

LEGAL REPORT

EXPUNGING UNWELCOME POLITICAL TESTIMONY: A CULTURE OF CENSORSHIP?

by Jamie Cameron

THE ORDER TO EXPUNGE

Recently, a parliamentary committee conducting hearings on Bill C-113, which proposes changes to the *Unemployment Insurance Act*, voted to expunge the entire testimony of a witness. The witness, representing the International Association of Machinists and Aerospace Workers, had stated, "[w]e find it particularly despicable that anyone leaving a job is treated as an abuser of the system."

To that he had added, "[w]ell, the proportion of UI recipients cheating the system is less than the proportion of Tory MPs convicted of corruption." The vote to expunge followed the witness's refusal to withdraw that "one extremely inflammatory and accusatory statement about government members."

The next day a member of the committee raised a point of privilege in the House. *Beauchesne's* 6th edition, citation 109, states that "[w]itnesses before committees share the same privilege and freedom of speech as members." By silencing the witness, the member from Timmins Chapleau argued, the government majority on the committee had committed a breach of parliamentary privilege.

The speaker reserved decision on the point. By the time he ruled, a subsequent witness had read the expunged testimony back into the record, without incident. Expressing his reluctance to interfere in the proceedings of a committee, the

speaker ruled that the decision to erase a witness's testimony was within the committee's powers.

THE BROUHAHA

Stevie Cameron's column in *The Globe and Mail* described the incident as "a blow to freedom of speech in Canada." Later the same week, after lamenting that free speech is not a "living part of our political culture," a *Globe* editorial portrayed the decision to erase the union's brief as "an exercise in Stalinist historiography."

The Office of the Speaker responded with a letter that chided Cameron and *The Globe* for a "gross misrepresentation of the facts, of the role of the speaker, and of history."

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A second published letter complained that, in her "crusade" to heap scorn on parliamentarians, Cameron failed to understand "the fundamental working of the House of Commons and its committees."

Most telling, perhaps, was a letter by Doug Fee, MP from Red Deer, Alberta and chair of the committee. As he explained, the issue was not one of censorship but "more appropriately" one of "respect."

RESPECT OR CENSORSHIP?

In the House, the Hon. Warren Allmand had spoken in support of MP Samson's request for a ruling on privilege. In Allmand's view, it would be "totally unparliamentary" if the House accepted a procedure that would allow a committee to expunge proceedings, whenever it "simply [does] not like the tone of debate or what is said."

In defence of his ruling, the speaker referred to a standing order that authorizes committees to choose to publish all or a portion of the evidence they receive. By necessary implication, he concluded, committees can likewise choose not to publish any of the evidence they hear. Subsequently, in its letter to *The Globe*, the Office of the Speaker maintained that parliamentary tradition does not permit the speaker to "comment on legal or political matters."

Moreover, Fee's letter to *The Globe* declared that the witness's remarks would have been ruled out of order in the House, not because "politicians can't handle hearing nasty remarks," but because "there should be respect for the institution of Parliament."

However, as Allmand had pointed out, the great bulk of the witness's testimony had been useful, and had made many telling points. If the committee truly was concerned about one remark, he said, that remark could have been expunged, leaving the rest of the testimony intact.

The committee's action against the witness was surely punitive. In the circumstances, one can certainly argue that respect for Parliament demanded protection of the privilege, not censorship.

Why, then, did the speaker rule against the claim? Committee matters normally come before the House through the presentation of a report. To permit disgruntled committee members to raise complaints in the House might undermine the committee system and waste Parliament's precious time. As one letter in *The Globe* suggested, conflicts in committee should be resolved in committee, "not in the House of Commons and not by fiat of the speaker acting alone."

Yet more was at stake than a partisan dispute about the work and operation of a committee. As MPs observed, witnesses before committees

enjoy the same privileges as members. If it is permissible for a majority of committee members to vote to strike testimony, it would be equally permissible for a majority in the House to strike unwelcome debate from *Hansard*. To them, the incident raised larger issues about the integrity of parliamentary debate.


FREEDOM OF EXPRESSION AND POLITICAL CULTURE

Last month, this column commented on the Supreme Court of Canada's decision, in rejecting camera access to the legislatures, that the *Charter* does not apply to Nova Scotia's Legislative Assembly (see "Cameras in the Legislature: Stran-

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gers or Watchdogs?" (March 1993) 1 *Canada Watch* 89). There, McLachlin J. stated that the legislative branch must enjoy a certain autonomy, "absolutely and unconditionally," which even the Crown and courts cannot touch.

Neither the legislatures nor the courts have shown a willingness to protect expressive freedom in our representative institutions. Were it not for Stevie Cameron and *The Globe and Mail*, the public might still be unaware that a parliamentary committee succeeded in purging testimony from the public record.

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CW UPDATE

THE MONTH IN REVIEW

by Jonathan Batty

CONSERVATIVE LEADERSHIP CAMPAIGN

Defence Minister Kim Campbell announced her candidacy in the race to succeed Prime Minister Brian Mulroney on March 26. Widely believed to be the front-runner, she was the fifth entry into the field. Jean Charest, the federal minister of the environment and only other Cabinet contender, announced his candidacy on March 16. MP Patrick Boyer was first to declare his candidacy on March 9. Halton-Peel MP Garth Turner declared on March 17 and Tory whip James Edwards declared on March 22. No other Cabinet ministers are expected to join the race.

Several ministers ruled out joining the race after exploring their chances, and concluding that Campbell was likely to win. These included Perrin Beatty, Thomas Hockin, Barbara McDougall, Otto Jelinek, Michael Wilson, Benoit Bouchard, Bernard Valcourt, and Don Mazankowski.

The decision of so many prominent Cabinet ministers not to run reflects a general assumption within the Conservative party that Campbell is the most likely to lead the party to re-election. A *Maclean's*/Compass survey conducted from March 1 to 4, of 450 delegates from the 1991 Conservative policy convention, revealed that Campbell was considered to have the best chances for electoral success by a very wide margin.

CONFLICTING NATIONAL OPINION POLL RESULTS

Recent opinion polls have suggested the Conservative party under Kim Campbell would challenge the Liberals in voter popularity and would stand an excellent chance of being re-elected. A *Globe and Mail* telephone survey of 1,439 voters, conducted by ComQuest from March 8 to 15, found that 45 percent of decided voters said they would vote for the Conservatives led by Campbell, compared with only 32 percent who would vote Liberal. The NDP received 9 percent, Reform 10 percent, and Bloc québécois 4 percent.

An Angus Reid/Southam News poll of 1,500 voters, from March 15 to 18, gave a Campbell-led Conservative party 43 percent support, with the Liberals trailing at 25 percent, the NDP at 11 percent, and Reform at 10 percent. In comparison, the Tories under Jean Charest garnered only 25 percent, compared with 35 percent for the Liberals and 15 percent for the NDP.

However, an Environics poll conducted between March 10 and 25 that involved in-house interviews with 1,988 voters showed the Liberals slightly ahead. According to Environics, the party standings are: Liberal 36 percent, Conservatives 33 percent, NDP 12 percent, Reform 9 percent, and Bloc québécois 9 percent.

It is noteworthy that the respondents in the polls were all specifically asked about their intentions in the event that Kim Campbell is chosen as prime minister and Conservative leader. When respondents were asked simply about their voting intentions without any reference to leadership, Conservative support was substantially lower. (See chart opposite.)