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No. 18

Tuesday, March 19, 1996

2.30 o'clock p.m.

Prayers.

Mr. Kavanaugh, Member for Riverview, extended sympathy to the bereaved families and classmates of the victims of the Scotland tragedy. The House observed a moment of silence in memory of the 16 children and their teacher.

Question of Privilege

Mr. McKay, Member for Miramichi Centre, rose on a question of privilege pursuant to Standing Rule 10, to complain to the House of statements in an article published in the *Daily Gleaner* on March 16, 1996. The statements pertained to the awarding of contracts for the supply of dairy products to regional hospital corporations, a matter Mr. McKay stated he raised in a meeting of the Standing Committee on Public Accounts.

Mr. Speaker introduced Mr. Edmond Babineau, State Deputy, and Mr. Ben Evers, Master, 4th Degree, New Brunswick District, Knights of Columbus, noting that it was through the generous gift of the organization that a new sword had been purchased for use by the Sergeant-at-Arms in the Legislative Assembly.

Mr. Speaker noted the presence in the Gallery of Mr. Edgar LeGresley, the Liberal Member of the Legislative Assembly for Northumberland from 1970 to 1974 and for Miramichi Bay from 1974 to 1982.

Bills Introduced

The following Bills were introduced and read the first time.

By Hon. Mrs. Barry,

Bill 30, *An Act to Amend the Police Act*.

By Hon. Mr. Duffie,

Bill 31, *Statute Law Amendment Act 1996*.

Ordered that the said Bills be read a second time at the next sitting.

Government Motions re Business of House

Hon. Mr. Frenette announced that it was the government's intention to proceed with the regular order of business, which provides for Private Members' Motions. The Government House Leader indicated that Bill 27 is scheduled for second reading, and it would be the government's preference that this Bill be read a second time on Friday of this week. Continuing, Hon. Mr. Frenette requested unanimous consent of the House to have Bill 27, *An Act Respecting the New Brunswick Extra-Mural Hospital /*

Hôpital extra-mural du Nouveau-Brunswick read a second time on Friday, March 22, 1996, which was denied.

Hon. Mr. Frenette announced the government's intention at today's sitting to go into Committee of the Whole to deal with legislation, particularly Bill 23, *An Act to Amend the Schools Act*.

Second Reading

The Order being read for second reading of Bill 27, *An Act Respecting the New Brunswick Extra-Mural Hospital / Hôpital extra-mural du Nouveau-Brunswick*,

Hon. Mr. Frenette moved, seconded by Hon. Mr. King:

AMENDMENT

THAT the motion for second reading be amended by deleting all the words after the word "that" and substituting the following:

Bill 27, *An Act Respecting the New Brunswick Extra-Mural Hospital / Hôpital extra-mural du Nouveau-Brunswick* be not now read a second time but that it be read a second time on Friday, March 22nd, 1996.

And the question being put on the amendment, a debate ensued.

Hon. Mr. Valcourt then arose on a point of order and objected to the amendment as proposed by the Government House Leader as being contrary to Standing Rule 42(2) and established procedures of the House.

In ruling the amendment in order, Mr. Speaker referred to citation 666 of *Beauchesne's Parliamentary Rules & Forms, 6th Edition*, as follows:

666. *There are three types of amendments that may be proposed at the second reading stage of a bill. These are:*

- 1. the hoist (eg. three months, six months).*
- 2. the reasoned amendment.*
- 3. the referral of the subject-matter to a committee.*

Continuing, Mr. Speaker noted that a hoist amendment was permissible at the second reading stage of a Bill, but called for further points of view to assist him in coming to a final decision.

After hearing the comments of other Members, Mr. Speaker reserved his decision.

The Order being read for second reading of Bill 28, *An Act to Amend the Vital Statistics Act*, a debate arose thereon.

And after some time, Hon. Mr. Valcourt concluded his remarks by moving, seconded by Mr. Mockler,

AMENDMENT

That Bill 28, *An Act to Amend the Vital Statistics Act*, not be read a second time but that it be referred to the Law Amendments Committee for further study and consultation.

Mr. Speaker having put the question on the proposed amendment, Hon. Mr. Frenette moved the adjournment of the debate.

And the question being put on the motion to adjourn the debate, it was resolved in the affirmative on the following recorded division:

YEAS - 32

Hon. Mr. Duffie Mr. McAdam Ms. de Ste. Croix

Hon. Mr. Frenette Mr. Kennedy Mr. Kavanaugh

Hon. Mr. Graham Hon. Mr. Doucet Mr. Olmstead

Hon. Mr. King Hon. Mr. Richard Mr. Flynn

Hon. Mrs. Barry Mr. Allaby Mr. DeGrâce

Mr. McKay Mr. Steeves Mr. MacDonald

Hon. Mr. Tyler Mr. Wilson Mr. Byrne

Hon. Mrs. Mersereau Mr. LeBlanc Mr. Doyle

Hon. Mrs. Trenholme Mr. Jamieson Mr. D. Landry

Hon. Mr. Savoie Mr. A. Landry Mr. Armstrong

Mrs. Jarrett Mr. Johnson

NAYS - 6

Mr. Sherwood Hon. Mr. Valcourt Mr. Volpé

Mr. Robichaud Mr. Mockler Mr. D. Graham

The Order being read for second reading of Bill 29, *An Act to Amend the Executive Council Act*, a debate arose thereon.

