

1978

VICTORIA

REPORT

from the

STANDING ORDERS COMMITTEE

upon

THE PROCEDURE TO BE ADOPTED

FOR RAISING MATTERS OF PRIVILEGE.

Ordered by the Legislative Assembly to be printed.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY.

TUESDAY, 7TH MARCH, 1978.

18. STANDING ORDERS COMMITTEE.- Motion made, by leave, and question- That Mr. Speaker, Mr. Fordham, Mr. McLaren, Mr. Reese, Mr. Ross-Edwards, Mr. Stephen, Mr. Whiting, and Mr. Wilkes be members of the Standing Orders Committee; and that the Committee have leave to sit on days on which the House does not meet; five to be the quorum (*Mr. Hamer*)-put and agreed to.
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THURSDAY, 18TH MAY, 1978.

3. STANDING ORDERS COMMITTEE.- Motion made, by leave, and question- That the procedure to be adopted for raising matters of privilege in this House be referred to the Standing Orders Committee for examination and report (*Mr. Thompson*)-put and agreed to.
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STANDING ORDERS COMMITTEE.

REPORT

Your Committee has the honour to report as follows :-

1 On the 18th May, 1978 the House resolved "That the procedure to be adopted for raising matters of privilege in this House be referred to the Standing Orders Committee for examination and report."

2 The raising of privilege complaints in the Victorian Legislative Assembly is governed by Standing Orders and the practice of the United Kingdom House of Commons. The relevant Standing Orders read as follows :-

"In all cases not provided for herein or by Sessional or other Orders or practice of the House, resort shall be had to the Rules, Forms, Usages, and Practice of the Commons House of Parliament of the United Kingdom, which shall be followed so far as the same may be applicable." (S.O.No.3)

"Motions shall have precedence on each day, according to the order in which the notices for the same were given, but an urgent motion, directly concerning the privileges of the House, will take precedence of other motions, as well as Orders of the Day." (S.O.No.61)

"The debate upon a question may be interrupted -

- (a) by a matter of privilege suddenly arising;*
- (b) by words of heat between Members;*
- (c) by a question of order;*
- (d) by a message from the Council;*
- (e) by a motion for reading an Act of Parliament, an entry in the Journal, or other public document, relevant to the question before the Chair." (S.O.No.68)*

"Any Member may rise to speak "to order", or upon a matter of privilege suddenly arising." (S.O.No.86).

3 In pursuance of Standing Order No.3, our well-established practice has been that in the raising of privilege complaints we have, in general terms, followed the practice of the House of Commons.

In summary our practice until recently, had been as follows :-

- (a) the complaining Member raises his complaint in person in the Chamber at the earliest possible opportunity;
- (b) he may interrupt proceedings in order to do so;
- (c) he will usually have consulted informally with Mr. Speaker and/or the Clerk of the House in advance but is not obliged to do so;
- (d) if the complaint is founded upon a document the complaining Member must produce the document;
- (e) Mr. Speaker having heard the complaint then announces that he will reserve his decision on whether there is in his opinion a matter which, on the face of it, warrants precedence being accorded as a possible case of breach of privilege;
- (f) when he has considered the matter, Mr. Speaker will give his ruling, usually on the following day, but earlier if possible. If he rules either that the Member has not raised the complaint at the earliest possible opportunity, or that there does not appear to be a prima facie case of any established head of privilege, the complaint will not take precedence;
- (g) in the event of an adverse ruling, the Member concerned may proceed by way of substantive motion in the appropriate manner, that is, by giving notice enabling the matter to be set down on a future day;
- (h) if Mr. Speaker rules that in his opinion precedence is warranted, the matter then proceeds immediately and the practice usually requires some appropriate motion to be moved; and
- (i) if the complaint is made against a Member he will be heard in explanation or exculpation and, by custom, then withdraws whilst the House has the matter under consideration.

