

Added by the
Member for St. George's
Humber

2019-04-15

Baines



HOUSE OF ASSEMBLY
NEWFOUNDLAND AND LABRADOR

REPORT OF PRIVILEGES AND ELECTIONS COMMITTEE

***Point of Privilege Against the Member for Terra Nova
Respecting The Release of Reports of the Commissioner
for Legislative Standards***

APRIL 15, 2019

Background

On August 24, 2018 the Commissioner for Legislative Standards released two reports relating to investigations under the Code of Conduct for Members. The Commissioner released the reports to the complainants, the respondents and the Speaker of the House of Assembly. As required by *the House of Assembly Accountability, Integrity and Administration Act*, the Speaker (in his capacity as Chairperson of the Management Commission) sent copies to Commission Members with the following reminder: “As the Management Commission has no authority to release these reports publicly, until the reports are tabled in the House of Assembly, members are reminded of their obligation to keep these reports strictly confidential until that time.”

Evidence provided to the Committee shows that the Member for Terra Nova received the Joyce Report of August 24, 2018 from the Commissioner for Legislative Standards at 3:31 pm on that date. He received the Kirby Report of August 24, 2018 from the Commissioner at 3:33 pm. Within one hour, the MHA received inquiries from three members of the press respecting the Commissioner’s reports. Some of those questions were based on information on the Twitter feed of an NTV reporter which contained direct quotes from the Commissioner’s reports.

On Monday, August 27, 2018, the Member for Terra Nova released the reports publicly.

On October 25, 2018, the Member for Mount Scio rose on a point of privilege. The basis for this point of privilege was an earlier ruling by the Speaker on another *prima facie* point of privilege also relating to the release of the Commissioner’s reports (by the Member for Mount Scio). That Member argued that the Member for Terra Nova released two reports produced by the Commissioner prior to those reports being tabled in the House. The Member for Mount Scio further asked that this Committee review the matter.

Decision

In its examination, the Committee invited the Member for Terra Nova to make a submission, which it received. The Committee also asked to hear from the Commissioner for Legislative Standards, who subsequently appeared before the Committee to discuss his practices around confidentiality. The Committee reviewed sixteen related audio and video media files for the time frame in question, as well as various print media reports. It studied a number of authorities on the matter, including the “Report On the Case of Privilege Relating to Leaks of the Auditor General’s Report on the Audit of Senator’s Expenses”, prepared by the Standing Committee on Rules, Procedures and the Rights of Parliament (Senate of Canada).¹

¹ <http://publications.gc.ca/site/eng/9.835561/publication.html>

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Contempt can be defined as “any conduct which offends the authority or dignity of the House, even though no breach of any specific privilege may have been committed.” The Committee recommends to the House that there be no finding of contempt in this matter.

The Committee finds that the Member only released the reports when they were clearly already in the public domain. In the absence of a statutory provision or confidentiality agreement, the matter of the confidentiality of the reports was not clear. In addition, the Member reached out for guidance to both the Commissioner of Legislative Standards and the Speaker of the House before releasing them, showing that he intended to follow the correct protocols. It is the view of this Committee that the Member was unaware of the possible impact of releasing the reports on the privileges of the House.

However, it must be remembered that these reports were prepared for the House of Assembly and they related to the discipline of Members, an authority and privilege held by the whole House.

The Committee notes that a Joint Committee on Parliamentary Privilege, 1999 indicated that “unauthorised disclosure of embargoed copies of reports presented to the House but not yet published... may be treated as contempt”.² Further, the Standing Committee on Rules, Procedures and Rights of Parliament did find that the release of a report of the Auditor General before it was tabled as required was a contempt of Parliament.³

However, findings of contempt are rare.⁴ In light of the lack of statutory requirements and lack of clarity and understanding around parliamentary traditions in matters of this sort, the Committee does not find that a matter of contempt has been made out in this instance.



Scott Reid, MHA, St. George's-Humber
Chair

Committee Members:

Lorraine Michael, MHA, St. John's East-Quidi Vidi, Vice-Chair
John Finn, MHA, Stephenville-Port au Port
Keith Hutchings, MHA, Ferryland
Pam Parsons, MHA, Harbour Grace-Port de Grave

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² <https://publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4302.htm>

³ *Ibid.*, note 1

⁴ “... in the prima facie cases of contempt raised in the Canadian Parliament between 1867 and 2003, only one motion containing the word “contempt” was adopted by the House. Kieron Wood, Contempt of Parliament, chapter 3, p.8