

The House met at 1:00 P.M.

Prayers.

SPEAKER'S RULING

On Friday, March 8th, the honourable Premier rose on a point of privilege and stated that the honourable Leader of the Official Opposition and the House Leader for that caucus had provided the House with what he described as “misinformation that they should know was not true,” during Question Period on the previous day, March 7th. He referred to several tabled documents.

The Premier stated that the Leader of the Official Opposition and the Official Opposition House Leader both suggested to the House that the Attorney General and the Justice Minister wrote to the committee to add a name to the list of persons recommended for the position of Chief Judge of the Provincial and Family Courts. At the centre of this is a letter dated July 19, 2018, from the Attorney General to the then Chief Justice of Nova Scotia. The Premier stated, “At no time in any of this documentation did the Attorney General say to add a name to the list.”

Before reviewing the letter, I wanted to satisfy myself as to exactly what the two members from the Official Opposition had actually said, so I reviewed the video from both March 7th and March 8th Question Periods and noted the language used in the framing of their various questions. I noted that they said that the Attorney General had variously “directed,” “instructed,” or “forced” the judicial recruitment committee to add a name to the list.

I have reviewed the letter in question, and I have to confess that I did not see any direction to add a name to a list. The letter referred to the process and criteria for the appointment of Chief Judge and noted that terms of reference stated that the short list would contain a ranking of the candidates in the committee's order of preference, and this would be accompanied by a précis of each. The letter goes on to request the ranking and one of the candidates' précis.

I understand how the Leader of the Official Opposition and the Official Opposition House Leader have been characterizing the letter in question in their questions, but the letter does not direct anyone to add a name to the list, which was the point made by the Premier on March 8th.

As stated above, in raising this point of privilege, the Premier referred to “misinformation that they should know was not true.” In finding a *prima facie* case of a breach of privilege in a case like this, a Speaker has to consider whether what happened in the case amounted to a

member “intentionally misleading the House.” I have the benefit of a lengthy ruling on this exact issue delivered on April 23, 2013, by then Speaker of this House, Gordie Gosse. I will refer to several paragraphs in his ruling. Speaker Gosse said:

“...the elements that need to be established by a committee when it is alleged that a Member is in contempt of the House for deliberately misleading the House. These are found in *O'Brien and Bosc* and are as follows: one, it must be proven that the statement was misleading; two, it must be established that the Member making the statement knew at the time that the statement was incorrect; and three, that in making the statement, the Member intended to mislead the House. It should be pointed out that I do not have to find any of these elements to have existed, which is how some others have characterized this process, apparently based on a misreading of the reference in *O'Brien and Bosc*. The duty of the Speaker is limited to assessing whether the point presented is arguable on its face at first glance.”

Maingot says that a Member who is raising a question of privilege is entitled to the benefit of the doubt that he or she has raised an arguable point. *Maingot* says at Page 227:

“In the final analysis, in areas of doubt, the Speaker asks simply:

Does the act complained of appear at first sight to be a breach of privilege... or to put it shortly, has the Member an arguable point? If the Speaker feels any doubt on the question, he should leave it to the House.”

The Speaker's ruling does not extend to deciding whether a breach of privilege has in fact been committed. That is a question that must be decided by the House itself.

I am going to re-state a small portion of a ruling by former Speaker Fraser of the House of Commons, in which he was quoting a ruling of his predecessor, Speaker Jerome, found at page 3975 of *Hansard* for March 21, 1978, where Speaker Jerome quoted from a report of the United Kingdom Select Committee on Parliamentary Privilege. He stated:

“...It might be inferred that the test applied by the Speaker in deciding whether to give precedence over the orders of the day to a complaint of a breach of privilege... is, Does the act complained of appear to me at first sight to be a breach of privilege? Rigorously applied, it would mean that

no complaint of breach of privilege could ever be entertained unless the Speaker was of the opinion that the act or conduct complained of was a breach of privilege...

Borderline cases and arguable ones would be excluded automatically because in such cases the Speaker could not say that he was of the opinion that the act or conduct which was the subject of complaint *prima facie* constituted a breach of privilege.

In my submission the question which the Speaker should ask himself... should be... has the Member an arguable point? If the Speaker feels any doubt on the question, he should... leave it to the House."

In ruling whether a Member has raised a *prima facie* case of privilege the Speaker has to consider, on the evidence presented, whether the facts could amount to breach of privilege or a contempt of the House. In doing this the Speaker will also consider representations from other Members, including the Member who is alleged to have committed the breach or contempt. Speaker Milliken of the House of Commons has said that 'It is this element of deliberately seeking to mislead the House and not the presentation of information subject to differing interpretations that is key.'

In the case I have had presented to me as Speaker, no differing interpretation from that presented by the Leader of the Official Opposition, which presented an argument for intent, was offered to the House for its consideration. A statement by the Member that he or she did not intend to mislead the House will usually end such a matter, but that has not been offered to the House in this matter."

That is the end of the materials I have quoted from Speaker Gosse.

Based on the very simple test Speaker Gosse set out, which you will all recall was similar to the test I explained in my ruling on March 27th, the *prima facie* point of privilege appears to me to be arguable.

I am, however, left with a hurdle I have to overcome. Normally in the raising of a point of privilege, the member doing so proposes a resolution referring the matter to a committee. In our House that would be the Internal Affairs Committee. I note, however, that the Premier did not propose a motion when he raised this matter on March 8th, so I will ask him to do that in a moment.

If the Leader of the Official Opposition and his House Leader care to retract the allegations they made, then there may not be a need for a

resolution, so I will grant them that opportunity before looking to the Premier on the question of a motion.