4 As a consequence of change in the procedures of the House of Commons following a resolution of that House dated 6th February, 1978, Mr. Speaker advised the Legislative Assembly on the 19th April, 1978 (Hansard, pp.1756-77) that our procedure henceforth would be -

- (a) a Member wishing to make a complaint of privilege must write to Mr. Speaker giving details;
- (b) his letter must be written as soon as practicable (a less stringent requirement than the previous requirement of the "earliest possible opportunity");
- (c) the complaining Member is not permitted to say anything in the House concerning the matter pending the Speaker's consideration;
- (d) if the Speaker decides either that the case does not satisfy the essential requirements which could cause it to fall within the general ambit of privilege, or alternatively, even if it does, that it is too trivial to take precedence, he writes accordingly to the Member. In such event the Member may not raise the matter in the House except for his right to proceed by way of substantive motion;
- (e) if Mr. Speaker decides the case should have precedence, he informs the Member to that effect and tells him when he proposes to announce his decision; and
- (f) the Speaker announces his decision in the House as arranged and the complaining Member is then entitled to give notice of motion on the following day's Notice Paper in a position of precedence, (such a motion may be for referral to the Privileges Committee or in some other terms).

5 Mr. Speaker's statement to the House was prompted by the situation that whilst our Standing Orders deal with specific questions concerning interruption of debate for the purpose of raising privilege complaints and the according of precedence to privilege motions, the Standing Orders do not prescribe the detailed procedure for the raising of complaints. This being so, the House has relied upon the practice of the House of Commons by virtue of our Standing Order No.3. Consequently, when the procedure changed, our own procedure changed accordingly and Mr. Speaker so advised the House. It is open to the House to adopt a practice of its own which differs from the new procedure of the House of Commons; this could be done by Standing Order or by resolution. The referral of this matter to your Committee, following a debate upon the Speaker's statement to the House, is the means whereby the merits or otherwise of adopting a practice differing from that of the Commons have now received your Committee's detailed consideration.

6 Your Committee have taken into consideration the reports of successive Select Committees of the House of Commons dealing with this matter.* The Committee have also taken into account the experience of the Legislative Assembly over a period of some years and the known views of its Members arrived at as a result of that experience.

7 When a complaint is made, the Speaker should have adequate time to deliberate before ruling upon it. This may be 24 hours or less, depending upon circumstances or may (in the event of a complaint being raised at the end of a sitting week) be considerably more than 24 hours. Whilst in theory a Speaker only rules upon the question of whether a case is sufficiently made out to warrant precedence being accorded, in practice his unfavorable ruling will mean that most probably no further action in the House will follow. His favorable ruling on the other hand will not necessarily mean that after full examination the House itself or the Privileges Committee will determine that there has been a breach of privilege. In reality his responsibility is indeed a heavy one, each ruling providing a precedent for the future thus requiring careful research and reflection. The need for adequate time to be available to the Speaker for this purpose is beyond argument.

8 One must consider however, the rights of a person or persons who are the subject of the complaint - what of their rights? Pending a decision of the Chair the person complained of does not know if there is a case for him to answer or not. His reputation may be the subject of much adverse publicity during the intervening period. Only if the Chair's ruling upholds the complaint may he speak in explanation or exculpation. From his view point delay may help him prepare his reply if he is called on to make one. Conversely it will have the grave disadvantage of prolonging his period of enforced silence in the face of an unanswered complaint and growing adverse publicity attracted thereby.

9 Your Committee believe that in our case, as is the case with the House of Commons, many potential complaints are never raised in the House following advice privately sought from the Clerks by the would-be complainant. Under the new House of Commons procedure which for the moment applies here, only those cases which in the view of the Chair satisfy the essential requirements will be raised in the House by way of privilege procedure.

* (Ref. H.C. No.34, 1967-68. H.C. No.417, 1976-77.)

10 After careful consideration your Committee prefer that in the case of the Legislative Assembly the old procedure should continue to apply so that all privilege complaints which a Member decides to raise will be raised publicly in the House.

11 The Committee however are aware of certain difficulties existing under the past practice, most particularly the difficulty outlined above concerning the effects of the period of waiting on the reputation of those concerned. There is a further difficulty that a Member is obliged to raise his complaint at the earliest possible opportunity, a requirement which may increase the likelihood of trivial matters being raised without adequate consideration, and unavoidable delay perhaps precluding the House from discussing matters of considerable importance (see para. 156 of H.C. Report No.34, 1967-68).

