

52



Journals

(Unrevised)

Legislative Assembly

Province of New Brunswick

Hon. Herménégilde Chiasson
Lieutenant-Governor

Speaker: Hon. Michael Malley

Tuesday, June 20, 2006

Third Session of the 55th Legislative Assembly
Fredericton, New Brunswick

Tuesday, June 20, 2006.

1 o'clock p.m.

Prayers.

Mr. S. Graham offered condolences to the family of the late Walter Ray Craigs, a long-time employee of the New Brunswick Legislative Assembly, and World War II veteran, who died Friday, June 16, 2006. Born in Edinburgh, Scotland, he was known to everyone as "Wally", and for several decades he kept the sound systems and audio boxes working in the legislature.

Mr. Speaker and Hon. Mr. Harrison joined with Mr. S. Graham in this regard.

The Honourable the Premier laid upon the table of the House the following document:

Improving the Way Government Works: Government Response to the Final Report of the Commission on Legislative Democracy.

Mr. Lamrock gave Notice of Motion 102 that on Tuesday, June 27, 2006, he would move the following resolution, seconded by Mr. Burke:

That an address be presented to His Honour the Lieutenant-Governor praying that he cause to be laid upon the table of the House all contracts, agreements and memoranda of understanding, correspondence, including minutes of meetings, letters, e-mails, briefing notes, handwritten notes, reports, analysis and research between N.B. Power Corporation and Carbones del Cerrejon, the Cerrejon Mine and/or the El Cerrejone Zona Norte coal project.

Mr. Arseneault gave Notice of Motion 103 that on Tuesday, June 27, 2006, he would move the following resolution, seconded by Mr. Haché:

That an address be presented to His Honour the Lieutenant-Governor praying that he cause to be laid upon the table of the House the report which identifies the results and recommendations concerning the electric fence pilot project that was undertaken following the increase in moose collisions in the area of Belledune.

Hon. Mr. Harrison, Government House Leader, announced that following Private Members' Motions, it was the intention of government to debate Motion 98, following which the House would resolve itself into a Committee of the Whole to take into consideration Bills 4, 2, 53, 5, 22, 43, and 17.

With the unanimous consent of the House, it was agreed to limit the time reserved for Private Members' Motions to 30 minutes, and to limit the time allowed for each Member to speak on the motion to five minutes.

Mr. Speaker delivered the following ruling:

STATEMENT

Honourable Members,

On Wednesday, June 7, 2006, I reserved my decision on two allegations of breaches of privilege or contempt raised by the Member for Saint John-Kings.

In her submission, the Honourable Member claimed that she found the actions of the Member for Moncton North intimidating when he said "I have indicated that I will sue her. The lawsuit is drafted. It will be served upon her, and she can spend the many, many thousands of dollars defending this, or she can apologize today". The Member for Saint John-Kings stated that the actions of the Member for Moncton North constitute a contempt of this House by attempting to deprive her from fully exercising her freedom of speech. The Honourable Member further claimed that the subsequent service of a notice of action and statement of claim by a staff member of the Official Opposition within the legislative precincts amounted to a contempt. The Member concluded her remarks by tendering the required motions calling on the Assembly to refer the matters raised to the Standing Committee on Privileges.

I would like to thank all honourable members who spoke on this matter. I have reviewed and considered the information provided and I am now ready to give my ruling.

When a claim of privilege is raised by a Member, it is the duty of the Speaker to decide whether there is a *prima facie* case that a breach of privilege has been committed - the Speaker only decides whether on the face of it, the privileges of Members seem to be sufficiently involved to warrant the setting aside of all business of the House to debate the matter.

The essence of privilege is the ability of Members to fulfill their responsibilities. Among the privileges extended to Members individually is freedom of speech. Threatening a Member of the Assembly for comments made in the House although related to the privilege of freedom of speech, is more properly classified as a contempt of the Assembly.

Contempts are offences against the authority or dignity of the House. Generally speaking, any act or omission which obstructs or impedes any Member in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt.

