

JOURNAL OF THE LEGISLATIVE ASSEMBLY

WEDNESDAY, 22 NOVEMBER 2017

The House met at 2:00 p.m.

Prayers

Routine Proceedings

Journals

Journals for Friday, 17 November, 2017 were adopted by the House without amendment.

Doors were opened

Matters of Privilege

Hon. Mr. Speaker made the following ruling:

“Honourable Members, on Friday, November 17th, the Honourable Member for Georgetown-St. Peters rose in this house on a point of order and asserted that the twitter account for the Liberal Party of Prince Edward Island contained detail on the 2018-2019 Capital Estimates of Revenue and Expenditure before the actual estimates had been tabled in this Chamber. The Honourable Member requested that I review this matter to determine if this practice was in keeping with the Rules of the Legislative Assembly respecting the tabling of documents and the capital estimate procedure.

On Tuesday, November 21st, the Honourable Member for Georgetown-St. Peters rose in this house on a point of order and requested that I review a matter associated with the posting of a political advertisement in the Guardian newspaper for the Liberal candidate in the District 11 by-election that included details of the capital estimates that should not have been known to the district or the candidate before the advertising deadlines for the newspaper and, finally, also on November 21st,

the Honourable Member for Kensington-Malpeque rose on a point of order, requested that I review the matter of a major government announcement being made on a cultural strategy for Prince Edward Island being made outside of this House when the House is in session despite there being numerous interventions from the Speaker of the Legislative Assembly, past and present, that major Government announcements, out of respect for the Legislative Assembly, ought to be made in the Legislative Assembly when the House is in session.

Honourable Members, it is my intention to rule on all three of these matters today as all are very much related. I'd ask all members to keep in mind that while the following references are to budget, which generally refer to main budget estimates, this should also apply to capital budget estimates presented in this House.

House of Commons Procedure and Practice states as follows on budget secrecy:

There is a long-standing tradition of keeping the contents of the budget secret until the Minister of Finance actually presents it in the House. Respect for a budget's impact on financial markets has often been used as the basis of questions of privilege or points of order

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respecting the validity of budget proceedings where there has been a budget “leak”.^[411] However, Speakers of the Canadian House have maintained that secrecy is a matter of parliamentary convention, rather than one of privilege.^[412] Speaker Sauvé noted that while a breach of budget secrecy

... might have a very negative impact on business or on the stock market [and] might cause some people to receive revenues which they would not otherwise have been able to obtain ... [it has] no impact on the privileges of a member. [It] might do harm, irrevocable in some cases, to persons or institutions, but this has nothing to do with privilege. It has to do with the conduct of a minister in the exercise of his administrative responsibility.^[413]

In order that Members of Parliament and the news media are able to respond to the budget speech, a closed-door informal session, or “lock-up”, is usually provided for them by Finance Department officials several hours before the actual budget presentation in the House.^[414] Although questions of privilege have been raised concerning lock-ups, the Speaker has ruled that admission to lock-ups and the nature of lock-ups are not a matter for the Chair to decide.^[415]

Joseph Maingot in *Parliamentary Privilege in Canada*, states:

Parliamentary privilege is concerned with the special rights of members, not in their capacity as ministers or as party leaders, whips or parliamentary secretaries, but strictly in their capacity as members in their parliamentary work. Therefore, allegations of misjudgement, or mismanagement, or maladministration on the part of the minister in the performance of his ministerial duties do not come within the purview of parliamentary privilege. And neither does an allegation that a minister permitted a budget leak constitute a matter of privilege.

***Beauchesne's Parliamentary Rules and Forms*, 6th Edition, citation 31 provides:**

Budget secrecy is a political convention, and if breached, the Minister may be attacked through a substantive motion, but not through a question of privilege.

and finally,

David McGee's *Parliamentary Practice in New Zealand*, states that:

Certainly, premature disclosure of the Budget has important political implications, though it is not a question of privilege.

Honourable Members, guided by these parliamentary authorities, I must find that the serious concerns raised by the Honourable Member for Georgetown - St. Peters on the capital budget and the assertion that budget detail was provided to others outside of this place do not meet the test of parliamentary privilege nor do they constitute a point of order. As your Speaker, I am constrained by these limitations on this by Rule 2 of the Rules of the Legislative Assembly of PEI which provides that in all cases not provided for in the Rules or by sessional or other orders, the usages and customs of the House of Commons of Canada in force at the time shall be followed so far as they are applicable to this House and I have provided these authorities above.

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I wish, however, Honourable Members, to be very clear. I am bound by these authorities but I am not all pleased with the events surrounding the introduction of the capital estimates last Friday.

There is a disturbing trend that I feel, as your Speaker, that I must address. On numerous occasions Speakers have reminded successive governments that major announcements ought to be made in the House, not outside of it, when the Legislative Assembly is in session. This is done out of respect for our provincial parliament collectively and all members individually. It appears clear. Capital budget detail was released to others outside of the membership of this House before the actual document was tabled in the Legislature. I myself witnessed individuals other than members in this Chamber who had possession of the actual capital estimate budget document before it was tabled. I've reviewed the process followed by the department of Finance in the release of this budget and also note that Government's own press release on the capital estimates, including a link to the entire capital estimates, was posted at 11:45 am BEFORE the budget was formally tabled in this House at 12:16 pm by the Minister. I can also confirm that all Members of the Legislative Assembly and staff in caucus offices were given advance copies of the budget at 9:00 am with a cover letter from the Minister. That letter states that the budget was being provided under the strict confidentiality associated with budgets in the parliamentary system prior to their formal presentation to the Legislature and that members understand that they are not to release this information to anyone, with the possible exception of a very restricted number of resource staff assisting with analysis.

