

JOURNAL OF THE LEGISLATIVE ASSEMBLY

TUESDAY, 17 APRIL 2018

The House met at 2:00 p.m.

Prayers

Routine Proceedings

Journals

Journals for Thursday, 12 April 2018 were adopted by the House without amendment.

Doors were opened

Matters of Privilege

Hon. Mr. Speaker made the following ruling:

“Honourable members, on Wednesday, April 11, the Honourable Member for Georgetown-St. Peters rose on a Point of Order, and asserted that the Minister of Justice and Public Safety and the Attorney General prejudged a trial currently before the courts and that given his responsibilities as Attorney General, the matter should be addressed.

Next, the Honourable Minister of Justice and Public Safety rose on two matters:

The first, on a Point of Privilege, objected to comments made by the Honourable Member from West Royalty-Springvale, and cited that the Honourable Member breached caucus confidentiality by referring to confidential meetings during his line of questioning during oral question period; and second, on a Point of Order, requested that I review the admissibility of questions from the Official Opposition that are outside the scope of ministerial responsibilities.

And lastly, the Honourable Member for West Royalty-Springvale rose on a Point of Privilege and asserted that he did not breach caucus confidentiality when asking his questions in the House as these were not caucus meetings but rather secret committee meetings.

Honourable Members, it is my intention to rule on all four of these matters today.

First, on the point of order raised by the Member for Georgetown-St. Peters, I am guided by the parliamentary authorities on the parliamentary convention of *sub judice*, and I would direct Honourable Members to the following sources:

House of Commons Procedure and Practice, 2nd Edition, Chapter 11 (pages 504-505):

In December 1976, a special committee was established to review the rights and immunities of Members.[81] The Special Committee on the Rights and Immunities of Members decided to study how Members’ freedom of speech was affected by the *sub judice* convention. Its First Report, presented to the House on April 29, 1977, remains the definitive study of the convention.[82] In the Report, the Committee stated:

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It is the view of your Committee that the responsibility of the Chair during the question period should be minimal as regards the *sub judice* convention, and that the responsibility should principally rest upon the Member who asks the question and the minister to whom it is addressed. [83]

As the Committee noted, if a question to a Minister touches upon a matter that is *sub judice*, it is likely that the Minister will have more information than the Speaker concerning the matter and can determine whether answering the question may cause prejudice. The Minister could refuse to answer the question as is his or her prerogative.[84] The Committee clarified further that while all Members share in the responsibility of exercising this restraint, the Speaker is the final arbiter in determining whether a subject raised during the consideration of Oral Questions is *sub judice*.

Beauchesne's Parliamentary Rules and Forms, 6th Edition, citation 507 states:

- (1) No settled practice has been developed in relation to civil cases, as the convention has been applied to some cases but not in others.
- (2) In civil cases the convention does not apply until the matter has reached the trial stage.

And citation 509 of the same:

The Special Committee on the Rights and Immunities of Members recommended that the responsibility of the Speaker during the question period should be minimal as regards the *sub judice* convention, and that the responsibility should principally rest upon the Member who asks the question and the Minister to whom it is addressed. However, the Speaker should remain the final arbiter in the matter but should exercise discretion only in exceptional cases. In doubtful cases the Speaker should rule in favour of debate and against the convention.

Honourable members, it is clear from the above noted parliamentary authorities that the convention of *sub judice* is a voluntary restraint, and especially when concerning civil cases. The responsibility regarding the convention rests principally on both the Member asking the question and the Minister responding. As such, I find no basis for the Point of Order raised by the Honourable Member for Georgetown-St. Peters on April 11; however, as the Attorney General, the Minister may wish to further consider the comments made by the Honourable Member for Georgetown-St. Peters, but such is not within the responsibility or jurisdiction of the Speaker of the Legislative Assembly.

Next, the Minister for Education, Early Learning and Culture and Justice and Public Safety rose on what he termed both a point of order and a point of privilege. His first objection was that the Member for West Royalty – Springvale during Oral Question Period on a previous day had referred to proceedings of *in camera* meetings of government caucus members. The Minister asserted that this was a breach of his privilege as caucus Whip, and a breach of privilege of other caucus members. His second objection was that questions were asked of ministers that were outside of their departmental responsibility and the knowledge they would have in relation to their departments, which he asserted was improper.

I will address the first objection first.

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The Rules of the Legislative Assembly of Prince Edward Island provide for *in camera* meetings of the committees of the Assembly and for proceedings of the Assembly itself. Rule 104(3) states that a committee's *in camera* proceedings are protected by privilege and any verbal or written publication of its proceedings is an offense that the House may deal with.

However, the meetings the Member for West Royalty–Springvale has referred to in his questions were not committee meetings, nor were they meetings of the Assembly. From what I understand, they were meetings between members of the government caucus who were then members of the Standing Committee on Public Accounts, and perhaps other persons, that took place prior to meetings of the Standing Committee on Public Accounts. They did not form part of the proceedings of the Standing Committee on Public Accounts, whether public or private. As such, rule 104(3), or any other rule prohibiting reference to *in camera* proceedings of the Assembly, does not apply. Therefore I do not find that reference to these meetings constitutes a departure from the rules that would be subject to a point of order.

