PARLIAMENT (POWERS, PRIVILEGES AND IMMUNITIES) BILL 1985

(Private Member's Bill)

Date Introduced: 21 May 1985
House: House of Representatives
Presented by: Hon. J.M. Spender, M.P.

Short Digest of Bill

Purpose

To clarify and reform the law and procedure of Parliamentary privilege.

Background

Parliamentary privileges and immunities exist to enable the proper functioning of Parliament. They have been described as 'the sum of the peculiar rights enjoyed by each House collectively and by Members of each House individually without which they could not discharge their functions'.

Privilege, including immunities, should be distinguished from the Standing Orders. The former allows Parliament and its Members, to operate without undue interference, while the latter comprises rules to control Parliamentary proceedings. In addition, the Standing Orders may be changed by the House concerned. Since 1704, when the United Kingdom's House of Commons accepted a House of Lords resolution that neither could create new privileges on its own, the approval of both Houses is necessary to create new privileges.

Privilege for both Houses of the Federal Parliament is based on section 49 of the Constitution which adopts, until Parliament declares otherwise, the powers, privileges and immunities of the U.K. House of Commons as at the time of Federation. The law inherited from the U.K. House of Commons was reviewed by a Joint Committee of both Houses in 1908. The Committee made a number of criticisms of the law as it stood, but its report was not immediately acted upon. The report was revived in 1938 when a bill was drafted to implement its recommendations. The bill was not introduced. The next attempt at a review of Parliamentary privilege occurred in 1955, following the Browne and Fitzpatrick case. Browne and Fitzpatrick were imprisoned for a breach of privilege and, following widespread controversy, the Prime
Minister ordered a review of Parliamentary privilege. The result of this review is not known.

The next attempt at reform came in 1981 when the Leader of the Opposition in the Senate, Senator Button, introduced a bill aimed at reforming Parliamentary privilege as it related to contempt. This bill lapsed with the dissolution of the 32nd Parliament in February 1983.

A Joint Committee was established in 1982 to review the law procedures and penalties associated with Parliamentary privilege. Parliament was dissolved before the Committee could report. However, the Committee was reformed, with minor changes to personnel, by the new Government. An Exposure Report was tabled in June 1984 to obtain the view of interested parties. The Committee's Final Report was presented in October 1984. Parliament has legislated on a number of peripheral areas, such as extending privilege to Parliamentary papers and broadcasts, but has yet to change the basic rules of privilege inherited from the U.K. House of Commons.

There are two main types of privilege, namely, that associated with individual Members of Parliament and that associated with a House of Parliament as a whole, though there is considerable overlapping between the categories.

The major rights and immunities of Members are:

- Freedom of Speech: This right flows from Article 9 of the 1688 Bill of Rights and excludes debates, speeches and proceedings from Court action, such as defamation proceedings.

- Freedom from jury service and freedom from arrest on civil matters or appearance at Court as a witness, for a period extending to 40 days before and after a Session. These freedoms ensure that Parliament has first call on its Members.

The main privilege attracted by either House as a whole is the power to punish for contempt. The Joint Select Committee on Parliamentary Privilege described contempt in the following way:

"Contempt encompasses any act or omission which impedes or obstructs the operation of the Houses, and their committees, or which tends to do so, or which impedes or obstructs Members in the performance of their duties, or which tends to do so."[2]
If a House finds a person guilty of contempt it has the choice of either a reprimand or imprisonment for the duration of the session of Parliament in which the offender was convicted. The Joint Committee on Parliamentary Privilege has concluded that there is no power to impose a fine.\footnote{3} The power to imprison has only been used once, in June 1955, to imprison Fitzpatrick and Browne. The accused were found to have breached Parliamentary privilege "by publishing articles intended to influence and intimidate a Member ... in his conduct in [the] House, and in deliberately attempting to impute conduct ... for the express purpose of discrediting and silencing him".\footnote{4} Both were sentenced to imprisonment until the end of the Session, namely 10 September 1955. The most recent appearance for contempt occurred in September 1984 when the editor and a reporter from the National Times together with an executive of John Fairfax and Sons Limited appeared before the Senate's Privileges Committee for having published transcripts of evidence given in camera before a Senate Committee. Those who appeared as well as the publisher, John Fairfax and Sons Limited, were reprimanded.

Both Houses also have the power to expel Members. Again this power has only been used on one occasion, namely the expulsion of Mr Mahon in 1920. The member had given a speech outside Parliament in which he expressed sympathy for the Irish Republicans and opposition to British policy in Ireland. The Prime Minister, Mr Hughes, proposed Mr Mahon's expulsion. After some debate, the gag was used, and the resolution expelling Mr Mahon was passed on party lines. In the by-election that followed, Mr Mahon stood for re-election but was defeated.

Outline

The Bill aims to clarify, rather than codify, the law of Parliamentary privilege through the implementation of certain recommendations of the Joint Select Committee on Parliamentary Privilege majority report. The Committee's Final Report was not unanimous, with 2 of the 10 Committee members presenting a dissenting report.

Main Provisions

Clause 6 aims to clarify the situations in which statements and publications are free from civil action. This will supplement the current individual Members' freedom of speech.

Clause 7 clarifies the conditions where a Member is free from arrest on civil matters and appearing as a witness. The major change will be the restriction of these
freedoms to 5, rather than the current 40, days before or after a sitting.

Clause 8 will abolish defamatory contempts.

Clause 9 will remove the Houses' power to expel a Member.

Clause 10 will amend the penalties that may be imposed by Parliament. The maximum period of imprisonment is to change from the current, uncertain 'until the end of the session', to 6 months. It will still be possible for a House to recommit at the end of this period. As well, the Houses will be given power to impose maximum fines of $5,000 on natural persons and $10,000 on corporations.

Clause 12 will provide for limited review of a decision to punish by imprisonment. It will give the High Court jurisdiction to determine whether the facts disclosed in a warrant for imprisonment are capable, at law, of constituting a contempt.

Clauses 15 and 16 deal with the rights of witnesses who appear before a House or Committee. The clauses give the witness the same rights as a witness before the High Court (clause 15) and make it an offence to interfere with or intimidate a witness (clause 16).

Remarks

The Member noted in his Second Reading Speech that it is intended:

"... that debate on this Bill should remain adjourned for a fairly long period so that honourable members and honourable senators will have an opportunity to examine it in detail, and to propose such amendments as they may think necessary or useful."[5]
References

1. House of Representatives: Short Description of Business and Procedures, p.64.