*, 21 January, 1983.

[2]*L'Événement*, 14 January, 1916.

[3]*Le Soleil*, 14 January, 1916.

[4]Barreau de la province de Québec, *Les rapports judiciaires de Québec. Cour supérieur*, Montréal, Eug. Globensky & Cie, 1917, p. 351.

[5]Barreau de la province de Québec, *Les rapports judiciaires de Québec, Cour du banc du roi* (en appel). Montréal, Eug. Globensky & Cie, 1918, p. 37.

[6]*Ibid*, pp. 38-41 (Refers to 1879 edition of Erskine May).

Maurice Champagne works for the Legislative Library of the Quebec National Assembly.

Ontario's New Legislative Timer

Smirle Forsyth

When members of Ontario's legislature took their places at 2:00 p.m. on April 28th, 1983, they found new electronic timing devices installed on the east and west walls of the Chamber with a master timing unit at the Clerk's Table. The timing device met with initial criticism from some members who found it difficult to adjust to a 24 hour clock or who found the flashing seconds digits and the intense green light of the display units distracting. One member stated that the timing devices reminded him of a hockey arena. Labelling them "digital obscenities", he called for their removal. And one columnist likened putting "a flashing, digital clock on the richly panelled walls of the Legislature . . . (to) wearing jeans to dinner with the Queen." However, despite some of the initial criticism of the Legislative Timer, it has met with the general approval of many of the members and has taken its place with the other electronic innovations (i.e. television cameras, microphones and loudspeakers) in the Chamber.

The installation of the Legislative Timer came about as a result of a proposal submitted to the Board of Internal Economy in June, 1982. For a number of years, a timing device had been located on the Table and provided the Clerks at the Table with the time for oral question period, the length of speeches, division bells, etc. However, this information was not visible to the members of the House and notes, hand signals and coloured lights were used at various times to indicate to the members the time remaining in question period, in a speech or debate or in a division bell.

The Board considered the timing device proposal following a visit to Westminster by the presiding officers and the Standing Committee on Procedural Affairs. At Westminster, members saw video units in the Chamber of the House of Commons and throughout the Parliament Buildings which provide information on the time and subject-matter being debated in the House. As a result of comments concerning the equipment in place at Westminster as well