

**NOTES FOR AN OPENING STATEMENT
BY
MS. AUDREY O'BRIEN
CLERK OF THE HOUSE OF COMMONS
BEFORE
THE STANDING COMMITTEE ON PROCEDURE
AND HOUSE AFFAIRS
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REGARDING INTERNET BROADCASTING**

Introduction

I would like to thank the Committee for inviting me to appear today as it reviews the issues regarding Internet broadcasting, or webcasting, of proceedings of the House and its committees. I am accompanied by Mr. Rob Walsh, Law Clerk and Parliamentary Counsel. I intend to speak to the question more generally, notably on the procedural issues involved and with regard to practices in other jurisdictions, and I will ask the Law Clerk to speak to the questions of copyright law and privilege.

As you know, this issue arose in the spring of 2007. An organization, the Friends of Canadian Broadcasting, was webcasting audio and video proceedings of committees on its Web site. On March 23, 2007, the Office of the Law Clerk and Parliamentary Counsel wrote a letter asking them to cease and desist webcasting, podcasting or otherwise broadcasting the House of Commons proceedings. The Parliamentary Counsel advised the group that: “broadcasting without permission of the House of Commons or the appropriate license could be raised in the House of Commons as a breach of privileges” and that “broadcasting of excerpts of the proceedings of the Standing Committees of the House of Commons without authorization may also be considered a contempt of Parliament since the publication of a partial report of the proceedings may be considered by the House of Commons as an obstruction.”

On April 16, 2007, a spokesperson for the Friends of Canadian Broadcasting replied to the letter by stating that they did not wish to remove any of the material from their Web site, but they would be pleased to follow any reasonable procedure that the House would suggest to obtain the necessary permissions and that they would welcome guidance from the House.

Later that month, the Chairs of the Standing Committee on Finance and the Standing Committee on Canadian Heritage wrote to the Chair of this Committee to inform him that an organization, the Friends of Canadian Broadcasting, was offering to its subscribers for downloads or for webcasting proceedings of their respective committees without

authorization. They asked this Committee to look into the policies and recourses available to prevent this infringement on the House's control over the records of its proceedings.

In its meeting of February 10 last, this Committee agreed to hold a meeting today to look into the issues surrounding webcasting, such as establishing rules and/or adding new Standing Orders, determining the authority responsible for this matter here at the House, and how other legislatures deal with this issue.

In reference to the authority for dealing with this issue, as you know, pursuant to Standing Orders 108(3)(a)(v) and 119.1(2), this Committee has the mandate to review and report on the radio and television broadcasting of the proceedings of the House and its committees, and to establish guidelines governing the broadcasting of committee meetings. Consequently, in the absence of a reference from the House of Commons on a question of privilege dealing with the case outlined above, the Standing Orders do give you the authority to deal with the issue more generally.

A brief review of the history of broadcasting at the House of Commons and of the role played by this committee and its predecessors provides further support for this committee's authority to act in this area:

- The general question of radio and television broadcasting of the House of Commons was referred to the Standing Committee on Procedure and Organization in 1970, following debates in the House in 1967 and 1969.
- That committee opted for an "electronic Hansard" approach to any televising of parliamentary proceeding. In their view, rather than journalistic coverage, radio and television broadcasting should be a faithful record of the proceedings and debates of the House in the same sense as is the Official Report of Debates. This fundamental recommendation has been the cornerstone of all subsequent decisions on the broadcasting of the activities of the House of Commons or its committees.

- Broadcasting of proceedings in the House of Commons began in the autumn of 1977.
- At that time, the House of Commons was a pioneer in this area and the idea of gavel-to-gavel coverage was unique.
- Starting in 1977, several committees received special permission for broadcasting from the House of Commons, but this was done on a single issue basis.
- In 1989, the House of Commons Standing Committee on Elections, Privileges, Procedure and Private Members' Business undertook a major study of broadcasting in Parliament. Its report, *Watching the House at Work*, recommended that electronic media be permitted to broadcast committee proceedings. This report was not adopted by the House.
- Also in 1989, a consortium of cable companies and the CBC proposed a new public affairs channel to be known as CPaC.
- In 1991-92, the Standing Committee on House Management conducted a study of the broadcasting of committee proceedings.
 - The Committee recommended that the audio-feed of all public committee meetings should be made available throughout Parliament Hill and could be recorded by the media.
 - It also proposed that a committee room would be equipped for videotaping committees by the House of Commons, subject to the same guidelines, rules and policies that applied to the House itself and that the tapes be made available to the media and broadcast as part of the parliamentary channel programming.
- As the Committee is aware, *ParlVU* was launched initially in April 2003 on the parliamentary Intranet site for Members and their staff. The Canadian public has been able to view *ParlVU* through the parliamentary Web site since February 2, 2004. For the newer members of this Committee who might not be familiar with the term, *ParlVu* is the House of Commons' Webcast service which carries live proceedings of the Commons, televised committee meetings and live audio of all other House of Commons committee meetings that are open to the public.

