



# Recent Publications and Documents

**SELECTED DECISIONS OF SPEAKER JAMES JEROME 1974-1979**, published under the authority of the Clerk of the House of Commons, Ottawa, 1983, 174 p.

Proceedings in legislative bodies are based on Standing Orders, written conventions and decisions of successive Speakers. The latter is the subject of this book, intended as the first in a series which, when completed, "will bring together in summary form all the significant decisions of the Speakers of the Canadian House of Commons".

This volume contains more than one hundred decisions grouped under fifteen headings such as "Questions", "Adjournment Motion Proposed Under Standing Order 26", "Precedence and Sequence of Business", etc. Each ruling is presented in a uniform format with a paragraph of background information, a brief statement of the issue involved, a summary of the decision, the reasons given by the Speaker, authorities cited and references to appropriate pages in Hansard. The type is easy to read with English on the left hand page and French on the right. There is both an analytical and a chronological index.

The format works well in this case but it should not necessarily be applied to rulings of all previous Speakers. In many cases they were rulings on Standing Orders or problems that no longer exist. A decision will have to be made as to whether future books will be primarily historical works or whether decisions selected will be limited to include only those which still have some relevance today.

The book will be welcomed by parliamentarians and staff for it will save them many hours of searching for references. It is understandable, although unfortunate, that the names of the many people who collaborated on this collective work are not mentioned somewhere.

In the course of a session, Speakers deliver numerous rulings of a routine nature. It would undermine the usefulness of

the book if all such rulings were included. The editors tried to select those which, in their judgement, were the most significant. Still there is much repetition with several rulings making essentially the same point.

A more serious problem is caused by the difficulty of condensing all the nuances of a complicated procedural issue into a paragraph of background or a statement of the issue. Thus a few of the rulings seem to contradict each other. For example on July 25, 1975 Speaker Jerome ruled that an accusation by a newspaper that a Member of Parliament had leaked budget information to a businessman was a *prima facie* question of privilege (p. 20). Three years later "The Chair expressed serious doubts as to whether the convention of budget secrecy falls within the area of privilege at all." (p. 36). If the question arises again members will no doubt want to examine the original material in full.

The Editor

**CANADA'S NEW ACCESS LAWS: PUBLIC AND PERSONAL ACCESS TO GOVERNMENT DOCUMENTS**, edited by Donald C. Rowat, Ottawa, Carleton University, 1983, 165 p.

This book comprises a series of essays written by Professor Rowat's graduate students at Carleton University in a special seminar on Canada's new access to information laws given in the winter term 1983. By that time the federal government and four of the provinces, namely: Nova Scotia, New Brunswick, Newfoundland and Quebec, had adopted an access law. In addition, in Ontario, a commission had recommended that a public and personal access statute be enacted, and this recommendation had been accepted in principle, though not yet acted upon, by the Ontario government.

A similar book composed of a series of graduate student essays and edited by Professor Rowat was entitled *The Right to Know*. The book first appeared in 1980 and was updated in second and third editions in 1981. That book contained a detailed analysis of the public access part of the federal Bill, C-43, which was subsequently amended and enacted into two pieces of legislation, the *Access to Information Act* and the *Privacy Act*. The present book's emphasis is therefore not on the federal legislation, but rather on provincial legislation.

The book is divided into two parts. Part I is composed of three essays discussing the relevant federal legislation. One essay is devoted to problems concerning the implementation of the *Access to Information Act* and the likely consequences the Act will have for the information management function within the federal government. Another points to a number of shortcomings in the then existing Part IV of the *Canadian Human Rights Act*. These provisions have since been repealed with the coming into force of the *Privacy Act*. For instance, while Part IV of the *Canadian Human Rights Act* conferred broad rights of access to personal information contained in federal government files, it did not grant a right to judicial review of decisions to refuse access. Appeals could be taken by aggrieved individuals to a Privacy Commissioner who was given the power only to investigate and recommend disclosure, the ultimate power to decide resided with the appropriate minister. The essay rightfully points out that a very significant improvement in the new *Privacy Act* is the provision allowing for an appeal of the minister's decision to the Federal Court. A third essay outlines a number of concerns connected with the *Privacy Act*. The author notes that some of the possible problem areas may, in fact, never be barriers to access to personal information depending on how the relevant provisions are interpreted by departmental officials, the Privacy Commissioner and the courts.

The second part of the book consists of a series of six essays dealing with developments at the provincial level. One essay is devoted to the access legislation in each of the four provinces which have thus far adopted such a law. In addition, there are two essays discussing the recommendations of the Ontario Commission on Freedom of Information and Individual Privacy. The explanations of the relevant statutes are clear and concise. Positive as well as negative aspects of the legislation are pointed out.

The essay on Nova Scotia notes that among other things, that province was the first Commonwealth jurisdiction to enact access to information legislation on November 1, 1977. Rather than adopting the American approach of a broad general principle of access subject to specified exceptions, the Nova Scotia legislation establishes a right of access to only certain categories of information subject to specified exemptions. The statute contains no provision for an independent review of ministry decisions concerning the release of information. Refusals to grant access can be appealed only to the Legislature, which is, of course, controlled by the government.

As pointed out in the essay on New Brunswick's legislation, that province enacted its *Right to Information Act* in June 1978; however, the statute was not proclaimed in force until January 1, 1980. The New Brunswick Act generally followed the American pattern of adopting a broad principle of public access subject to certain specified exemptions. The appeal procedure outlined in the New Brunswick Act differs from both the federal Act and that of Nova Scotia. It provides an applicant with two routes of appeal in disputed cases. He or she may either refer the matter to the Provincial Ombudsman or to a Judge of the Queen's Bench, however, if he elects to go to the court and his request for information is denied, he cannot then turn to the Ombudsman. Judicial review is thus the final step in the process. The essay provides several interesting examples of cases where, on appeal to the court, information was ordered to be released.

The province of Newfoundland enacted its *Freedom of Information Act* in June 1981 to come into force on January 1, 1982 in terms similar to those of the New Brunswick legislation. The essay notes that the Newfoundland statute provides for an appeal to the provincial Ombudsman followed, if need be, by an appeal to the trial

division of the Supreme Court of Newfoundland.

In Quebec, the relevant statute was passed in June 1982; but, the provisions creating rights of access had yet to be proclaimed in force when this book was written. Under the Quebec statute, a person who is denied access to information may appeal to an Appeal Commission. A further appeal may be made to three judges of the Provincial Court.

The essays on Ontario recount the story of the government's delay in introducing legislation after the Williams Commission's report was released in 1980. A Bill has not yet been introduced in the Ontario Legislature. Finally, the book contains a useful bibliography of a number of important publications concerning the subject matter of public access and privacy.

In summary, the book is easily readable and provides interesting information concerning selected aspects of the federal access and privacy legislation as well as a more detailed analysis of the relevant existing provincial legislation.

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