In regard to the assertion that reference to these meetings breaches privilege, as you likely know, the Speaker's duty in responding to a point of privilege, as provided by rule 45(3), is to assess whether the matter raised does, at face value, touch on the privileges of the Legislative Assembly or its individual members. Secondly, the Speaker is to assess whether the matter has been raised at the earliest opportunity. If the matter satisfies both these conditions, the House may then debate a motion on the privilege matter and deal with it as it sees fit.

Privilege applies to official proceedings in parliament; this would include meetings of the Assembly and its committees. But I am not of the view that a caucus meeting or a meeting between a few members, whether it takes place within the parliamentary precinct or not, is a parliamentary proceeding, in this instance. Many factors distinguish such meetings from parliamentary proceedings. For example, they are not necessarily open to all members of the Assembly; any records emanating from such meetings are not records of the Assembly; they are not overseen by a Speaker or a Chair with any particular role established in legislation, rule or parliamentary authority; they do not possess the same power to send for persons or papers; and the list goes on.

Furthermore, the Speaker has no particular role in maintaining order in such meetings or in upholding any expectations of confidentiality attached to such meetings. There may well be expectations of confidentiality and secrecy, but breaches of these expectations would be matters for the caucus to deal with, not the Speaker nor the Assembly as a whole.

For those reasons I do not find the alleged breach of caucus confidentiality raised by the Minister to be a privilege matter.

Regarding the Minister's second objection, that questions have been improperly directed to ministers on topics outside of their responsibility and knowledge, I draw your attention to rules 59 and 62:

59. Written questions may be placed on the order paper or **oral questions may be asked seeking information from ministers of the Crown relating to public affairs, any bill, motion or other public matter connected with the business of the Assembly in which such members may be concerned;** but in putting any such question or in replying to the

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same, no argument or opinion shall be offered, nor any facts stated, except so far as may be necessary to explain the same; and in answering any such question, the matter to which the same refers shall not be debated.

62 (1) Upon the order of business “questions by members” being called, oral questions of an urgent nature relating to the public affairs may be put without notice to ministers of the crown.

(2) An oral question shall be clearly and concisely put and shall refer only to a matter which may reasonably be assumed to be within the present knowledge of the minister.

(3) The minister to whom an oral question is directed may:

- a) immediately answer the question, or
- b) state that he or she takes the question as notice and answer it orally on a subsequent day under the same order of business, or,
- c) state that in his or her opinion the question should be put in writing.

Further Hon. Members, as you know, it is a well-established practice of this House that even though a question may be directed to a specific minister, any government minister may respond to the question. Therefore I do not find it out of order to direct a question on some aspect of public affairs to a minister, even if that minister’s portfolio does not necessarily involve that aspect of public affairs.

However, there were some questions that were directed to certain ministers on April 11 regarding their presence in the above-mentioned meetings that took place in advance of Public Accounts committee meetings in the fall of 2016. Specifically, the Member for Belfast – Murray River asked the current Ministers of Workforce and Advanced Learning, and Economic Development and Tourism, successively, whether they were present at those meetings and whether what happened in those meetings influenced what later happened in meetings of the Standing Committee on Public Accounts.

The timeframe is key here; the meetings referenced took place in 2016, when both the current ministers were private members. Are Ministers of the Crown answerable, through oral questions, for their actions prior to entering Cabinet? *Beauchesne’s Parliamentary Rules and Forms* (6th Edition) in citations 409 to 412 includes guidance from past Speakers on the nature of questions in Question Period as follows:

409(6) A question must be within the administrative competence of the Government. The Minister to whom the question is directed is responsible to the House for his or her present Ministry and not for any decisions taken in a previous portfolio.

410(10) The subject matter of questions must be within the collective responsibility of the Government or the individual responsibilities of Ministers.

410(13) Questions should not seek a legal opinion or inquire as to what legal advice a Minister has received.

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410(16) Ministers may be questioned only in relation to current portfolios.

(17) Ministers may not be questioned with respect to party responsibilities.

411(2) [A question may not] seek information about matters which are in their nature secret, such as decisions or proceedings of Cabinet or advice given to the Crown by the Law Officers.

412 A question may not be asked of a Minister in another capacity, such as being responsible for a province, or part of a province, or as a spokesman for a racial or religious group.

Honourable members, the principles listed above provide several arguments toward finding the questions directed to the Ministers of Workforce and Advanced Learning and Economic Development and Tourism on April 11 out of order. The questions pertained to a time when the ministers were private members, and thus the questions are outside the administrative competence of the Government and the individual responsibilities of the ministers. If ministers ought not to be questioned about previous portfolios, it stands to reason that they ought not to be asked about their time prior to joining Cabinet. I trust members will refrain from posing such questions in the future.

