

*As approved, with changes,
April 1, 1968*

Paper S-124

S.M. 1/4/68

*Openness of Senate
Senate procedures*

SENATE COMMITTEE ON "OPENNESS OF SENATE"

At the Senate Meeting of March 4, 1968, the Committee, in consultation with the Chairman of Senate, was asked to draw up rules, procedures and arrangements for conducting open meetings of Senate for acceptance at the April meeting of Senate, with the May meeting to be the first open meeting.

This Committee respectfully presents its report upon the above matters.

J.L. Dampier
M.A. Lebowitz
John Walkley - Convenor
Stan Wong

1 April, 1968

1. RULES PERTAINING TO VISITORS

It was agreed that the 'rules' concerning visitors must be kept simple and that the behaviour of visitors must be left to the good taste of our visitors. Senate retains at all times the right to go into recess and reconvene in closed session. This is a simple and adequate way of Senate indicating that it disapproves of any attempt by a visitor or visitors to interfere with the business of Senate.

We suggest then that the following 'rules' are sufficient:

- (i) that visitors are expected to be seated before the start of a Senate meeting;
- (ii) that visitors can leave or enter the meeting chamber at any time they wish but are advised to do so between agenda items;
- (iii) that at all times visitors conduct themselves in such a manner as not to interfere with the business of Senate.

2. THE OPERATION AND AGENDA OF SENATE MEETINGS

- (i) That the agenda for Senate meetings shall be split into two: that for the open session, which shall be publicly displayed, and that for the closed session which shall have the circulation of the present Minutes;
- (ii) that supporting documents for items in open or closed session shall continue to have only the present circulation;
- (iii) that an agenda item called "Confidential matters" shall be placed as a regular item at the end of the agenda for the open session and at this item Senate moves into closed session;
- (iv) that the placing of agenda items into closed session shall be left to the discretion of the Registrar but that a Senator can request any item placed upon the agenda by himself to be put into the open or the closed session;

deleted (v)

that upon any request that Senate move into "special session" or of the "committee of the whole" then the discussion of that item be stopped and the item transferred to become the first item of the immediately following closed session;

amended

- (vi) that at any time ^{prior to or during discussion of} an item in the agenda of the open session ^{it} can be placed into the following closed session by a successful motion to have it so placed, the motion requiring only a simple majority. The motion may be spoken to only by the mover and by one other person who wishes to speak against the motion. A similar procedure shall be followed if it is wished that an item be moved from the closed to the following open session;

other than the inner and second

2. (vii) that the part played by any individual in closed session remain always private to Senate. Minutes of the closed session should read as the present Senate Minutes. Any vote taken in closed session shall be recorded by numbers only unless any person wishes to have his vote registered.

3. ARRANGEMENTS FOR OPEN MEETINGS

This Committee felt that the present seating of members of Senate is bad and that Senate might find it sensible to discuss this matter.

With regard to open Senate we recognise that there will be a large variation, from meeting to meeting, in the numbers of visitors we might expect. The present room, the Board Room, could hold at the most 30 visitors. The inner Faculty dining room, though of the same floor area could be made to hold more visitors. It is also likely that in this room a U-shaped table configuration could be used and that a better seating arrangement for the Senators would result. We have discussed the possible use of small lecture theatres for Senate meetings but recognise that the added problems (mostly concerned with audibility) militate against their use.

If we wish to allow for a large number of visitors we find three possible alternatives:-

- (i) to continue to hold Senate meetings in a relatively small room (the Board Room or the Inner Dining Room) and to transmit the proceedings to a larger auditorium. Some difficulties must be overcome if this is to be at all successful;
- (ii) to use the regular Faculty Dining Room (i.e. the Outer Dining Room) and to open this on to the Faculty Lounge. It is then possible to seat Senate comfortably and adequately in the Dining Room area and to seat visitors in the Lounge area. This solution might face some accoustical difficulties but has the tremendous advantage that the visitors' gallery is now well separated from Senate;
- (iii) to make use of the theatre. The implications of this are obvious, the advantages and the disadvantages are equally obvious.

The Committee suggests:

- (i) that all visitors be admitted to the Senate meeting by showing a pass-card. This pass-card is to be issued generally, before each meeting, at the main desk in the Registrar's Office. Certain visitors (e.g. the Press) should have a permanent card;
- (ii) the number of pass-cards is obviously limited to the accommodation available but after all cards have been issued a list of those requesting cards should be kept. If the demand is sufficiently

3. large then the location of that particular Senate meeting should be changed in an attempt to try and satisfy the demand;
- (iii) that inasmuch as the Senate meeting of May 6th is likely to attract a fairly large number of student visitors and that the Press, generally, will wish to attend, the alternative (ii) above be adopted (use of the main Faculty Dining Area with visitors in the outer Lounge.

.....