12 In relation to the former difficulty the Committee believe that this problem can be minimised but not entirely removed by imposing a requirement of prior notice to the Speaker before the matter is raised in the House. This will have the advantage of enabling him to commence his consideration of the complaint and should shorten the time required between the formal raising of the complaint and the delivering of his ruling. Prior notice to the Speaker should be as soon as reasonably practicable and should be preferably in writing supplying as much information as possible in support of the complaint.

13 To avoid the strictures of the earlier requirement of "earliest possible opportunity" the Committee consider that some flexibility should be allowed the Chair in applying the test in relation to time. In general terms, a Member should take the first opportunity which is reasonably practicable. He should be permitted sufficient time to allow him to investigate, verify and prepare his material so as not to seriously jeopardise the presentation of his own case due to enforced haste. Ultimately the Speaker will have to decide whether under all the circumstances the matter has been raised within a reasonable time.

14 Your Committee consider that amendment of the Standing Orders is not warranted in order to achieve the procedure suggested. It would, in the Committee's view, be preferable for a set of guidelines to be adopted by way of resolution of the House to guide the Speaker and the House on the question of the procedure for raising privilege complaints. The complex matter of the sub-judice convention has been adequately handled by resolution of the House of Commons (see "May" 19th Ed., p.427) which is followed by this House. It seems that this same approach would be particularly suitable as a drafting technique in connexion with this present matter.

15 Your Committee see no need to suggest any amendment to the relevant Standing Orders (Nos. 3, 61, 68 and 86) which have proved to be compatible with the earlier House of Commons practice. In the view of your Committee, the guidelines now proposed will not be inconsistent with the existing Standing Orders.

16 Your Committee therefore commend to the House the following suggested guidelines to establish a practice for the raising of complaints of privilege :-

That, subject always to the provisions of the Standing Orders -

(1) A Member wishing to raise a complaint of alleged breach of privilege shall comply with the following requirements :-

(a) He shall, if circumstances permit, give prior notice to the Speaker, such notice to be -

- (i) wherever practicable, in writing;
- (ii) accompanied by as much information, documentary or otherwise, as practicable in explanation and support of the proposed complaint; and
- (iii) given as soon as reasonably practicable:

Provided that if the complainant Member has failed to comply with the above requirements, Mr. Speaker may, in his discretion, refuse to permit such Member to raise his complaint in the House until such notice requirements have been met;

(b) The complaint is to be raised in the House in the following manner :-

- (i) It will be raised as soon as reasonably practicable;
- (ii) The complainant Member, except for providing any additional material which may have become available to him since the giving of notice, will be confined in his complaint to the general ambit of the notice given to the Speaker; and
- (iii) If the complaint is founded upon a document, or documents, the Member shall produce such document, or documents, to the House at the time of raising the complaint.

- (2) Following the raising of such complaint Mr. Speaker will determine whether to give his opinion to the House forthwith or, alternatively, whether he requires further time for consideration of the matter;
- (3) After he has considered the matter, Mr. Speaker will announce his opinion to the House as to whether :-
- (a) The complaint has been raised as soon as reasonably practicable; and
 - (b) The complaint, on the face of it, warrants precedence being accorded it as a complaint falling within the ambit of a possible case of breach of privilege; and
- (4) Following Mr. Speaker so announcing his opinion to the House :-
- (a) If he rules that, in his opinion, the matter has been raised as soon as reasonably practicable and warrants precedence, then -
 - (i) The matter will proceed immediately;
 - (ii) The complainant Member will be required to offer an appropriate motion containing a concise statement of the complaint which motion may be for the referral of the complaint to the Privileges Committee; and
 - (iii) If the complaint is against a Member, the Member concerned will (if present) be then heard in explanation or exculpation following which, in accordance with custom, he will then withdraw during the deliberations of the House, alternatively, if the Member who is the subject of the complaint is not present, he shall, in accordance with custom, be given an opportunity of attending for the purpose of being so heard and, if necessary, the matter will be adjourned accordingly; or
 - (b) If Mr. Speaker rules that the complaint does not satisfy the essential requirements in order to enable it to take precedence, the subject of the complaint may only proceed by way of a substantive motion which does not attract precedence, per se.

17 Your Committee is proposing to consider the matters raised in paragraph 13 of the Privileges Committee Report (Parliamentary Paper D.No.2 of 1978).

Committee Room
5th September, 1978.