In raising the matter, the Honourable member for Georgetown-St. Peters implied that the rules or privileges of this House collectively, and members individually, had been breached as a result of others, beyond the membership of this House (and specifically the Liberal Party of Prince Edward Island) having details of the capital budget before members received them. Honourable members, I've address this above from the perspective of parliamentary authorities and I have confirmed with the Office of the Clerk that the budget was not distributed by his office prior to being tabled in the Legislative Assembly at 12:16 pm.

I've also reviewed the Liberal Party of Prince Edward Island's twitter account and it appears that capital estimate detail was being tweeted beginning at 11:41 am in what appears to coincide with the announcements being made by the Minister of Finance in his capital budget statement. It could also well be the case that the Liberal Party of PEI, and many others, had access to budget detail; however, as noted above, this does not meet the test of parliamentary privilege nor a point of order.

Regardless Honourable members, the foregoing chain of events, lack of careful due process and disrespect to this House is troubling. There are a number of matters, which, in my opinion, must be reviewed to ensure that dignity and respect for this place during the budget process is maintained:

- 1) All caucus offices and certain staff in those offices, had access to the actual budget document outside of this House under strict conditions as noted in the Minister of Finance's letter above. Only the Official Opposition Office and the Third Party Office received this letter advising of strict confidentiality. The Government Members Office did not receive the letter advising of confidentiality yet all members and staff in that office, as well as the other caucus offices, were in possession of the capital budget document. This process, and the communication protocols surrounding Government's release of budget detail, must be reviewed to ensure that respect and dignity is accorded to this House and to all members during the

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budgetary, and other, processes. In Government's review of this matter, consideration should be given to the advisability of conducting a traditional lock-up or embargo and emerging electronic communication initiatives must be assessed, and,

- 2) the procedure followed for the introduction of the capital estimates in the future will ensure that the capital budget document is presented to the House, and made openly available (without restriction) to all members in the House, before the Minister of Finance commences with a capital budget statement or budget speech. Due to the unusually lengthy Minister of Finance capital budget statement (20 minutes) last Friday, a full 35 minutes elapsed from the start of the capital estimate statement until the actual capital budget was tabled in the House,

Finally Honourable Members, on the point of order raised by the Member for Kensington-Malpeque yesterday on major Government announcements being made outside of this House when the House is in session, I wish to remind Government, as have many Speakers past, that it is customary that major Government initiatives or announcements, when the House is in session, are, out of respect for the Legislative Assembly and its Members, made in the Legislative Assembly. This includes budgets and any major government initiative.

There is no rule to this effect Honourable Members. It is custom, practice and an expectation of the House that this fundamental show of respect is observed. Government has been repeatedly reminded of it yet, almost every session of the Legislature, there is an example of this disrespect...and it is troubling. If Members, in the conduct of your serious responsibilities on behalf of Prince Edward Islanders do not have respect for each other and this parliament, you cannot realistically expect those outside this place to show any respect for the work you conduct here on their behalf.

Thank you for your attention.”

Statements by Members

2:26 Bush Dumville (West Royalty-Springvale) expressed his support for efforts to make adoption records more open and accessible.

2:27 Hal Perry (Tignish-Palmer Road) congratulated the recently retired W/O Al McDonald on his career in the Canadian military and as Sergeant-at-Arms and Director of Security of the Legislative of Assembly of PEI.

2:30 Bradley G. Trivers (Rustico-Emerald) congratulated 4H members Reagan Bouma and Megan Vanderkloet on their success at the recent Royal Agricultural Winter Fair in Toronto.

2:32

Questions by Members

Statements by Ministers

3:12 Hon. Premier announced the establishment of a Housing Supply Task Force.

3:15 Hon. Leader of the Opposition and Leader of the Third Party added their comments.

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3:19 Hon. Robert Henderson (Health and Wellness) announced that CannonDesign Ltd has been awarded the tender to carry out the master program and planning for a mental health and addictions campus to replace Hillsborough Hospital.

3:21 Sidney MacEwen (Morell-Mermaid) and Leader of the Third Party added their comments.

3:24 Hon. Allen Roach (Finance) summarized the Fall 2017 Economic Update and 2017-2018 Second Quarter Forecast.

3:27 Darlene Compton (Belfast-Murray River) and Leader of the Third Party added their comments.

Presenting and Receiving Petitions

None

Tabling of Documents

Hon. Allen Roach (Finance) tabled,

1st, by leave, the Second Quarter Forecast for 2017-2018;

2nd, by leave, the Fall 2017 Economic Update for the Province of Prince Edward Island.

Reports by Committees

None

Introduction of Government Bills

None

Government Motions

None

Orders Of The Day (Government)

3:33 The Order of the Day being read for the consideration of the Capital Estimates in Committee, Kathleen Casey (Charlottetown-Lewis Point) took the Chair of the Committee to further consider the Capital Estimates.

Hon. Mr. Speaker resumed the Chair and the Chairperson reported progress and asked leave to sit again, to which the House agreed.

Adjournment

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5:00 On Motion of Hon. Alan McIsaac (Agriculture and Fisheries), seconded by Bush Dumville (West Royalty-Springvale), the House adjourned until 2:00 p.m. on Thursday, November 23, 2017.

Charles H. MacKay
Clerk of the Legislative Assembly