In support of her submission, the Member for Saint John-Kings cited from *May's 23rd Edition* at page 146 where it states:

To attempt to intimidate a Member in his parliamentary conduct by threats is also a contempt ... Actions of this character which have been proceeded against include impugning the conduct of Members and threatening them with further exposure if they took part in debates ...

The Member also cited the following passage from Maingot's *Parliamentary Privilege in Canada, Second Edition*, where it states at page 230:

Members are entitled to go about their parliamentary business undisturbed. The assaulting, menacing, or insulting of any Member on the floor of the House or while he is coming or going to or from the House, or on account of his behavior during a proceeding in Parliament, is a violation of the rights of Parliament... Any form of intimidation ... of a person for or on account of his behavior during a proceeding of Parliament could amount to a contempt.

Did the threat of a lawsuit in the circumstances of this case constitute a contempt by attempting to intimidate the Member and preventing her from fully exercising her freedom of speech?

The parliamentary authorities and precedents are clear. The taking of an action against a Member for what is said in the House or in a Committee is technically a breach of the privilege of freedom of speech because it is declared in article 9 of the Bill of Rights that "freedom of speech and debates ... ought not to be questioned in any court out of Parliament".

Further, threatening a Member with legal action or with the possibility of a trial at some future time for comments made in the House have been considered contempts.

In the matter before me, however, it is important to make a clear distinction between remarks that were made in the House and those that may have been made outside the House. In his First Edition, Maingot states at page 96:

While it is clear that the member is afforded absolute privilege in law for acts done and words said during a parliamentary proceeding, he speaks outside the House at his peril without the protection of parliamentary privilege. In these circumstances, however, he is afforded the protection of the common law like anyone else to the extent that it would apply.

As I understand the facts, according to media reports of June 7, 2006, and the statements in the House by the Member for Moncton North, the Member for Saint John-Kings repeated to the media the assertions made in her Member's Statement of June 6, 2006. The Member for Moncton North indicated that he would sue the Member for Saint John-Kings unless she apologized for the remarks he claimed impugned his reputation. It appears from the Hansard that the Member for Moncton North was referring to the statements made outside the Chamber.

In a 1978 case in the House of Commons that is directly on point, a Member's claim of privilege was unsuccessful when he complained in the House that he was sued for remarks made on a radio talk show when he repeated the substance of remarks he had made earlier during a parliamentary proceeding.

In the matter before me, I conclude that the Member for Moncton North threatened the lawsuit for remarks made to the media by the Member for Saint John-Kings when she repeated in substance the remarks made earlier while engaged in a parliamentary proceeding. The Member for Saint John-Kings does not have a valid claim of privilege because at the time she spoke to the media, she was not engaged in a proceeding in Parliament.

However, I find that it was inappropriate for the Member for Moncton North to use his right to speak on the floor of this House as an avenue to threaten a fellow Member with a lawsuit.

It is my view that such an action may be seen as intimidating, heavy-handed, and may have the effect of diminishing the dignity of this House in the eyes of the public.

While I acknowledge that the Member for Saint John-Kings is concerned and feels aggrieved by actions which she considers breached her privileges as Member and which she may have perceived as intimidating, a *prima facie* case of breach of privilege or contempt has not been made in this instance.

I now turn to the second question of privilege raised by the Member for Saint John-Kings.

The Honourable Member claims that she was served with a notice of action and statement of claim within the legislative precincts by a staff of the Official Opposition on behalf of the Member for Moncton North.

In support of her submission that a civil process cannot be served on a Member in the legislative precincts while the House is sitting, the Honourable Member referred to the following passage from *May's 23rd Edition* at p. 142:

...serving or executing civil or criminal process within the precincts of either House while the House is sitting without obtaining the leave of the House is a contempt

There is a long-standing tradition that process cannot be served in the legislative precincts without the permission of the Speaker. A Member is immune from service within the precincts of the House by virtue of a privilege enjoyed by the House in its corporate capacity on the ground that the service, or attempted service, of process in the precincts of the House is a violation of the dignity of, and an insult to, Parliament and an abuse of the privilege of admission to the precincts extended to persons outside the House.

