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Monday, October 3, 2005

Speaker: The Honourable Peter Milliken

Privilege
Order Paper Question No. 151

[Privilege]

Mr. John Cummins (Delta—Richmond East, CPC): Mr. Speaker, I appreciate your patience on this issue.

On Thursday, the parliamentary secretary to the government House leader offered comments on the matter of privilege that I placed before the Chair on September 28. He claimed that the government was duty bound not to reply to my questions.

The government, in its response, claimed it was unable to answer because there was a civil suit against CMHC in the B.C. courts and another where the NRC might be named as a third party.

The parliamentary secretary noted that the Minister of Labour and Housing had referenced a civil suit in a letter to me earlier this year.

I will quote briefly from the words of the parliamentary secretary. He said:

The letter provided background information on the matter of interest to the member. However, given that the matter was at that time before the Supreme Court of British Columbia, the minister explained that it would not be appropriate for him to comment on the particular case.

The government has also declined to provide the material requested by the member because this, itself, would interfere with the court's proceedings.

It is clear that this was not an attempt to interfere with the member's parliamentary work but was done in order to protect the integrity and the work of the B.C. Supreme Court.

The government then tabled a copy of the letter from the Minister of Labour to me related to my request for information on when the government became aware of the leaky condo disaster and what action it took when it became aware of the wet and rotting buildings.

In this letter, the Minister of Labour states:

> I am advised by officials at CMHC that all the documents you referred to are a part of or have been produced in the course of an action filed in the British Columbia Supreme Court against CMHC and, as such, go to issues before the court. Given the circumstances, and as I am sure you appreciate, it would not be appropriate for me to comment.

The government did not table a similar letter to me, dated September 2, from the Minister of Industry in which he states:

> I have been advised by the NRC that it would be inappropriate for me, as Minister of Industry, to respond to your question at this time in light of the discussions and actions presently taking place on this issue before the courts of British Columbia.

I will later provide you, Mr. Speaker, a copy of that letter.

However, in both letters, the government is claiming that the issue of leaky condos is before the courts in British Columbia and, therefore, it is prevented from answering questions.

In its response to Question No. 151, which is the matter under consideration, the Minister of Industry, answering as minister responsible for the National Research Council, states, in part:

> A Third Party Notice has been served on the Attorney General of Canada in the matter of the Owners, *Strata Plan VIS 3861 v. Boso Ventures Inc. et al.* The National Research Council is unable to answer the questions of [the member for Delta—Richmond East] as the matters raised by these questions are presently an issue before the courts in British Columbia.

> In another part of the response to Question No. 151, the Minister of Labour, answering as minister responsible for CMHC, states, "CMHC is a defendant in the matter of *Dan Healy v. CMHC et a*l".

Both these cases are civil matters. To the best of my knowledge, both are at a very preliminary stage. Neither matter has gone to trial. They may well never go to trial. Yet the government refuses to respond to my question in the House of Commons, claiming that it is unable to answer because the matter is before the courts.

The claim that a matter is before the courts and ought not to be referred to in a question or answer in Parliament is not new. A special parliamentary committee, chaired by Speaker Jerome, studied this matter and made a number of important conclusions which are very pertinent to the claim by the parliamentary secretary that the government is not obliged to answer when there is a suit before the courts.

I am referring to the 1977 report of the Special Committee on Rights and Immunities of Members that provides great insight into the appropriateness of the parliamentary secretary's statement in the House on Thursday.

As a noted expert in procedural matters, Mr. Speaker, you are no doubt familiar with this report. I am not an expert on such matters. However, I have had the good fortune to be able to receive the advice of John Holtby, also an expert on the workings of Parliament, who brought this report to my attention.

The Committee on Rights and Immunities of Members was a remarkable committee, containing a number of truly great parliamentarians: Jed Baldwin, who was to become the father of access to information; John Reid, the current access to information commissioner; and Herb Gray and Stanley Knowles. Both Herb Gray and Stanley were deans of this House, men who are still remembered with great respect and affection. It was indeed a stellar committee, composed of unusually talented members of all sides of this House.

In its report, the committee was concerned about the limitation of debate on matters before the courts. At paragraph 12 in the report reference is made to a statement in the House by the former member for Central Nova, the father of the current member for Central Nova. That member's freedom of speech should not be interfered with lightly. He states:

> A Member of Parliament, I submit, has a right and duty to pursue investigations and ask questions on behalf of his constituents and the general public, and any interference or obstructions in this respect must be taken very carefully and supported by citations and precedents of the greatest weight and substance.

The former member for Central Nova was concerned that he not be prevented from questioning the government on a matter where a civil proceeding had begun. This is not unlike the matter before the House, except it is the parliamentary secretary and the ministers who are seeking to shield themselves from answering a question in the House when there is a civil suit against the government.

