SPEAKER'S RULING

QUESTION OF PRIVILEGE: WITNESSES BEFORE COMMITTEE

Yesterday, Senator Cowan raised a question of privilege about media reports suggesting that a witness invited to appear before the Standing Senate Committee on National Security and Defence during its study of Bill C-42 had not done so because of pressures exerted on him by his employer. The bill had been reported earlier in the sitting, without amendment but with observations. As the Leader of the Opposition explained, Corporal Roland Beaulieu, a member of the RCMP currently on medical leave, had been invited to appear before the committee on Monday, May 6. Senator Cowan indicated that last week Corporal Beaulieu had been informed that if he came to Ottawa to testify his medical leave would be terminated. As a result he did not attend. A number of other honourable senators then participated in consideration of the question of privilege. After these interventions, the chair committed to ruling today.

Before dealing with the substance of the question of privilege — the allegation of deliberate witness intimidation — it should be made clear that the proceedings of the committee at its Monday meeting have not been questioned. The committee heard witnesses, including representatives of the Mounted Police Professional Association of Canada, to which Corporal Beaulieu belongs, and reviewed the bill clause-by-clause. Bill C-42 was then reported back to the Senate. The bill is now on the Order Paper and open to debate at third reading.

As already noted, the fundamental issue is the protection of witnesses. Privilege is the sum of the rights enjoyed by this house and its members that are necessary for us to conduct our work. We must be mindful that this protection of privilege is not limited to parliamentarians alone. More importantly, with respect to the current situation, witnesses also enjoy a range of protection. As stated at page 267 of the 24th edition of Erskine May, "Any conduct calculated to deter prospective witnesses from giving evidence before either House or a committee is a contempt." Erskine May then continues to explain "It is also a contempt to molest any person attending either House as witnesses, during their attendance in such House or committee," as are threats against those who have previously appeared. These points are repeated at page 840. Similar statements are made at pages 114 and 115 of the

second edition of *House of Commons Procedure and Practice*, which explains that witnesses are protected from threat or intimidation.

On April 13, 2000, the Standing Committee on Privileges, Standing Rules and Orders — now the Standing Committee on Rules, Procedures and the Rights of Parliament — presented its fifth report, dealing with allegations about reprisals against a witness. The report stated in part as follows:

> The Senate, and all Senators, view with great seriousness any allegations of possible intimidation or harassment of a witness or potential witness before a Senate committee. In order for the Senate to discharge its functions and duties properly, it must be able to call and hear from witnesses without their being threatened or fearing any repercussions. Any interference with a person who has given evidence before a Senate committee, or who is planning to, is an interference with the Senate itself, and cannot be tolerated.

The essential issue is not whether representatives of the association appeared before the committee. They did. The issue is whether there was a deliberate attempt to impede the appearance of an invited witness, agreed to by the Steering Committee. Witnesses or potential witnesses who fear retaliation, directly or indirectly, arising from their testimony, whether because of implied or direct threats or because previous witnesses or potential witnesses have suffered due to the fact that they appeared or considered appearing, will either be unwilling to appear or, if they do, will not be forthcoming in their evidence. Since this impedes parliamentarians on the committee in the full exercise of their duties, it would represent a breach of privilege.

Based on the information available, the witness had agreed to travel to Ottawa and come before the committee. He cancelled because an RCMP medical officer informed him that, if he did testify, he would be considered able to return to work and his medical leave would be terminated. Furthermore, on the last working day before the committee meeting, it would seem that a new policy was issued by the RCMP, requiring that a member on medical leave seek approval before undertaking certain types of travel. All this could be coincidental, but the chronology of events and the allegations are such as to raise concern.

I will now turn to the four criteria of rule 13-3(1), all of which must be met for a prima facie case of privilege to be established. Senator Cowan clearly raised this issue at the first opportunity, thereby meeting this first criterion.

In terms of the second criterion, that the matter must "directly concern[] the privileges of the Senate, any of its committees or any Senator," the references to the procedural works already given make clear that this matter does involve the privileges of the Senate and its committees. Unlike many other parliamentary bodies, questions of privilege relating to the work of a committee can be raised in the Senate itself, without requiring a report of the committee.

If there were intent to intimidate the witness, it is clearly a grave and serious breach, therefore meeting the third criterion.

The final criterion is that a question of privilege must seek a remedy the Senate can "provide and for which no other parliamentary process is reasonably available." In this case, the issue is not whether the committee did its work properly. As far as can be ascertained, it did. Instead, the fundamental issue is whether there was a deliberate attempt to prevent a witness from appearing. Were this to be so, it would constitute contempt. The accepted remedy is to treat such issues as cases of privilege. As such, the final criterion has also been fulfilled. This ruling, to be clear, does not establish that there was a deliberate intent to intimidate, which would be a decision for the Senate to eventually make, but rather that there is reason for concern.

The ruling is, therefore, that there is a prima facie case of privilege. Senator Cowan can now 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 now, but will only be considered at the end of Orders of the Day or 8 p.m., whichever comes first. If the Senate adjourns earlier, the motion will be taken up at the next sitting. Debate on the motion can last a maximum of three hours, with each senator limited to speaking once, and for no more than 15 minutes. This debate can be adjourned. When debate ends, the Senate will decide on the motion.