



# **STANDING COMMITTEE ON PRIVILEGES**

**Hansard Verbatim Report**

**No. 1 – June 7, 2016**



**Legislative Assembly of Saskatchewan**

**Twenty-Eighth Legislature**

## **STANDING COMMITTEE ON PRIVILEGES**

Hon. Corey Tochor, Chair  
Saskatoon Eastview

Mr. David Forbes, Deputy Chair  
Saskatoon Centre

Mr. Greg Brkich  
Arm River

Hon. Ken Cheveldayoff  
Saskatoon Willowgrove

Mr. Delbert Kirsch  
Batoche

Mr. Paul Merriman  
Saskatoon Silverspring-Sutherland

Mr. Randy Weekes  
Biggar-Sask Valley

[The committee met at 17:10.]

**The Chair:** — Welcome everyone. Today's the Standing Committee on Privileges. And I'm just going to firstly introduce our members: David Forbes from the NDP [New Democratic Party]; Delbert Kirsch; Greg Brkich; substituting for Randy Weekes, we have Dan D'Autremont; Ken Cheveldayoff; and substituting for Paul Merriman, we have Jeremy Harrison.

We have two items on the agenda, which is the election of Deputy Chair and the establishment of a steering committee. We'll first start with the election of the Deputy Chair. And pursuant to the rules of the Legislative Assembly, the Speaker is the Chair of the Standing Committee, and the Deputy Chair shall be an opposition member. Since we only have one member of the committee who is an opposition member, I would ask a member to move that David Forbes be elected to preside as Deputy Chair of the Standing Committee on Privileges.

Ken Cheveldayoff has moved:

That David Forbes be elected to preside as Deputy Chair of the Standing Committee on Privileges.

Is the committee ready for the question?

**Some Hon. Members:** — Question.

**The Chair:** — All those in favour?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. We're going to the second matter, which is the establishment of a steering committee. I have a motion. Can I get a motion to establish a steering committee? Mr. D'Autremont.

**Mr. D'Autremont:** — Okay. I move:

That a steering committee be appointed to establish an agenda and priority of business for subsequent meetings, and that the membership be comprised of the Chair, the Deputy Chair, and the Government House Leader;

And further, that the steering committee shall meet time to time as directed by the committee or at the call of the Chair; that the presence of all members of the steering committee is necessary to constitute a meeting; and that substitutions from the membership of the Standing Committee on Privileges be permitted on the steering committee.

**The Chair:** — So will the committee take this as read, the motion from Dan D'Autremont?

**Some Hon. Members:** — Agreed.

**The Chair:** — All right. Is the committee ready for the question? I recognize David Forbes.

**Mr. Forbes:** — At this point I'd like to make a statement. Thank you to the Chair and to the members of the committee. I thank the committee for the opportunity to offer an opening statement on behalf of the members of the official opposition as this important hearing gets under way.

It's important to note that it's not my intention to call the Speaker's ruling into question. The question surrounding the contemptuousness of the budget day press release was answered by the Assembly, and it would certainly be inappropriate to question the ruling of the Speaker and of the Assembly.

[17:15]

What I'm going to do today is provide members of the committee with some context, context so they may have a fuller understanding, during this committee's deliberations, of how novel the Speaker's ruling was on this particular matter. It is my hope that this context will assist the committee in determining the appropriate remedy for the member of Saskatoon Nutana.

This ruling outlines a new understanding of the relationship between privilege and contempt and introduces a new understanding of the convention of budgetary secrecy as being equally integral to the work of the members of the Assembly as the well-established privilege that pertains to bills. I think all members will be well served by a full understanding of the new precedent set with this ruling.

Of particular note, throughout the Speaker's ruling of June 2, is the interchangeability of the words "privilege" and "contempt." The Government House Leader specifically alleged that the pre-emptive release of the budget day press release constituted a contempt of the Assembly, while the Speaker's ruling refers to the question of being related to both contempt and to privilege. In fact the very first sentence of the Speaker's ruling reads, "Yesterday, June 1, 2016, the Government House Leader raised a question of privilege in accordance with rule 12."

Now this may seem like mere semantics, but there is an important distinction to be made. I would refer members to page 83 of O'Brien and Bosc where it says, "In that sense, all breaches of privilege are contemptuous of the House, but not all contempts are necessarily breaches of privilege."

I would never pretend to know the thoughts of my friend the Government House Leader, but I imagine that he chose the less restrictive and more open-ended avenue of an allegation of contempt of the Assembly for a reason.