I hope you will find, Mr. Speaker, that the convention on limiting questions on a matter before the courts, if it exists, applies equally to both the questions posed by members and the responses given by ministers.

The Chair's response to the former member for Central Nova is, therefore, very pertinent here. I draw everyone's attention to paragraph 13, which states:

> The next day the Chair ruled that...the convention did not apply in civil cases until the matter had reached the trial stage:
>
> It is clear...[that] no restriction ought to exist on the right of any member to put questions respecting any matter before the courts particularly those relating to a civil matter and until that matter is at least at trial.

After careful consideration of the practice in this House, the United Kingdom and in Australia, the Jerome committee rejected most of the situations where a claim that a matter ought not be asked or responded to because there was a similar matter before the courts.

At paragraph 22, the committee states:

> It is the view of your committee the justification for the convention has not been established beyond all doubt, although it would not go so far as to recommend that it be totally abolished. Your committee believes, however, that any modification of the practice should be in the direction of greater flexibility rather than stricter application....It follows that the House should not be unduly fettered by a convention, the basis of which is uncertain. On no account should the convention...come to be regarded as a fixed and binding rule. It is not unreasonable, for example, that Parliament should be more limited in its debates concerning judicial proceedings than in the press in reporting such proceedings.

In paragraph 23 the committee further addressed the limited application of the convention. In particular it cautioned ministers about their responses when they might be inclined to claim that they were unable to answer because the matter was before the courts. It states:

> Additionally, a Member who calls for the suppression of discussion of a matter on the grounds of *sub judice* should be obliged to demonstrate to the satisfaction of the Chair that he has reasonable grounds for fearing that prejudice might result. Should a question to a minister touch upon a matter sub judice, it is likely that the minister involved will have more information concerning the matter than the Speaker. The minister might be better able to judge whether answering the question might cause prejudice. In such a situation the minister could refuse to answer the question on these grounds, bearing in mind that refusal to answer a question is his prerogative in any event.

The government's response to Question No. 151 attempts to hide behind the *sub judice* convention, yet the cases referenced by the labour and housing minister and the industry minister are civil have not gone to trial and may never go to trial. The minister has offered no valid justification for failing to answer the question based on this convention and I would ask you to so rule, Mr. Speaker.

Indeed, it is clear in both the letters of the Minister of Labour and Housing and the Minister of Industry that neither minister has sought a justification for the departmental refusal to respond to a parliamentary question related to a civil case not yet gone to trial.

By asking the question, I am not interfering in any civil trial. I am trying to determine if the Government of Canada has acted properly, competently and fairly regarding leaky condos in British Columbia.

The government has adopted the position, a position that the Jerome report noted had troubled Speaker Lamoureux and was specifically rejected by him, that the filing of a writ by anyone in any court anywhere in Canada can be used as a reason to deny information to Parliament.

The House has never recognized such a convention whereby ministers should routinely shield themselves from questions by a claim that the matter might tangentially relate to matters in a civil case that is not yet at trial.

Speaker Jerome in his 1977 report to this House on the rights and immunities of members, while noting that ministers could not be compelled to answer a question, concluded that neither a member's question nor a minister's answer ought to be limited merely because of civil action that has not reached the trial stage.

Indeed, if the government is a party to a civil action it is obliged by law to disclose all it knows in that matter. While the government is not compelled to answer questions in this place, it is not permissible for ministers to claim the reason for not answering is that the government is merely a party in a civil action that is not now at trial, nor may ever reach that stage.

If ministers do not wish to answer they ought to say so, but they ought not claim that they are unable to answer, as the Minister of Industry and the Minister of Labour have done. They are able to answer, but have chosen not to.

The government has chosen to treat the House with contempt. It is hiding behind a civil case not yet gone to trial and may well never go to trial. One of these cases referenced by the government as the reason it was unable to answer my question started in the B.C. courts in 2001 and may not go to trial for several years. Following the government's logic, ministers have been unable to answer questions such as I have put for the past four years. That is nonsense.

There is no convention of this House that prevents a minister from responding to a general question while the government is party to a civil suit prior to the actual trial. The parliamentary secretary and ministers are purporting to use a non-existent convention to shield themselves from answering a simple question. The ministers are treating the House with contempt.

In conclusion, if there is consent, I would table the letter from the hon. Minister of Industry that was referenced in my comments.

The Speaker: Does the hon. member for Delta—Richmond East have unanimous consent to table the letter?

Some hon. members: Agreed.

Mr. John Cummins: Mr. Speaker, this might further clarify the responses. If there is permission, I would also table the letter to the hon. minister responsible for CMHC and to the hon. minister responsible for the National Research Council which triggered the responses referenced in both the government's matter and in mine.

The Speaker: Mr. Speaker, is there unanimous consent for the tabling of these additional letters?

Some hon. members: Agreed.

The Speaker: I thank the hon. member. I will take the matter under advisement and be back to the House in due course