T. Houston, Leader of the Opposition and A. MacMaster, Opposition House Leader, both retracted their statements.

The Speaker continued:

As the quotation from Speaker Parker's ruling said, a statement by the member that he or she did not intend to mislead the House will usually end such a matter.

The House is bound to accept the word of a member with respect to themselves, and this is set out in *Beauchesne*, on Page 151, which says: "It has been formally ruled by Speakers that statements by Members respecting themselves and particularly within their own knowledge must be accepted."

Beauchesne goes on to say, "On rare occasions this may result in the House having to accept two contradictory accounts of the same incident."

In this case, as Leader of the Official Opposition and the House Leader for the Official Opposition has each stated that they did not intend to mislead the House, it is my interpretation of the principle, stated in *Beauchesne*, that the House is bound to accept their words, thereby concluding this matter.

GOVERNMENT NOTICES OF MOTION

Pursuant to the order, the following notices were passed in at the Clerk's table:

Res. No. 922 – Hon. K. Regan, Minister of Community Services – encouraging everyone to visit the SmartSAVER website to learn how to register for the Canada Learning Bond.

With the unanimous consent of the House, the usual two days' notice was waived and the motion carried nem con.

Res. No. 923 – Hon. T. Ince, Minister of African Nova Scotian Affairs – congratulating the Delmore "Buddy" Daye Learning Institute on their resource guide called *Black History Africa, the Caribbean and the Americas*.

With the unanimous consent of the House, the usual two days' notice was waived and the motion carried nem con.

Res. No. 924 – Hon. L. Glavine, Minister of Communities, Culture and Heritage – recognizing April as National Poetry Month.

With the unanimous consent of the House, the usual two days' notice was waived and the motion carried nem con.

INTRODUCTION OF BILLS

The following bill was introduced by the following Member, read a first and ordered to be read a second time on a future day:

No. 135. An Act to Amend Chapter 8 of the Acts of 1992, the Nova Scotia Power Privatization Act, and Chapter 19 of the Acts of 1998, the Nova Scotia Power Reorganization (1998) Act

(Hon. G. MacLellan – Minister of Business)

OPPOSITION MEMBERS' BUSINESS

A. MacMaster, Opposition House Leader, called the following bill:

No. 107. House of Assembly Act

A debate ensued during which the following took part: T. Halman, G. Wilson, C. Chender, A. Paon, K. Irving and A. MacMaster. The debate was deemed to be adjourned.

A. MacMaster, Opposition House Leader, called the following bill:

No. 117. Adoption Information Act

A debate ensued during which the following took part: B. Adams, Hon. K. Regan, S. Leblanc, K. Bain, B. Maguire and A. MacMaster. The debate was deemed to be adjourned.

ADJOURNMENT

The Speaker adjourned the House to meet Thursday, April 4th at 1:00 P.M.

MOTIONS UNDER RULE 5(5)

Mr. Speaker interrupted the business having received notices of motion under Rule 5(5). The topic of late debate as submitted by J. Lohr, Kings North:

“Therefore be it resolved that the government has failed to provide sufficient resources to the Valley Regional Hospital leading to delayed and cancelled surgeries and procedures.”

A debate ensued during which the following took part: J. Lohr, T. Martin and Hon. L. Glavine.

NOTICES OF MOTION UNDER RULE 32

The following notices were passed in at the Clerk’s table:

Res. No. 925 – B. Jessome, Hammonds Plains-Lucasville – congratulating Matt Walsh on being selected to be a member of the Education Standard Development Committee.

Res. No. 926 – Hon. K. Murphy, Eastern Shore – congratulating Brandon Power on being the only Nova Scotian to be selected to the Canada U-18 national rugby team.

Res. No. 927 – Hon. K. Casey, Colchester North – congratulating Ron Crowe for being honoured by the Canadian Firefighters Curling Association as a life member and for being inducted as a life member of the Nova Scotia Firefighters Curling Association.

Res. No. 928 – Hon. K. Casey, Colchester North – congratulating Adam Boertjes of the Debert Fire Brigade for 5 years of service.

Res. No. 929 – Hon. K. Casey, Colchester North – congratulating Bob Davis of the Debert Fire Brigade for being named Honorary Member.

Res. No. 930 – Hon. K. Casey, Colchester North – congratulating Brandon Slack of the Debert Fire Brigade for the 2018 Fire Officer of the Year Award.

Res. No. 931 – Hon. K. Casey, Colchester North – congratulating Ed Hingley of the Debert Fire Brigade for being named Charter Member.

Res. No. 932 – Hon. K. Casey, Colchester North – congratulating Ian Jennings of the Debert Fire Brigade for the 2018 Wendell Barnhill Memorial Award Most Improved Fire Fighter Award.

Res. No. 933 – Hon. K. Casey, Colchester North – congratulating Kyle Slack of the Debert Fire Brigade for 20 years of service.

Res. No. 934 – Hon. K. Casey, Colchester North – congratulating Michael Hepburn of the Debert Fire Brigade for the 2018 Fire Fighter of the Year Award.

Res. No. 935 – Hon. K. Casey, Colchester North – congratulating Randy Barnhill of the Debert Fire Brigade for 30 years of service.

Res. No. 936 – Hon. K. Casey, Colchester North – congratulating Rob Stone of the Debert Fire Brigade for 25 years of service.

Res. No. 937 – Hon. K. Casey, Colchester North – congratulating Royce Totten of the Debert Fire Brigade for being named Charter Member.

Res. No. 938 – Hon. K. Casey, Colchester North – congratulating Ted Totten of the Debert Fire Brigade for being named Charter Member.