

SPEAKER'S RULING

QUESTION OF PRIVILEGE

On March 17, 2010, Senator Wallace rose on a question of privilege under rule 59(10) respecting Senator Lavigne's attendance earlier that day. Senator Wallace explained that Senator Lavigne is currently on leave of absence and, having already attended the Senate once this session, rule 136(5) prohibits him from attending again. Senator Wallace referred to Maingot to argue that disobedience to the Rules constitutes contempt. He also indicated that he was ready to move that the matter be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament should the Speaker find a prima facie question of privilege.

Senator Cools then questioned the process being followed. She argued that when invoking rule 59(10) Senator Wallace should have moved a motion, not asked the Speaker to determine whether there was a prima facie question of privilege.

Before turning to the substance of Senator Wallace's complaint, I will address the process used. A question of privilege can be brought before the Senate in at least five ways. First, and most frequently, there is the process under rules 43 and 44, requiring written and oral notice. Second, a motion moved on notice can be used. Third, Appendix III of the Rules outlines a process in cases involving a disclosure of confidential committee documents. Fourth, a committee can bring a possible issue of privilege to the Senate's attention by presenting a report. Finally, rule 59(10) provides that no notice is required to raise a question of privilege.

It was this fifth process that Senator Wallace invoked. I would draw honourable senators' attention to a series of three rulings given during March and April of 2009. They were raised under rule 59(10), and were all assessed by the Speaker in light of the criteria usually used to determine a prima facie question of privilege. In the third ruling, given on April 21, it was noted that:

... rule 43 details a process for written and oral notice to properly raise a question of privilege. All of these are imperative, and are meant to be used. Unless the Senate makes a deliberate decision to change rule 43, rule 59(10) will only remain available for questions of privilege that arise out of circumstances that prevent a senator from providing the notices required under rule 43. To do otherwise would render the rule meaningless. Such a reversal of the clear obligations contained in the rules requires a deliberate and positive decision of the Senate.

With respect to the substantive matter of the question of privilege, the Speaker's role is to review the case and determine whether there is a prima facie case for a question of privilege, guided, *inter alia*, by the four criteria identified in rule 43(1).

The process used by Senator Wallace, who raised an issue that had occurred during the course of the sitting, thus respected current Senate practices. As has been noted in previous

rulings, the Senate would benefit if the Rules Committee were to consider the processes for raising questions of privilege.

The specific matter at issue is largely based on rule 136(5), which states:

A Senator on leave of absence, or suspended under rule 141, for more than a full session may nonetheless make an appearance in the Senate once every session to avoid disqualification, but only on the sixth day the Senate sits after the Clerk lays upon the Table a notice of the Senator's intention to be present, signed by the Senator.

By way of background. Senator Lavigne is currently on a mandatory leave of absence. On March 3, 2010, he sent a letter to the Clerk indicating that he would take advantage of his right to be present. Once the letter had been tabled and recorded in the *Journals of the Senate*, the Clerk wrote to Senator Lavigne advising him that, if the Senate sat on dates identified in the letter, which reflected the normal pattern of sittings, the senator could attend on March 17, expected to be the sixth sitting day following the tabling of his letter. This date would, of course, change if the Senate varied from its normal pattern of sittings, a fact that was noted.

Despite receiving this information, Senator Lavigne attended the Senate on March 10, earlier than allowed, since it was only the third sitting day after the letter was tabled. This led to a point of order on March 11, on which I ruled. Senator Lavigne then wrote to the Clerk seeking clarification. As part of his response the Clerk noted the provision in rule 136(5) that stipulates attendance is allowed "once every session." In the event, on March 17, Senator Lavigne was again present at his desk. The question of privilege was raised as a result of this second attendance.

At this stage, the Speaker's role is to take into account the four criteria of rule 43(1). It is clear that the matter was raised at the earliest opportunity, satisfying the first criterion. It is also clear that Senator Wallace is willing to offer a remedy, referral to the Rules Committee, thereby satisfying the third criterion.

The second and fourth criteria can perhaps be best addressed together. They require that "...a matter directly concern[] the privileges of the Senate..." and that it "be raised to correct a grave and serious breach." Rule 136(5) only allows a senator on leave of absence or who is suspended to attend a sitting once in a session, and only on the sixth sitting day following the tabling of a notice. This notice requirement is useful for the planning of house business and votes.

In this case, Senator Lavigne was correctly informed of the requirements of rule 136(5). While neither of his appearances respected the rule, it is not clear that this constitutes a contempt, an action tending to obstruct or impede the Senate or to offend against its authority or dignity. Instead, it appears to be an unfortunate misunderstanding. The fact that Senator Lavigne withdrew once it became apparent that his presence was a cause of concern supports this conclusion. A breach of the Rules certainly occurred, as addressed in the ruling of March 11, but there is insufficient evidence to determine wilful contempt to the authority of the Senate.

Before concluding, I would like to clarify any confusion that may have arisen about the use of the term “stranger.” Since he is on a mandatory leave of absence, Senator Lavigne is not authorized to be on the floor while the Senate is sitting, except in the very narrow circumstances provided under rule 136(5). As such, the word “stranger” was used as a means to challenge his presence in the chamber. The term is relevant inasmuch as it provides a framework for dealing with the awkward situation in which a senator who is prohibited from being present is nevertheless in the chamber.

To return to the case at issue, the ruling is that no prima facie case of privilege has been established. There was, instead, a breach of order, which, as noted in the earlier ruling, is now a matter of record.