Every single time that an allegation of a leak of budgetary information has been brought to the Chair for a ruling on the question of privilege, successive Speakers have ruled that those matters did not constitute a breach of privilege. It is also worth noting that a Speaker has never found the leaking of budgetary information to be contemptuous of the House while not a breach of privilege. That is to say that no Speaker, after finding that there has been no breach of privilege, has found a case for contempt. In fact, it's right there in O'Brien and Bosc, page 894, and I quote: "Speakers of the Canadian House have maintained that secrecy is a matter of convention, rather than one of privilege."

I would like to bring a few more examples of relevant precedents to the attention of the members of the committee. Speaker Jerome of the House of Commons stated in his ruling of April 17th, 1978, and I quote:

I must express some serious doubt whether the conventional budgetary secrecy falls within the area of privilege at all. [And he goes on, and I quote again] I cannot accept that there is a precedent which argues the general matter of budgetary leaks falls within the question of privilege.”

These passages can be found on page 4549 of the *Debates* of the House of Commons.

And again, I do not call the wisdom of our Speaker into question, but to ensure that all members understand how much a departure from previous precedent our Speaker’s ruling is. This novel nature of this ruling should be made known to all members as we deliberate the consequences for my friend, the member of Saskatoon Nutana.

Closer to home, Speaker Brockelbank found in his ruling of March 16th, 1982, and I quote:

It is not the role of the Chair to determine whether in fact there was a premature release of budget information. From the citation just quoted, it is clear that even if there was a disclosure of this information it would not impede the House or individual members in the performance of their duties and, therefore, would not constitute a prima facie case of breach of privilege.

That passage can be found on page 580 and 581 of the *Debates* of the Legislative Assembly of Saskatchewan.

Our Assembly’s Speaker did refer to this previous ruling by Speaker Brockelbank and did indeed note that it stood as the most definitive and precedent-setting case for our legislature. Rather than further agreeing with Speaker Brockelbank, our Speaker outlined a novel understanding of what is and what is not a matter of privilege.

In her ruling of November 18, 1981, which is found on page 12,898 of the *Debates* of the House of Commons, Speaker Sauvé found that the available precedents, and I quote:

... give me the authority to say that a breach of budget secrecy cannot be dealt with as a matter of privilege. It might constitute a very important grievance for members. Such action might have a very negative impact on business or on the stock market. It might cause some people to receive revenues which they would not otherwise have been able to obtain. All of these are possible consequences of budgetary secrecy, but they have no impact on the privileges of the member.

Speaker Sauvé goes on to say, and I quote:

They 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 the minister in the exercise of his administrative responsibility.

Possibly in the spirit of this final passage from Speaker Sauvé’s ruling, our Speaker’s ruling of June 2nd is silent on the Government House Leader’s contention that divulgence of budgetary information impeded the Minister of Corrections and Policing’s ability to fulfill her duties as a member of the Assembly. Certainly the release of this information could have interfered with her ability to fulfill her duties as a minister of Crown but that potential interference should not be understood to have interfered with her duties as a member of the Assembly. Should the Speaker have upheld the Government House Leader’s unsubstantiated assertion that this breach violated the minister’s privileges as a member of the Assembly, opposition members now and in the future would be hard-pressed to comment on any untoward activities of the entire executive government that were not matters of public knowledge for fear of being found in contempt of the Assembly only to be hauled before a committee like this one.

Furthermore, government members have produced no evidence to date that anyone associated with the correctional centre in question learned of the facility’s closure through the pre-emptive release of the budget press release. However, beyond the novel interpretation of the previously established precedents, the most consequential section of our Speaker’s ruling comes from the following passage, and I quote:

In the past when access has been denied, the Speaker permitted privilege cases to proceed. It’s appropriate then if a serious matter when a member is denied access to the briefs, that a breach of the embargoed conditions by a member should be treated with equal seriousness.

This interpretation — that the divulgence of secret information is equivalent in its contemptuous nature to the denial of secret information — interprets precedent in a new way.

Our Assembly’s Speaker offers a justification for this, a number of rulings pertaining to the denial of embargoed technical briefings for bills and annual reports to members, none of which were found to be in contempt. However, our Speaker’s ruling offers no explanation or grounding in precedent for the conclusion that the release of information is as egregious as the withholding of it, or that the understanding of privilege as it pertains to the bills should also be extended to the embargoed budget documents.

I would like to share a couple more observations with the committee. First, with the extraordinary precedent, to find a member in contempt of the House when she had no knowledge of the error that was made, is not the same from all other findings of contempt that he referred to be on the basis that in every other occasion, the member’s actions were deliberate. One might think it reasonable to assume that, if one were to be in contempt, one might need to have intent. That is clearly not the case in this instance. So the nature of this new precedent will have serious implications for all new members as we go forward.

