

SPEAKER'S RULING

QUESTION OF PRIVILEGE -- PARLIAMENTARY BUDGET OFFICER

Honourable senators, I am ready to rule on the question of privilege raised by Senator Cools on February 26. The basic concern relates to actions of the Parliamentary Budget Officer, an officer of the Library of Parliament, that may have brought disrepute on Parliament and undermined the control of the houses over the administration of parliamentary affairs. In particular, the Parliamentary Budget Officer has applied to the Federal Court asking it to define his mandate as part of an on-going disagreement with the executive that he has recently raised at an international conference. The importance of this issue is reflected by the fact that consideration of the question of privilege was, exceptionally, spread over two days, with Senators Carignan, Comeau, Fraser, Mitchell and Tardif all taking part, along with Senator Cools.

Before dealing with the specifics of the issue, it would be helpful to review how the process for dealing with questions of privilege works. The Speaker's role at this initial stage is limited to determining whether there is a prima facie case of privilege, that is to say whether a reasonable person could conclude that there may have been a violation of privilege. This ruling does not deal with the substance of the case. If a prima facie case of privilege is established, the senator who raised the matter can, under rule 13-7(1), move a motion, which is subject to debate and can be amended.

In conducting the initial review the Speaker is guided by the four criteria set out in rule 13-3(1), all of which must be met for a prima facie case of privilege to be established. I shall now review each of the criteria to see how they relate to this question of privilege.

The first criterion is that the question be raised at the earliest opportunity. The international meeting at which the Parliamentary Budget Officer apparently made remarks that are the subject of this question of privilege was only reported last week in the *Ottawa Citizen*, and Tuesday, February 26 was the first day the Senate sat after that press coverage. Senator Cools therefore raised her question at the earliest opportunity. I also accept Senator Cools' position that when matters escalate, it is necessary and legitimate to look back at the whole picture. As such, I am satisfied that the first criterion has been met.

The second and third criteria can be considered together. They are that the matter "...directly concerns the privileges of the Senate, any of its committees or any Senator" and that it "be raised to correct a grave and serious breach."

The Parliamentary Budget Officer serves in the Library of Parliament, which is under the direct control of the Parliamentary Librarian, reporting to the two Speakers, who are assisted by the Standing Joint Committee on the Library of Parliament. As such, the Parliamentary Budget Officer operates under the authority of the two houses and must act within the framework of this organizational structure. In fact, the Senate already took this position on June 16, 2009, when it adopted a report of the joint committee dealing with the mandate of the Parliamentary Budget Officer. Among other things, the report recommended that the officer should "...respect the provisions of the [*Parliament of Canada Act*] establishing his position within the Library of Parliament...."

By asking the courts to decide the question of his mandate, the Parliamentary Budget Officer has disregarded the established authority and organizational structure of which he is a part. The question of his mandate is solely for Parliament to determine. The officer's actions run contrary to the constitutional separation of powers between the branches of government. As a consequence, both the second and third criteria have been fulfilled.

The final criterion is that a question of privilege "be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is

reasonably available.” Senator Cools has indicated that she is ready to move a motion. This criterion has, therefore, also been met.

Before concluding, one other point, identified by Senator Fraser, should be addressed. The senator was concerned about dealing with a matter that is before the court, in effect raising the *sub judice* convention. As noted at pages 627 and 628 of the second edition of *House of Commons Procedure and Practice*, “The *sub judice* convention is first and foremost a voluntary exercise of restraint on the part of the House to protect an accused person, or other party to a court action or judicial inquiry, from any prejudicial effect of public discussion of the issue. Secondly, the convention also exists ... ‘to maintain a separation and mutual respect between legislative and judicial branches of government’. Thus, the constitutional independence of the judiciary is recognized.” Quite importantly, the text then goes on to note that “...the *sub judice* convention has never stood in the way of the House considering a *prima facie* matter of privilege vital to the public interest or to the effective operation of the House and its Members.” The *sub judice* convention does not, therefore, prevent the Senate from dealing with this matter.

A *prima facie* case of privilege has been established. The role of the Speaker, as identified at citation 117(2) of the sixth edition of Beauchesne, “... is limited to deciding the formal question, whether the case conforms with the conditions which alone entitle it to take precedence ... and does not extend to deciding the question of substance – whether a breach of privilege has in fact been committed – a question which can only be decided by the House itself.”

Under rule 13-7(1), Senator Cools now has the opportunity to move a motion either calling on the Senate to take some action or referring the case of privilege to the Rules Committee. The motion must be moved at this time, although it will only be taken into consideration at the end of Orders of the Day or 8 p.m., whichever comes first. Debate on the motion can last no more than three hours, with each senator limited to speaking once, and for no more than 15 minutes. This debate can be adjourned, and when it concludes the Senate will decide on the motion. The final decision is for the Senate to make.

The ruling is that a prima facie case of privilege has been established.