

October 26, 2006

Notice Requirements—Speaker's Ruling

The Hon. the Speaker: Honourable senators, before proceeding to Orders of the Day, I wish to render the Speaker's ruling on a point of order relative to notice requirements for questions of privilege.

Honourable senators will recall that last Tuesday, during the time for Senators' Statements, Senator Stratton advised the Senate that he had decided not to proceed with the question of privilege he had raised on Thursday, October 19.

Honourable senators will recall that I had reserved my decision on Senator Fraser's point of order which touched on the adequacy of the notice in relation to the alleged breach of privilege claimed by Senator Stratton. This point of order remains outstanding.

Senator Stratton's decision with respect to forsaking his intention to pursue the question of privilege does not eliminate my obligation to deal with this point of order.

Let me briefly summarize elements of the exchanges raised last Thursday with respect to this point of order. Senator Fraser began by objecting that the notices given by Senator Stratton were inadequate because there was too little information about the substance of the privilege complaint. Based on this limited information, she maintained that no senator could know what the question of privilege was about. A number of senators also contributed their views. For his part, Senator Comeau, while generally empathetic with Senator Fraser's position, explained that rule 43, as it is currently written, requires only that a senator give notice "without in any way having to provide the substance of the motion." The senator stated that the rules do not require more than a simple notice. Senator Cools echoed some of the arguments of Senator Fraser. According to Senator Cools, notice ensures that senators are not caught or taken by total surprise. As she explained, the notice should contain enough information to allow senators to prepare themselves should they want to speak on the question of privilege. Senator Austin was also of the view that the "disclosure of a general nature" of the question of privilege is necessary. Finally, Senator Banks, without taking a specific position, pointed to an apparent conflict between rule 43(1) and rule 59(10). I wish to thank all honourable senators who participated in the exchanges on this point of order.

Since the time when the point of order was first raised, I have taken the opportunity to study the rules, read the authorities and examine recent practices to inform myself as best I can about how rule 43 should be understood and applied. The specific issue at hand is whether Senator Stratton's written and oral notices were sufficient to satisfy the requirements of Rule 43.

In assessing the meaning of notice, which is central to the determination of this point of order, it is essential to look to the purpose of the particular notice required. I feel it appropriate to consider not just rule 43 but other Senate rules, as well as current practices

that provide a better sense of what notice is meant to be and the purposes that it serves. Part VI of the *Rules of the Senate*, from rule 56 through 59, is all about notices. Not only do these rules identify the period of a notice, either one or two days when notice is required at all, but they also confirm that the content of the notice must be meaningful. For example, as rule 56(1) states:

When a Senator wishes to give notice of an inquiry or a substantive motion, the Senator shall reduce the notice to writing, sign it, read it during a sitting of the Senate ... and send it forthwith to the Clerk at the Table.

Similarly, rule 56(2) requires that a senator seeking to propose an inquiry shall "as part of the notice under this rule give notice that he will call the attention of the Senate to the matter to be inquired into." It is not adequate, as a notice, to state simply an intention to move a motion or to propose an inquiry. To suggest otherwise would seriously distort the meaning and intent of the notice. As an example, who would accept as adequate notice a senator's declaration to move a motion without any indication of its content, or to have a committee undertake a study without knowing what it was about? Notice must include some content indicating the subject being proposed for debate and decision.

The merit of this proposition is evident from any review of the authorities that are often used to guide the understanding of Senate procedures. Marleau-Montpetit's *House of Commons Procedure and Practice* at page 464, explains that the purpose of notice "is to provide Members and the House with some prior warning so that they are not called upon to consider a matter unexpectedly."

Motions for which notice is routinely required usually seek to solicit a decision of the Senate, either to order something be done or to express a judgment on a particular matter. Such motions are always subject to debate and the notice is required in order to allow parliamentarians to inform themselves of this upcoming debate and to prepare themselves should they wish to participate in the debate.

In a ruling of June 21, 1995, Speaker Molgat reiterated the explanation for notice:

The purpose of giving notice is to enable honourable senators to know what is coming so that they can have an opportunity to prepare. Why else would there be notice? They must have an opportunity to get themselves ready for the discussion. It is not meant to delay the work of the Senate. It is simply meant to bring order.

