

SPEAKER'S RULING

TWENTY-SECOND REPORT OF STANDING COMMITTEE ON INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

Honourable Senators,

On May 21, the Honourable Senator Cowan, the Leader of the Opposition, raised a question of privilege. His allegation was that privilege had been violated by the events leading to the presentation of the twenty-second report of the Standing Committee on Internal Economy, Budgets and Administration on May 9. Based on subsequent information from the media and other sources, Senator Cowan argued that the report was incomplete and biased. The effect, he argued, was to undermine the credibility of the Senate and public confidence in the institution. Senator Cowan argued that it was essential that action be taken to deal with this situation by thoroughly investigating all aspects of the allegations.

Senator Carignan, the Deputy Leader of the Government, responded by urging senators to focus on established facts, not allegations. He noted that other processes are available to deal with the concerns that are circulating. This includes recourse to the *Conflict of Interest Code for Senators*. Later Senator Nolin took up this idea by noting that another alternative was to refer the report back to the Internal Economy Committee. Senator Andreychuk drew our attention to the parliamentary authorities, which note that a disagreement as to fact does not constitute a question of privilege.

Senator Fraser, however, shared the concerns of the Opposition Leader. She underscored the importance of parliamentary bodies remaining free from obstruction, interference and intimidation. She argued that the allegations raise serious concern about inappropriate interference with a committee that plays a central role in the operation of the Senate.

Let me begin by making reference to a statement made more than thirty years ago, by the then-Speaker of the House of Commons, the Right Honourable Jeanne Sauvé. On March 18, 1982, after a serious breakdown in the business of the other place, she stated:

What ensued from our failure to bring our rules up to date earned us shrugs and even sneers from our fellow citizens. We may even have strengthened an unfortunately widespread tendency to be sceptical of the actions of Parliament ...

She went on to state that “The authority of the Chair is no greater than the House wants it to be.” The Speaker is the servant of the house, assisting it in conducting its business in an orderly manner that balances, as far as possible, many divergent interests.

In the Senate, given the limited authority of the chair, this is even more evident. Honourable senators are themselves responsible for how business is conducted, and retain final control of proceedings through the right to appeal decisions of the Speaker.

I raise this situation from many years ago because of the current circumstances, characterized by many as a crisis, in which the Senate now finds itself. There has been a swirl of accusations, many of them disturbing, and this has affected how the public perceives this body. The Senate is an important part of our parliamentary system, which has served our country well for more than 145 years. Honourable senators work for the public good in positions of trust, and must act responsibly. It is for honourable senators to take control of the situation and restore trust that may have been damaged.

When the Auditor General of Canada first identified concerns about inadequate documentation for some reimbursable claims, the Senate took this seriously. Through the Internal Economy Committee we worked to review travel expenses. This eventually led to the audit of certain senators’ expenses. To date the Senate has received three reports on specific cases. Other proposals to enhance expenditure controls have been made.

Senator Cowan has outlined his understanding of how events relating to the twenty-second report unfolded. Because of these concerns, the Senate decided to refer the report back to the Internal Economy Committee for further consideration on the same day the question of privilege was raised.

I do not underestimate the serious challenge of this situation for the Senate. For the good of the institution, and for the good of Parliament, the Internal Economy Committee needs to consider carefully how it will undertake a thorough and careful review of all aspects of the situation. The *Rules of the Senate* and parliamentary practice afford this committee the authority it needs to hear witnesses and to send for papers. The committee knows that honourable senators, and Canadians, will watch its work with great attention.

It is in this context that we must consider the question of privilege raised by the Leader of the Opposition. At this preliminary stage, the Speaker provides the Senate with an analysis of whether a prima facie case of privilege has been established. The four criteria of rule 13-3(1), all of which must be met, guide this analysis.

Given the arguments during consideration of the question of privilege and subsequent events, it is most helpful to start with the fourth criterion – that no alternate parliamentary process is reasonably available to deal with the matter. Senator Carignan noted that some aspects of the situation can be dealt with under the *Conflict of Interest Code for Senators*. Of immediate relevance, the very fact that the report in question was sent back to the committee shows that an alternate process was available. The Senate has implemented it, thereby pre-empting to some degree this decision, as is its undoubted right.

The committee is now responsible for reviewing the expenses and a range of related issues. It would be best to wait for the results of that work to see if clarity can be brought to this grave situation, rather than starting a second, parallel process. That would risk further confusion.

The Speaker must be satisfied that all four criteria are met in order to find that a prima facie case of privilege exists. The fact that this question of privilege does

not meet one criterion means that, under the Rules, it cannot succeed. Given this, there is no need to directly address the other criteria. Debate in the Senate and other actions point to the seriousness of the events. After the Internal Economy Committee presents an updated report, senators will be able to assess it, to see if the concerns have been addressed properly and effectively.

The ruling is that there is no prima facie case of privilege. The Senate already is taking action on the concerns that gave rise to Senator Cowan's question of privilege. Senators must now have the chance to work to resolve this problem.