In the situation at hand, there appears to be some question as to whether service was intended or effected. With respect to the matter of service, it is my understanding that the Member for Saint John-Kings was delivered a copy of a Notice of Action, with a Statement of Claim attached, on the morning of June 7th by a staff member of the Official Opposition.

During submissions on this second question of privilege, both the Opposition House Leader and the Member for Fundy Isles argued that service had not been effected and that the Member was simply provided with a copy of the notice of action and statement of claim as notice of commencement of proceedings. However, the fact remains that the Member for Saint John-Kings believed she had been served.

In deciding the matter before me, I am guided by a 1989 ruling of the House of Commons which dealt with the service of a subpoena on a Member in his parliamentary office.

Speaker Fraser states at page 1952 of *Commons Debates*:

First, I feel that the service of the subpoena within the precincts of the House of Commons was improper without the permission of the Speaker.

Second, I would warn and caution those who attempt to further improper service of subpoenae, that they may be acting in a

manner that is in contempt of the House... Members will note that a Committee of the British House found it a contempt of Parliament to do something that has the object “—of furthering legal proceedings—” which are improper *ab initio*.

Therefore I find that the delivery of a Notice of Action with Statement of Claim attached on the Member for Saint John-Kings in the precincts of the House while the House was in session was improper and caused the Member for Saint John-Kings unnecessary anguish.

Similarly, as this is a first time occurrence, I would warn and caution those who attempt to further improper service, that they may be acting in a manner that is in contempt of the House. I would appeal to my colleagues, should this occur in the future, to refuse to accept any legal process within the precincts and to report to the Speaker should an attempt be made.

Pursuant to Notice of Motion 83, Mr. Huntjens moved the following resolution, seconded by Mr. C. LeBlanc:

WHEREAS a significant portion of New Brunswickers have benefited from rural mail delivery for decades; and

WHEREAS the government of New Brunswick is committed to supporting the rural lifestyle that is a fundamental element of our province; and

WHEREAS it is unrealistic and unfair to expect New Brunswick's rural residents to drive long distances to pick up their mail; and

WHEREAS Canada Post conducted no public consultation regarding its decision to cancel rural mail delivery; and

WHEREAS Canada Post continues to post record profits while increasing prices and reducing services to its customers;

BE IT RESOLVED that the Legislative Assembly of New Brunswick call upon Canada Post to continue providing rural mail delivery in New Brunswick.

And the question being put, a debate ensued.

And after some time, Mr. Lamrock moved in amendment, seconded by Mr. McGinley:

AMENDMENT

That Motion 83 be amended by adding the following:

BE IT FURTHER RESOLVED THAT this Legislative Assembly, while recognizing that the provision of mail services is a federal responsibility, ask the Ministers of Transportation and Public Safety

to reconsider their stance and meet with representatives of Canada Post to see if there are steps that can be taken provincially to restore home mail delivery to some rural areas.

And the question being put, a debate ensued.

And the debate being ended, and the question being put, the amendment was negatived on the following recorded division:

YEAS - 25

Mr. McGinley	Mr. Albert	Mr. Arseneault
Mr. Jamieson	Mr. Ouellette	Mr. Kennedy
Mr. MacIntyre	Ms. Robichaud	Mr. A. LeBlanc
Mr. Allaby	Mr. Lamrock	Mr. Paulin
Mr. S. Graham	Mr. Targett	Mr. Doucet
Mr. Haché	Mr. Burke	Mr. R. Boudreau
Mr. Armstrong	Mr. Murphy	Mr. Brewer
Mr. Landry	Mr. Kenny	Mr. V. Boudreau
Mr. Doherty		