Lastly, the Member for West Royalty–Springvale also rose on a point of privilege, and asserted that, in his words, “secret committee meetings are not caucus”, contrary to what the Minister of Education, Early Learning and Culture had indicated in his point of order and privilege.

Honourable members, this is not a privilege matter, but a dispute as to allegations of facts or opinions. Past Speakers of our Assembly and the House of Commons have consistently ruled that such disputes are not questions of privilege, and *Beauchesne* (6th edition) citation 31(1) puts it very clearly:

31(1) A dispute arising between two Members, as to the allegations of facts, does not fulfill the conditions of parliamentary privilege.

Thank you, Honourable Members.”

Statements by Members

2:30 Darlene Compton (Belfast-Murray River) recognized the Belfast Area Watershed Group and the Southeast Environmental Association.

2:32 Colin LaVie (Souris-Elmira) gave an update on the completion of École La-Belle-Cloche.

2:34 Bush Dumville (West Royalty-Springvale) made a statement on the Rotary Club of Charlottetown.

2:38

Questions by Members

Statements by Ministers

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3:21 Hon. Sonny Gallant (Workforce and Advanced Learning) updated the House on the Island Advantage George Coles Bursary.

3:24 Sidney MacEwen (Morell-Mermaid) and Leader of the Third Party added their comments.

3:29 Hon. Paula Biggar (Transportation, Infrastructure and Energy) made an announcement on the Transportation, Infrastructure and Energy Internship program.

3:32 Sidney MacEwen (Morell-Mermaid) and Hannah Bell (Charlottetown-Parkdale) added their comments.

3:35 Hon. Chris Palmer (Economic Development and Tourism) made a statement on the strategic alliance between StartUp Zone and Island Capital Partners.

3:38 Steven Myers (Georgetown-St. Peters) and Hannah Bell (Charlottetown-Parkdale) added their comments.

Allen Roach (Montague-Kilmuir), rising on a Point of Order, objected to the use of the term “false pretenses” by Sidney MacEwen (Morell-Mermaid) in reference to a statement made earlier by Hon. Sonny Gallant (Workforce and Advanced Learning) on the George Coles Bursary. Hon. Mr. Speaker advised that he would take the matter under advisement and report back to the House.

Hon. Sonny Gallant (Workforce and Advanced Learning), rising on a Point of Order, provided clarification on statements made earlier by Leader of the Third Party, in response to his Ministerial Statement.

Presenting and Receiving Petitions

None

Tabling of Documents

None

Reports by Committees

None

Introduction of Government Bills

None

Government Motions

None

Orders of the Day (Government)

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The Order of the Day being read for the consideration of the Estimates in Committee, Kathleen Casey (Charlottetown-Lewis Point) took the Chair of the Committee to consider the Estimates for the Department of Education, Early Learning and Culture.

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

5:00 Hon. Mr. Speaker declared recess until 7:00 p.m.

7:00 p.m.

Orders Other Than Government

With unanimous consent, the following bills were introduced and read a First Time:

Plastic Bag Reduction Act (Bill No. 114) by Allen Roach (Montague-Kilmuir).

An Act to Amend the Provincial Emblems and Honours Act (Bill No. 113) by Bush Dumville (West Royalty-Springvale)

Motions Other Than Government

The following Bill was read a Second Time and referred to a committee of the Whole House:

AN ACT TO AMEND THE WILDLIFE CONSERVATION ACT (Bill No. 107)

Promoter : Jamie Fox
Chair: Darlene Compton

After some time spent therein, Hon. Mr. Speaker resumed the Chair and the Chairperson reported Progress and begged leave to sit again, to which the House agreed.

Motion No. 41 (Campaign finance reform) being again called, debate was resumed by Hon. Jordan Brown (Education, Early Learning and Culture; Justice and Public Safety); continued by Darlene Compton (Belfast-Murray River); who moved, seconded by Jamie Fox (Borden-Kinkora), the following amendment:

Add the following after the third WHEREAS clause:

AND WHEREAS the organized PR Coalition is led by a Campaign Director, who also serves as the President of the Green Party of PEI, and has solicited approximately \$75,000 to date from donors including political parties and unions, absent of any transparency or public disclosure;

and,

Add the following after the operative clause:

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THEREFORE BE IT RESOLVED that this Legislative Assembly also encourage government to enact detailed rules for interest groups in plebiscites and referendums to ensure full public disclosure and complete accounting of the PR Coalition's approximately \$75,000, the identity of all donors and amounts, itemized expenses incurred during the 2015 plebiscite, and the balance of \$75,000 unspent and still held, to ensure full transparency ahead of the planned referendum.

Debate on the amendment was commenced by the Mover, and on her Motion, debate was adjourned.

Adjournment

9:00 On Motion of Hon. Alan McIsaac (Agriculture and Fisheries), seconded by Hal Perry (Tignish-Palmer Road), the House adjourned until 2:00 p.m. on April 18, 2018.

Charles H. MacKay
Clerk of the Legislative Assembly