As this history has indicated, as the environment has evolved, so has the House. The challenge has been to use the electronic media so as to exploit the opportunities they offer, without compromising the integrity of Parliament. This is the same challenge you face today in grappling with the issue of information dissemination.

The House controls the broadcasting of its proceedings, and it is clear that its intent has always been that control of any such broadcasting system, including the safeguarding of the electronic Hansard concept, was to remain with the House and under the supervision of the Speaker acting on behalf of all Members.

The following licence to broadcast is communicated at the beginning and end of all broadcasts and webcasts made by the House of Commons as well as on labels displayed on DVDs and tapes that are provided on demand:

The Speaker of the House of Commons hereby grants permission to use this video content in schools or for purposes of private study, research, criticism or review.

Television and radio broadcasting undertakings, licensed by the Canadian Radio and Television and Telecommunication Committee may make use of recorded excerpts of these televised proceedings in their news and public affairs programmes. Any other commercial use or rebroadcast of these televised proceedings requires the express prior written approval of the Speaker of the House of Commons.

In its 40th Report of the First Session of the 39th Parliament (March 30, 2007), you may recall that this Committee made permanent guidelines for broadcasting committee meetings and, if I may, I would like to quote from the report the following: “The Committee will continue to monitor the broadcasting of committees by the electronic media, and retains the authority pursuant to Standing Orders 108(3)(a)(v) and 119.1(2) to recommend changes to these guidelines.”

RULES ON WEBCASTING

Any rules created to limit the exterior use of the webcasts of the proceedings of the House and its committees will have both advantages and disadvantages.

By adopting Standing Orders or guidelines, the House can seek to enforce the privileges of the House, assert its control over external use, reaffirm its control over the broadcasting of its proceedings, and reassert its authority to punish misuse as a contempt. This would send a signal to potential abusers that the House takes this matter seriously and will not hesitate to take any available measures against them.

An example of such a codification may be found in the rules of the Legislative Assembly of British Columbia. Standing Order 120 of the Assembly states in part:

(1) The magnetic-tape record of the said debates shall be under the control and custody of the Speaker and no duplicate or copy of the magnetic-tape record shall be made without the express authority of the Speaker.

(2) The public use, employment, publication, transmission, or broadcast outside of the House of the magnetic-tape record of the said debates, or any portion thereof, is prohibited without the express authority of the Speaker.

(3) Any person who, without the express authority of the Speaker, offends against sections 1 and 2 of this Order may be considered in contempt of the House.

The primary issue which arises is how the House is to enforce its control. In the current case, the House is dealing with one organization based in Canada, and the House can exercise its privileges if it so wishes. How will the House deal with inappropriate use of its proceedings by entities outside Canada or by Canadians using servers based outside Canada?

This latter issue has already arisen in Australia with regard to defamatory material published on the Internet in one jurisdiction and viewed in another. The Scrutiny of Acts

and Regulations Committee of the Parliament of the Australian state of Victoria has looked at this issue in a parliamentary context. In the Committee's final report in its inquiry into electronic democracy in 2005, it noted that in the case, *Dow Jones & Company Inc. v Gutnick* (2002), parliaments in Australia and elsewhere were presented with new uncertainty about the status of records of parliamentary proceedings that are transported across jurisdictional boundaries. The report states (at page 195):

“As the act of “publication” under this decision is determined by the action of the end user (“pull”), the Parliament of Victoria has limited capacity to control the jurisdiction of publication (or multiple publications of proceedings).

Thus, the Committee recognises a situation in which matters relating to an individual or company that has residency or significant financial interest in another State of the Commonwealth are discussed in the Victorian Parliament in the public interest, but ambiguity regarding the reciprocal nature of Privilege and new media technology gives rise to litigation. This may give rise to a charge of defamation outside of Victoria, resulting from webcast material or Hansard online.”

The Committee went on to note:

“The Committee does recognise that selective redistribution of recordings of the proceedings of Parliament could be used with malice by a MP or person, allowing the unlimited repetition of a defamatory claim made in Parliament in such a manner as to undermine the established legal protection to Members afforded by principle of Parliamentary Privilege.”

Among the disadvantages of creating rules to limit the exterior use of webcasts of the proceedings, may I point to the resources, financial and human, that would be required to monitor the Internet and pursue cases of abuse. It would certainly be a challenge to enforce guidelines given the number of unsanctioned webcasts that have already occurred. A very simple search of YouTube turns up a large number of sittings of the House and its committees that are already being webcast. In addition, how would

the House deal with organizations who do not act out of malicious intent and in which case, a pursuit could appear vindictive on the part of the House?

On the other hand, if the House does not enforce its control over the broadcasting of its proceedings and those of its committees, it could undermine its authority to do so in future.

