

flexibility. We are still in the course of the session following the one in which the orders about which the honourable member for Cape Breton South complains were passed. I am struck by the fact that at no time has the government, or any minister, declined to comply with the orders. The government has to date, in many cases, failed to table the returns, but the government is still in a position to comply with them. We have not had a dissolution of the House and it is still open to the government to respond during this session.

I wish to conclude by reference to a situation which occurred during the session of 1975. On Wednesday, February 5, 1975, the honourable member for Lunenburg East moved for an Order directing the Clerk of the House to table a report listing the House Orders to which no replies had been received between May 23, 1974 and the date of the return. The then Premier rose on a point of order to object to the notice on the basis that it referred to House Orders of previous sessions and stated that it is not part of the work of the current session. The then Leader of the Opposition, who is now the Premier, pointed out that it was an order for the present session and that it asked the government or the minister to whom the orders of the last session were directed that they now make returns in this current session.

Mr. Speaker MacLean indicated that he would rule on the point when it appeared

on the order paper. On Tuesday, February 11, 1975, the House Order was moved, indicating, in my view, that Mr. Speaker MacLean found that it was in order, although no direct ruling on this point was made. Further, on Thursday, February 13, 1975, Mr. Speaker MacLean said the following: "On a previous day, the Honourable Member for Lunenburg East presented a House Order, seconded by the Honourable Member for Cumberland West, requesting the Clerk of the House to report a listing of the House Orders for which no replies have been received between May 23, 1974 and the date of this return. The return, as directed by the House, has been tabled by the Clerk and is presently on his Table. I would direct also for the Clerk to send a copy of this particular return to each of the Ministers involved, so that the returns can be submitted to the House when they are completed."

This procedure commends itself to me as the appropriate one to follow. I would have no hesitation in ruling in order a motion which seeks to elicit information concerning the orders which have not been responded to should such a motion be forthcoming in the usual manner from any member of the House.

Now, from the length of this decision, and the material I have cited and reviewed, it will be obvious to honourable members

that under our present Rules, this is a very grey area. I am certainly very much attracted to the suggestion made by the Chairman of the Management Board in his contribution on April 3rd that this whole situation be reviewed by the Special Committee on Rules and Procedures and I have no hesitation in stating as Chairman of that Committee that the matter will be added to its agenda.

Meanwhile, based on the precedents and practices of our House, I am not convinced that the honourable member for Cape Breton South has made out a *prima facie* case, as he is required to do, and I am therefore ruling the motion out of order, without prejudice to the right of any honourable member to raise the issue again, if compliance with the Orders of the House is not made within a reasonable period of time following the introduction and passage of a motion directing that the Clerk report a listing of House Orders for which returns have not been tabled.

Editor's Note: The following day the House passed an order directing the Clerk to table a report listing the House Orders, (both by title, member moving, department involved, and number accorded by staff) to which no replies have been received between January 1, 1982 to the date of this return.

Question of privilege relating to civil action against a member of the Legislature, Saskatchewan, April 26, 1984



Herb Swan

Background: On April 25, 1984, the member for Regina Centre, Mr. Ned Shillington, after having given proper notice, rose on a point of privilege. He reported to the Legislative Assembly that he had received a letter from a Regina law firm which stated that their clients had commenced a court action claiming damages for remarks made by Mr. Shillington in the Legislative Assembly. The remarks in question were suggesting improprieties on the part of the people who bought the old Saskatchewan Government Insurance building from the Government of Saskatchewan.

The member also received a statement of claim issued out of the Court of Queen's Bench for Saskatchewan. The

plaintiffs (the purchasers of the building) claimed economic loss due to words said by Mr. Shillington.

Mr. Shillington argued that this constituted an attempt to intimidate him in the exercise of his responsibilities and therefore were a violation of his privileges and those of the legislature.

The Ruling (Speaker Herb Swan): Privilege is one of the most important procedural points in Parliament. A breach of the privileges of Parliament affects all members and Parliament itself.

I refer all Honourable Members to *Erskine May's Parliamentary Practice*, Twentieth Edition, p. 70, for a general defini-

tion of 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." And further, "The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers.' They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity."

The rights and privileges of members evolved and were enshrined over many centuries in the development of Parliament. The ninth article of the Bill of Rights of 1688 stated: "That the freedom of speech and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament." *Bourinot*, another parliamentary authority, wrote: "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". (4th edition p. 47)

And, further from *May* on p. 82: "The absolute privilege of statements made in debate is no longer contested, but it may be observed that the privilege which formerly protected Members against action by the Crown now serves largely as protection against prosecution by individuals or corporate bodies. Subject to the rules of order in debate, a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is pro-

ected by his privilege from any action for libel, as well as from any other question or molestation."

Saskatchewan legislators have recognized this important privilege by incorporating it into the *Legislative Assembly and Executive Council Act*, S.S. C.L.-11.1, section 27, as follows: "(1) No Member is liable to any civil action or prosecution, arrest, imprisonment or damages by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise or by reason of anything said by him before the Assembly. (2) The immunity provided by subsection (1) applies notwithstanding that words spoken by a member before the Assembly are broadcast, whether the broadcasting takes place while the words are being so spoken or the words are recorded at the time they are being so spoken and are broadcast at a later time."

The Member for Regina Centre, yesterday, in raising his Point of Privilege, stated that a letter he had received from the law firm of Wilson, Drummond, Finlay, and Neufeld and a statement of claim issued out of the Court of Queen's Bench were threatening to him as a Member of the Legislative Assembly and served to obstruct him in the carrying out of his duties. The letter and the statement of claim arose out of certain remarks made by the Member in the Legislative Assembly.

I refer all Honourable Members to *Erskine May's Parliamentary Practice*, (Twentieth Edition, p. 157): "To attempt to influence Members in their conduct by threats is also a breach of privilege." And further, on page 158: "Conduct not amounting to a direct attempt to influence a Member in the discharge of his duties, but having a tendency to impair his independence in the future performance of his duty, will also be treated as a breach of privilege"... "It is a breach of privilege to molest any Member of either House on account of his conduct in Parliament."

I refer all Members again to the *Legislative Assembly and Executive Council Act of Saskatchewan*, section 24:

(1) The Assembly is a court and has all the rights, powers and privileges of a court for the purposes of summarily inquiring into and punishing:

(a) Any assault, insult or libel upon or to a member while the Assembly is in Session; and(j) The bringing of a civil action or prosecution against, or the causing or effecting of the arrest or imprisonment of, a member for or by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise or said by him before the Assembly;..."

Upon reviewing the point raised by the Honourable Member yesterday and after having referred to *Bourinot*, *May*, *Beauchesne* and the *Legislative Assembly and Executive Council Act of Saskatchewan*, I find that a *prima facie* breach of privilege has been established.

I wish to point out that it is the role of the Chair to examine whether on the surface the privileges and rights of the members, such as freedom of speech and the freedom to fulfill their role as a member unimpeded, have been breached. It is up to the Legislative Assembly as a whole to act as it sees fit in this matter.

Editor's Note: It was then moved by Mr. Shillington that the matter be referred to the Standing Committee on Privileges and Elections. However, the government moved an amendment ordering the author of the letter to apologize by way of a letter to the Speaker of the House. The amendment was carried but only on May 1 after the opposition had refused to appear for the vote for several days. The amended motion was then withdrawn by Mr. Shillington following acceptance of the letter of apology and withdrawal of the legal action.