GORDON B. SHRUM
L. KEITH LIDDLE
SHOLTO HEBENTON
R. PAUL BECKMANN
WINTON K. DERBY

TELEPHONE: 602-3100

SHRUM, LIDDLE & HEBENTON

Senate Procedure
Paper S-124(a)

BARRISTERS AND SOLICITORS, 1614 BARRARD BUILDING, 1030 WEST GEORGIA ST., VANCOUVER 5, B.C.

S.M. 1/4/68

March 29, 1968

Simon Fraser University
Burnaby 2, B. C.

Attention: Mr. D.A. Meyers, Acting Registrar

Dear Sirs:

Re: Senate Privilege

You have inquired concerning the applicability of parliamentary immunity to Senators speaking at open meetings of the Senate at Simon Fraser University. You have also inquired about other implications or procedures of which you should be aware in conducting open meetings.

First, the matter of immunity. Parliament itself and certain other bodies such as courts enjoy a form of immunity known as absolute privilege. The effect of absolute privilege is that a speaker cannot be held liable for defamation even if, in speaking falsely about some person, he knew he was speaking falsely. This form of immunity does not apply to the Senate at Simon Fraser University.

Fortunately there is a second type of immunity termed qualified privilege which does protect Senate meetings. A person speaking with the protection of qualified privilege will not be liable for a false statement if he did not know it was false. That is, the speaker may speak falsely as long as he speaks honestly. The privilege is defeated if the speaker spoke with "malice". The concept of malice has escaped precise judicial definition. Courts find malice if the speaker was influenced by spite or improper motive. Malice may be found from the relations between the parties or if a speaker's statement is in excess of what the occasion warrants or if it is unnecessarily violent or abusive. Further, in order to retain the shield of qualified privilege the statement must be relevant. A favorite example used in the cases (and taken from a case involving absolute not

qualified privilege) is the question and answer "Were you at York on June 1st? Yes, and X picked my pocket there." The remark about X is not protected. So the speakers in the Senate should be relevant.

We should also point out that truth is a complete defence to any action for defamation. Any person is free to injure the reputation of any other person as long as the words spoken are true.

In summary, as far as civil liability is concerned, Senators may with confidence speak freely as long as they are sure of the truth of their statements. Even if they cannot be sure, they may still speak if they honestly believe what they say, their comments being relevant and not affected by any malice.

The criminal law as well as the civil law imposes restrictions on freedom of speech. There is a crime known as defamatory libel which roughly corresponds to the civil action. With respect to a speech in the University Senate honest belief in the truth of the statement would be a defence to a charge alleging this crime. The Criminal Code contains a host of other restrictions on free speech. Among the crimes involving speech are extortion, blasphemous libel, counselling an offence, conspiracy to murder, conspiracy in restraint of trade, inciting to mutiny, spreading false news, giving false alarms and causing a disturbance by screaming, shouting, swearing, singing or using insulting or obscene language. However we doubt whether a charge involving any of these matters would ever be laid with respect to a speech in the Senate. There is one matter which might be referred to, sedition. The laws on sedition should not inhibit free discussion on matters of government-university relations because, notwithstanding a rather nebulous definition of sedition, the Criminal Code excuses a person who intends, in good faith,

- (a) to show that Her Majesty has been misled or mistaken in her measures,
- (b) to point out errors or defects in
 - (i) the government or constitution of Canada or a province,
 - (ii) the Parliament of Canada or the legislature of a province, or
 - (iii) the administration of justice in Canada,
- (c) to procure, by lawful means, the alteration of any matter of government in Canada, or
- (d) to point out, for the purpose of removal,

S.M. 1/4/68

Senate Procedure...

- 3 -

matters that produce or tend to produce feelings of hostility and ill-will between different classes of persons in Canada.

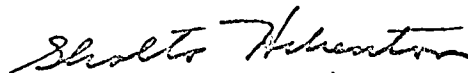
Finally, you have inquired whether there are any other implications or procedures of which you should be aware in conducting public meetings. We have done our best to canvass the whole range of the law. It is impossible to be absolutely certain but there do not appear to be any further legal issues which should be brought to your attention. Some of the Senators, for example, might have information which if released in the Senate would make them subject to prosecution under the Official Secrets Act. But we presume that in these and other particular circumstances the individual Senators will be aware of any limitations on their actions.

As far as procedures are concerned, the procedures which you have been using in private meetings will be satisfactory together with those procedures which you outlined in your letter of March 13th requiring orderly behaviour on the part of visitors.

We close by noting that for convenience in this letter we have referred to all Senate proceedings as "speech". We appreciate that much of the Senate's business is conducted through written material. Though there are some technical differences in the legal treatment of spoken and written words, the general principles concerning liability and privilege which we have described in this letter apply equally to both.

Yours truly,

SHRUM, LIDDLE & HEBENTON



Sholto Heberton

SH/ib