COPYRIGHT AND THE USE OF HOUSE MATERIAL

A number of legislatures in Canada and abroad have on their Web sites copyright statements that define the permitted uses of the material found on their Web sites. For example, the United Kingdom Parliament's copyright statement, which can easily be found on their Web site, reads as follows:

All Parliamentary copyrights are reserved. The material listed may be reproduced without formal permission for the purposes of non-commercial research, private study and for criticism, review and news reporting provided that the material is appropriately attributed. For any other re-use of the material you are required to apply for a Click-Use Parliamentary Licence from the Office of Public Sector Information. The use of images and broadcasts of the Proceedings of Parliament fall outside the scope of the Parliamentary Licence.

The Ontario Assembly's copyright statement encourages the use of its material while specifying the conditions:

The Legislative Assembly of Ontario supports and encourages the dissemination and exchange of information. You may download, display, print and reproduce material on this site for non-commercial use only. However, you are advised that the material in this Website is protected by

copyright, and that the Legislative Assembly asserts the right to have the material remain unaltered and to have the source acknowledged.

No permission to reproduce, adapt or distribute this copyright material, other than that expressly stated above, is to be implied by the availability of the material or images on this site. In particular, the Crest and Coat of Arms of the Legislative Assembly are trademarked business symbols and are reserved for the official use of the Legislative Assembly of Ontario and may not be used for purposes other than those authorized above.

WEBCASTING IN OTHER JURISDICTIONS

Most of the jurisdictions in Canada and other national parliaments broadcast their proceedings in some way. Unlike our Parliament, most Canadian legislative assemblies have copyright statements which restrict the use and reproduction of material available on their Web sites. Like our rules, theirs are also silent on the reproduction of webcasts.

The United Kingdom Parliament, in its copyright rules regarding video and audio broadcasts of procedural coverage, states: “All live and archive video broadcasts of procedural coverage is subject to Parliamentary Copyright. They may not be directly linked to, reproduced, copied or downloaded without formal agreement from PARBUL (Parliamentary Broadcasting Unit Limited) or the Director of Parliamentary Broadcasting.”

In the Ontario Legislative Assembly, the Standing Committee on the Legislative Assembly is empowered to act as an advisor body to the Speaker and the House on the television broadcast system and conducts reviews, at least on an annual basis, of the televising of the legislative proceedings and of the guidelines established by the House with respect to the television broadcasting system.

In its broadcasting guidelines, the Saskatchewan Legislative Assembly forbids the use of audio and video tapes of the legislative proceedings during any Saskatchewan provincial election or by-election.

USE OF COMMITTEE PROCEEDINGS BY OUTSIDERS

Although we are discussing webcasting of committee proceedings, the manner in which we treat written submissions to committees may be helpful to illustrate the complexity of the issue we are facing. As noted in *House of Commons Procedure and Practice* at page 865, a document submitted to a committee becomes the property of the committee and forms part of the committee's records. The document is also protected by parliamentary privilege. It is not always clear to a committee that a submission is intended to be published elsewhere and what is the status of such a document when it is published elsewhere. We have not yet had to deal with this question, but it is related to the issue before us.

In some jurisdictions, for example in committees of the House of Commons of the United Kingdom, potential witnesses are advised that if they wish to distribute or publish their evidence prior to their appearance before a committee, they must acquire the permission of the committee. The House of Lords on the other hand treats submissions as being in the public domain unless other arrangements are made, and allows free reproduction and use of the material, provided that the fact that it was originally prepared for the Lord's committee is acknowledged.

It may be that the approach of the House of Lords could serve to solve the current matter of the Friends of Canadian Broadcasting and for dealing with reuse of submissions and testimony in the future.

STANDING ORDERS ON BROADCASTING

Further to this Committee's 40th Report on the broadcasting guidelines that I mentioned earlier and which the House adopted on March 30, 2007, it would appear to me that your Committee has the authority to look into these matters without an order of reference from the House, but if the Committee feels that this should be made clear in the Standing Orders, then Standing Order 108(3)(a)(v) could be amended to read as follows:

“(v) the review of and report on the transmission or broadcast by any means of the video and audio of the proceedings of the House and its committees;”

As regards codifying the House's authority over the transmission of its proceedings and those of its committee, I would be happy to have my staff work with the Committee to develop appropriate Standing Orders, should the Committee wish to do so.

OPTIONS

So what actions can be taken?

1. As is done in other parliaments, the House and its committees could post a detailed copyright statement containing a clear warning of the consequences of misuse.
2. The House could adopt Standing Orders defining control over the broadcasting of all forms of the House's proceedings, including consequences of misuse, as has been done in the Legislative Assembly of British Columbia, and/or broadcasting guidelines as has been done in the legislative assemblies of Ontario and Saskatchewan.
3. The House could put in place processes for monitoring uploads of its proceedings to the Internet by others.

This brings me to the end of my presentation this morning. Thank you very much, Mr. Chairman. I would be pleased to take questions at this time.