In addition to the allegation referred to above, there are a number of other statements in the Government House Leader’s statement that are given as fact without any evidence that they are indeed true. He’d made statements, and I quote, “It also caused undue hardship throughout the province” and it has “ . . .

a significant impact on people's lives and well-being." And another quote, "The Minister of Corrections and Policing is but one example of how the untimely release of the confidential budget information has negatively impeded her in the discharge of her duties and responsibilities." These members, these statements are hyperbole and the Government House Leader has not given us any basis in fact for these statements.

In closing I would encourage all members to consider the following when determining the fate of my colleague and friend, the member for Saskatoon Nutana. Given that our Speaker's ruling sets an extraordinary new precedent for matters of budgetary secrecy, the novel nature of its finding and contempt should be carefully considered when determining the remedy and secondly because there is no evidence that any kind of harm was done to any branch of government or to any person or to any business by the release of the embargoed information. The committee should be careful not to overreach in the punishment applied to the member for Saskatoon Nutana. Thank you for allowing me to speak.

**The Chair:** — I'll recognize Jeremy Harrison.

**Hon. Mr. Harrison:** — Yes, thank you very much, Mr. Speaker. And I listened with significant attention to the statement my friend opposite put on the record. Obviously there was a significant amount of thought and work that was put into the statement, which I appreciate. You know, what we're going to do is we're going to review in more detail, and all of us are going to put some additional thought into the statement that was just put on the record.

I would just have a couple of observations though. And I know the member opposite, you know, indicated at a number of points that, you know, there wasn't a questioning of the Speaker or of the ruling or of the decision the House made. I'll read the wording over more carefully, but it sounded surprisingly . . . that that may have been the direction we were going in.

The other observation I would make in terms of the statement and the time when that statement could have been considered by the House, would have been to put that on the record after the finding of the prima facie breach. And we had an opportunity for the debate at that point, and there was a statement from the Government House Leader and from the Opposition House Leader. In terms of the consideration of the House, that would have been the appropriate time to put those thoughts to the House prior to the decision the House would have taken.

In terms of the substance of the matter, I mean, we're going to have an opportunity tomorrow to ask some questions, to have the facts, you know, presented on what happened. But I don't want to minimize the importance of what occurred. I mean, this was a budget leak which could have ultimately had significant implications for the taxpayers of the province. And that's why there is the convention that budget secrecy is maintained up until the time the Minister of Finance rises in his place. And that's why embargo agreements are signed by media representatives, by the official opposition as well. And, you know, in terms of the facts, I mean, the official opposition admitted that there was a breach of that embargo agreement.

And I would just say as well, I mean, we had mentioned this in conversation but if the shoe had been on the other foot, if the government had released details of the budget an hour or less or more prior to the Minister of Finance rising, whether he had anything personally to do with it or not, I mean, I know the official opposition would be calling for his resignation. And the reason for that is because of the seriousness of the matter. Because not just would it be a government thing; this could cost taxpayers millions of dollars if there had been a royalty change, if there had been taxation changes. That's why this is such an important thing.

You know, we need as government and as a House to have confidence in each other that we're able to, you know, exchange that information — whether it be budget, whether it be other embargoed information — in that way where we have that trust. And that's why we need to kind of get further on this.

We still actually haven't had an explanation as to how this happened. And, you know, I know that it's been put on the record that it's been dealt with, that there is mechanisms put in place to make sure it can't happen again, but we haven't heard what those are.

So we look forward to that tomorrow. We do. And, you know, I take members at their word when that's what, you know, that those measures have been taken. But we need to have that assurance. It's not because we don't believe that they've been put in place, but we have an obligation to the taxpayers of the province to make sure that their resources and their revenues are protected.

So we can talk about that more tomorrow, but those I would put on, by the way of just kind of remarks. We'll have probably a more detailed response, but I appreciate the statement and obviously the fact that there was a lot of thought put into it.

**The Chair:** — All right, we'll take the motion as read. All those in favour?

**Some Hon. Members:** — Agreed.

**The Chair:** — All those against? Carried. Seeing as that's the end of the agenda, this committee stands adjourned until Wednesday, June 8th, at . . . [inaudible interjection] . . . Oh, sorry, looking for a motion to adjourn. Greg Brkich makes the motion. All those agree?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. This committee stands adjourned until Wednesday, June 8th at 5:15.

[The committee adjourned at 17:30.]