During the debate, Hon. Mr. Frenette raised a point of order to the effect that the remarks of the Hon. Leader of the Opposition were not relevant to the principle of the Bill.

Mr. Speaker ruled the point of order well taken and advised the Leader of the Opposition to refrain from entering into repetitious or irrelevant debate.

And a point of order being raised by the Government House Leader that certain Honourable Members had questioned the ruling of the Chair, Mr. Speaker informed the House that a decision of the Chair is not debatable.

And the debate being ended, and the question being put that Bill 29 be now read a second time, it was resolved in the affirmative on the following recorded division:

YEAS - 33

Hon. Mr. Duffie Mr. McAdam Mr. Kavanaugh

Hon. Mr. Frenette Mr. Kennedy Mr. Olmstead

Hon. Mr. Graham Hon. Mr. Doucet Mr. Flynn

Hon. Mr. Lee Hon. Mr. Richard Mr. DeGrâce

Hon. Mrs. Barry Mr. Allaby Mr. MacDonald

Mr. McKay Mr. Steeves Mr. Byrne

Hon. Mr. Tyler Mr. LeBlanc Mr. MacLeod

Hon. Mrs. Mersereau Mr. Jamieson Mr. Doyle

Hon. Mrs. Trenholme Mr. A. Landry Ms. Weir

Hon. Mr. Savoie Mr. Johnson Mr. D. Landry

Mrs. Jarrett Ms. de Ste-Croix Mr. Armstrong

NAYS - 6

Mr. Sherwood Hon. Mr. Valcourt Mr. Volpé

Mr. Robichaud Mr. Mockler Mr. D. Graham

Accordingly, Bill 29, *An Act to Amend the Executive Council Act*, was read a second time and ordered referred to the Committee of the Whole House.

Mr. Speaker, having called for the order of Private Members' Motions, questioned the admissibility of Motion 29, standing on the Order and Notice Paper in the name of the Hon. Mr. Valcourt as follows :

WHEREAS the government is proposing major changes to the education system of this province;

WHEREAS all New Brunswickers have a vested interest in the success of our education system;

BE IT RESOLVED THEREFORE that the House resolve that the proposed reforms to our public education system be subject to public consultation through a special committee of the legislature prior to implementation.

Continuing, Mr. Speaker observed that the House, having accepted the principle of Bill 23, *An Act to Amend the Schools Act*, by virtue of having passed the Bill in principle, now had before it a motion dealing with very similar subject matter.

Mr. Speaker referred to the Guidelines for Votable Items laid out in *Beauchesne's Parliamentary Rules & Forms, 6th Edition*, page 273:

1013. (5) *The subject of the motion or bill should be different from specific matters already declared by the government to be on its legislative agenda.*

And page 175:

566.

(7) A motion dealing with the same subject matter as a bill, standing on the Order Paper for second reading, cannot be considered.

Mr. Speaker observed that the House had gone even further having given the Bill second reading and that unless arguments could be made to convince him to the contrary, he would have to rule the motion out of order. Mr. Speaker then invited comments from Members to assist him in making a final determination on the admissibility of the motion.

Ms. Weir spoke on the matter making the distinction that the motion was directed at the issue of public consultation and therefore merited debate. Continuing, she stated that the motion was not redundant because it was not restricted to either Bill 23 or future legislation that the government might introduce.

Hon. Mr. Valcourt, made two points. First, that notice of the motion was given prior to the introduction of the Bill in the House and, secondly, that the subject matter of the motion was much broader than that of the Bill and was in reference to the government's proposed education reforms as announced in the Throne Speech.

Hon. Mr. Frenette observed that the Speaker should have no difficulty in ruling the motion out of order, referring to The Rule of Anticipation as laid down in *Beauchesne's Parliamentary Rules and Forms, Fifth Edition*, as follows:

340. (2) *The rule against anticipation is that a matter must not be anticipated if it is contained in a more effective form of proceeding than the proceeding by which it is sought to be anticipated, but it may be anticipated if it is contained in an equally or less effective form. May, p. 371.*

341. (2) *In applying the anticipation rule, preference is given to the discussions which led to the most effective result which has established a descending scale of values for discussions, such as Bills which have priority over Motions, which in turn have priority over Amendments. Journals, February 24, 1936, p. 68.*

Mr. Allaby also spoke on the matter noting that Bill 23 dealt with not only substance but process.

Mr. Robichaud quoted a passage of *Beauchesne's Parliamentary Rules & Forms, 6th Edition*, as follows:

514. (1) *There is nothing in the rules, and no precedent to prevent the setting down of more than one bill or motion dealing with the same subject. Journals, July 3, 1969, pp. 1289-90.*

Mr. Speaker stated he would take the matter under advisement and report back to the House after the recess.