As to the specific notice requirements for a question of privilege, it must be stressed that the rules are somewhat different as to the process to be followed. As already noted, a senator seeking to raise a question of privilege must deliver a written notice to the Clerk's office three hours before a sitting in order to allow enough time to distribute it to all senators. In addition, the senator must provide oral notice during Senators' Statements. This double notice requirement reflects the importance to be accorded any claim to a question of privilege which a senator wishes to expedite under rule 43. In addition, the requirements were deliberately imposed in order to allow reasonable preparation for

consideration of the question of privilege to be considered the same day. This, in fact, is the exceptional aspect of the notice. The written notice alerts senators of the possibility that a certain question of privilege may be brought to the attention of the Senate. The oral notice confirms that a senator intends to pursue the matter at the conclusion of business under Orders of the Day. This is why I feel that the proper reading of the rule demands that the notice be sufficiently explanatory and comprehensive. In other words, the notice must clearly identify the matter that will be raised as a question of privilege.

I have reviewed past notices since the inception of rule 43 in 1991. In all cases that I have seen, Senators had provided an indication of the claimed question of privilege. In one case, the Senator did not adequately indicate the nature of the question of the privilege in the oral notice, but the written notice was clear enough about the complaint and no point of order was raised to challenge the oral notice. In another example, I have discovered a situation where the written notice was not followed by the oral notice, presumably because the Senator had decided to abandon the matter as a question of privilege. In all other cases reviewed thus far, both notices indicated the subject of the complaint giving rise to the question of privilege.

In this particular case, neither the written nor the oral notice provided by Senator Stratton dealt with the subject matter of the question of privilege. They simply stated that the Senator was going to raise a question involving, "a contempt of Parliament" that "constitutes an affront to the privileges of every senator and of this place". These notices were insufficient. Accordingly, the point of order raised by Senator Fraser is well founded and, therefore, it would not have been possible for Senator Stratton to proceed with his question of privilege under rule 43 based on the inadequate notice provided.

Before sitting down, I wish to deal with two other issues associated with this point of order. First, I want to refer to the attempt made by Senator Stratton to present his motion on the question of privilege at the close of last Thursday's sitting. The senator explained that he was doing this in accordance with rule 59(10), which allows for raising a question of privilege without notice. Senator Fraser immediately intervened to object to the proceeding and I then reminded the Senate of the fact that I had already reserved my decision, and that it would be out of order to proceed with the alleged question of privilege at this time.

When Senator Fraser spoke in objection to what Senator Stratton attempted to do, she explained that rule 59(10) was probably designed to deal with circumstances arising in the course of an actual sitting. As she said, "That is the only explanation I can find for the fact that rule 59(10) exists." As part of my investigation, I looked at the work on the rule changes made in 1991. Before those changes were adopted, there was no mechanism to raise a question of privilege on notice. The old rule simply provided that:

When a matter or question directly concerning the privileges of the Senate, of any committee thereof, or of any Senator, has arisen, a motion calling upon the Senate to take action thereon may be moved without notice and, until decided, shall, unless the debate be adjourned, suspend the consideration of other motions and of the Orders of the Day.

Rule 59(10) is clearly linked to this old rule that has been completely displaced by current rule 43. What I suspect happened is that in making the consequential changes to the rules, this particular change was not properly adjusted, either to delete it entirely or to modify it to explain under what conditions a question of privilege could be raised without notice. I suspect that this is one of perhaps several rules that remain inconsistent with other rules, or that are not easy to understand. It might be appropriate at some point to have the Standing Committee on Rules, Procedures and the Rights of Parliament look into this matter and clean up any of the anomalies and inconsistencies still in our rules.

While the Rules Committee is looking at that problem, it might also look at the second issue that I want to mention. Last Thursday, just after Senator Stratton gave oral notice during Senators' Statements, Senator Fraser sought to challenge the notice on a point of order. I responded by explaining that it was not possible to raise a point of order at that time. When I made this statement, I was working under the impression that Senators' Statements are part of the daily routine of business and that, in accordance with rule 23(1), points of order or questions of privilege are prohibited until we come to Orders of the Day. This, I think, is a view which is widely accepted and which appears to be reinforced by some of the language of our rules and operating documents, including the Order Paper. As I was preparing this decision, however, I looked more closely at the Rules of the Senate and I have come to a different position. Contrary to what I had previously believed, Senators' Statements are not, in fact, part of the daily routine of business. This is evident from a careful reading of rule 23(6). The fifteen minutes allocated to Senators' Statements are not part of the thirty minutes allowed for the routine of business, which begins with the Tabling of Documents and continues through Presentation of Petitions, and is called immediately prior to Question Period. My revised understanding as to the proper boundaries of the routine of business has been supported by a previous Speaker's ruling made December 11, 1997.

Nonetheless, I feel that some of the rules could be more clearly written and perhaps the Rules Committee might undertake to do this so as to reduce some of the confusion and misunderstanding that sometimes occurs. In this respect, I share some of the sentiments that were expressed by Senator Comeau and Senator Cools during the exchanges on this point of order last Thursday.