NAYS - 27

Hon. Ms. MacAlpine-Stiles	Hon. Ms. Fowlie	Hon. Mr. Fitch
Hon. Ms. Poirier	Hon. Mr. Steeves	Mr. Huntjens
Hon. Ms. Dubé	Hon. Mr. Williams	Mr. Stiles
Hon. Mr. Volpé	Hon. Mr. Ashfield	Mr. Sherwood
Hon. Mr. Lord	Hon. Mr. MacDonald	Mr. Mesheau
Hon. Mr. Harrison	Hon. Mr. Carr	Ms. Blaney
Hon. Mr. Green	Hon. P. Robichaud	Mr. E. Robichaud
Hon. D. Graham	Hon. Mr. Alward	Mr. C. LeBlanc
Hon. Mr. Mockler	Hon. Mr. Holder	Mr. Betts

And the debate being ended, and the question being put, Motion 83 was resolved in the affirmative.

With leave of the House to dispense with notice, Hon. Mr. Mockler moved the following resolution, seconded by Hon. Mr. Williams, which motion was agreed by unanimous consent to have been deemed read into the record in its entirety: (Motion 98)

WHEREAS UNESCO adopted, by an overwhelming majority, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions at its 33rd General Conference on October 20, 2005;

WHEREAS the convention recognizes cultural diversity as a common heritage of humanity;

WHEREAS cultural diversity, flourishing within a framework of democracy, tolerance, social justice, and mutual respect between

peoples and cultures, is indispensable for peace and security at the local, national, and international levels;

WHEREAS the convention recognizes that cultural activities, goods, and services convey identities, values, and meanings and reaffirms the sovereign right of states to develop cultural policies;

WHEREAS the convention is part of efforts to promote dialogue among cultures and international cooperation;

WHEREAS the relationship of the convention to other treaties, in particular trade agreements, is based on the principles of mutual supportiveness, complementarity, and nonsubordination;

WHEREAS, despite the unrestrictive nature of the dispute settlement mechanism provided for by the convention, its adoption by UNESCO represents a major step forward in protecting and promoting the diversity of cultural expressions;

WHEREAS, in order to enter into force, the convention must be ratified by a minimum of 30 states;

WHEREAS members of the committee on culture adopted an order of initiative on the diversity of cultural expressions;

WHEREAS New Brunswick, the only officially bilingual province in Canada, recognizes the wealth of cultural diversity within the province;

WHEREAS the New Brunswick government recognizes that cultural diversity is vital to the sustainable development of communities;

WHEREAS New Brunswick parliamentarians, in their relations with foreign parliaments and various interparliamentary organizations, have participated in mobilization efforts aimed at promoting and protecting the diversity of cultural expressions,

BE IT THEREFORE RESOLVED that the Legislative Assembly of New Brunswick adopt the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

And the question being put, a debate ensued.

And the debate being ended and the question being put, Motion 98 was resolved in the affirmative.

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

At 5.30 o'clock p.m., the Chairman declared a recess and left the chair to resume again upon the ringing of the bells.

5.45 o'clock p.m.

The Committee resumed with Mr. C. LeBlanc in the chair.

And after some time, Mr. Speaker resumed the chair and Mr. C. LeBlanc, the Chairman, after requesting that Mr. Speaker revert to Presentations of Committee Reports, reported:

That the Committee had directed him to report the following Bills as agreed to:

Bill 2, *Fiscal Responsibility and Balanced Budget Act.*

Bill 4, *Tuition Tax Cash Back Credit Act.*

Bill 5, *Tobacco Damages and Health Care Costs Recovery Act.*

Bill 10, *An Act to Amend the Crown Lands and Forests Act.*

Bill 11, *An Act to Amend the Crown Lands and Forest Act.*

Bill 15, *An Act to Amend the Clean Environment Act.*

Bill 22, *An Act to Amend the Kings Landing Corporation Act.*

Bill 43, *An Act to Amend the Time Definition Act.*

Bill 53, *An Act to Amend the Child and Youth Advocate Act.*

And that the Committee had directed him to report the following Bill agreed to as amended:

Bill 17, *An Act to Amend the Land Titles Act.*

Bill 73, *Seafood Processing 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 resolved in the affirmative.

And then, 6.05 o'clock p.m., the House adjourned.