At 5.41 o'clock p.m. Mr. Speaker recessed the House and left the chair, to resume again at 8 o'clock p.m.

8 o'clock p.m.

Mr. Speaker resumed the Chair and delivered his reserved decision on the admissibility of Motion 29 by Hon. Mr. Valcourt.

Speaker's Ruling

Honourable colleagues, I am now ready to rule on the acceptability of Motion 29 standing on the Order and Notice Paper under the name of the honourable Leader of the Opposition. I want to thank my honourable colleagues for their comments, which were helpful in ruling on this difficult issue.

At the last sitting of the House on February 29, debate concluded on an amendment to the motion for second reading of Bill 23, *An Act to Amend the Schools Act*. The amendment, in essence, proposed that Bill 23 not be given second reading, but that the subject matter of the Bill be referred to the Standing Committee on Law Amendments. During the debate on second reading the honourable Leader of the Opposition spoke at length on the need for public consultation prior to implementation of the changes proposed in the Bill, and urged the government to refer the Bill to the Standing Committee on Law Amendments. The amendment to refer the Bill to Committee was defeated by the House following which Bill 23 was read a second time and ordered referred to the Committee of the Whole House.

As a general rule, the precedents and parliamentary authorities all agree that "No question shall be offered to the House that is substantially the same as one on which its judgment has already been expressed in the same session. I would refer honourable members to citation 558(1) of *Beauchesne's Parliamentary Rules & Forms, 6th Edition*, page 172:

558. (1) An old rule of Parliament reads: "That a question being once made and carried in the affirmative or negative, cannot be questioned again but must stand as the judgment of the House." Unless such a rule were in existence, the time of the House might be used in the discussion of a motion of the same nature and contradictory decisions would be sometimes arrived at in the course of the same session.

The problem which arises under this rule is determining whether or not the motion in question is substantially the same as the one on which the House has already expressed an opinion. The Speaker has discretion to disallow any motion which is the same in substance as the question which has already been resolved in the affirmative or negative during the same session.

Motion 29 asks that the House pronounce itself on the proposed reforms to the province's public education system and that the reforms be subject to public consultation through a select committee of the Legislature prior to implementation.

I am of the opinion that amendment proposed to Bill 23 to refer the subject matter of the Bill to the Standing Committee on Law Amendments, and subsequently defeated by the House on February 29, has already decided this question.

I have also taken into consideration the rule of anticipation cited in paragraphs 513(1) and 513(2) of *Beauchesne, 6th Edition*, page 154:

513. (1) In determining whether a discussion is out of order on the grounds of anticipation, the Speaker must have regard to the probability of the matter anticipated being brought before the House within a reasonable time.

(2) In applying the anticipation rule, preference is given to the discussions which lead to the most effective result, which has established a descending scale of values for discussions, such as bills which have priority over motions, which in turn have priority over amendments.

On page 327 of Erskine May, 21st edition, it is stated that:

A motion must not anticipate a matter already appointed for consideration by the House, whether it be a bill or an adjourned debate upon a motion . . .

Stated generally, the rule against anticipation . . . is that a matter must not be anticipated if it is contained in a more effective form of proceeding than the form by which it is sought to be anticipated . . .

Erskine May goes on to state that a Bill or other order of the day is more effective than a motion.

In the matter before us, the question contained in the motion is that the proposed reforms to our public education system be subject to public consultation through a special committee of the Legislature prior to implementation. The proposed reforms are contained in a Bill which is currently under consideration in this House. The House has, in fact, approved these reforms in principle by giving second reading to the subject Bill. The Bill is still before this House and stands on the Order Paper to be considered in Committee of the Whole.

To allow this motion would, in my opinion, be contrary to the rule of anticipation. The subject is already before the House in the form of a Bill, which, according to the authorities, is a more effective form of proceeding than by way of a motion. The matter is already appointed for consideration by the House

and cannot be anticipated by this motion. As well, the question of referring the subject matter of the Bill to a committee of the Legislature was discussed and debated at the second reading stage. All members were given ample opportunity to speak on this issue at that time.

For the reasons stated above, and those referred to earlier, I must rule Motion 29 out of order.

Committee of the Whole

The House resolved itself into a Committee of the Whole with Mr. MacDonald in the chair.

During deliberations, Mr Chairman reminded Members that they should refer to each other by constituency rather than by name.

And after some time spent therein, Mr. Speaker resumed the Chair and Mr. MacDonald, the Chairman, after requesting Mr. Speaker revert to the order of Presentations of Committee Reports, reported:

That the Committee had directed him to report progress on the following Bill:

Bill 23, *An Act to Amend the Schools Act*.

And the Committee asked leave to make a further report.

Pursuant to Standing Rule 78.1, Mr. Speaker then put the question on the motion deemed to be before the House, that the report be concurred in, and it was resolved in the affirmative.

And then, 10.57 o'clock p.m. the House adjourned.

The following documents, having been deposited with the Clerk of the House, were deemed laid before the Table of the House pursuant to Standing Rule 39:

Annual Report Advanced Education and Labour 94-95 February 29, 1996

Documents requested in Notices of Motions 22 and 28 February 29, 1996