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Mercredi 15 septembre 2010

**Standing Committee on
the Legislative Assembly**

Members' privileges

**Comité permanent de
l'Assemblée législative**

Privilèges des députés

Chair: Bas Balkissoon
Clerk: Tonia Grannum

Président : Bas Balkissoon
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY**

**COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE**

Wednesday 15 September 2010

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The committee met at 1304 in room 228.

MEMBERS' PRIVILEGES

The Chair (Mr. Bas Balkissoon): We'll call to order the meeting of the Standing Committee on the Legislative Assembly.

Item one on our agenda is a draft committee report pursuant to standing order 111(b). Does everybody have a copy? Do we all understand the changes? Do we accept it? Can I take a vote?

Mr. Norm Miller: Just one question on that: The motion from the Speaker doesn't take precedence over that, is that it?

The Chair (Mr. Bas Balkissoon): No, this is business we have to get done.

Mr. Norm Miller: Because it's in the standing orders. Is that right?

The Chair (Mr. Bas Balkissoon): Yes, that's right.

Mr. Norm Miller: Okay.

The Chair (Mr. Bas Balkissoon): All in favour of the draft report? Carried.

Shall I report to the assembly on this draft report, because it has to go back?

Okay, carried. So that's done.

We'll move to item two. Item two is a matter that was before the committee before we recessed for the summer. At our last meeting, on June 2, there was a motion by Mr. Naqvi that deputations to the committee end with the June 2, 2010, presentation of Mr. Shortill, and that the committee move to report writing. I have that motion on the floor, and I'm ready to take the vote.

Mr. Michael Prue: I wish to speak to the motion.

The Chair (Mr. Bas Balkissoon): Mr. Prue.

Mr. Michael Prue: I've thought about this all summer; I've given it a great deal of thought. With the greatest respect, I don't think that is what this committee should be doing. We had a ruling by the Speaker and an instruction from the Speaker that this should be investigated. He invited Mr. Miller to make a motion to send it to this standing committee in order that the ruling of the Speaker could be brought to the fullness of debate and inquiry. At this point we are at a stage, in my view, that there is likely only one, or possibly two, witnesses left to hear, one being Mr. Till, who is called today, and possibly a second one, who was identified throughout the

course of the last day as Dan—I don't know the last name.

There was also a request by me to have cellphone records for the day brought forward so that we could see the times at which the phone calls were made, or what phone calls were going back and forth between those parties, which has not been forthcoming, at least not over the course of the summer. It may be here today or it may never be here, but that request was made as well.

If the committee proceeds and votes on this motion, I think we are doing a disservice to the Speaker, who has ordered that we do a full inquiry into what went on, but also to the House, because the House voted unanimously on Mr. Miller's motion, as I remember, to send it here with the instruction that we were to find out everything we possibly could of what went on that day and, in the words of the government House leader, to make sure it "does not happen again."

By passing this motion, if the motion is passed, this committee will have both usurped the function of the House and gone against the express written and oral instructions of the Speaker. If the government members choose to vote for this motion, I will have no option but to leave the committee. I will tell you that. It's not a threat, but I do not believe I can sit here in all conscience to carry out the will of the House and what the Speaker has instructed us to do by simply saying we're not going to do it, because that's what this motion says. We're going to be prevented from doing it.

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I think it's very unparliamentary, and I'm hoping that over the summer, the members opposite, especially, had an opportunity to reflect on this and do not do something that, in my view, is completely unparliamentary, contrary to the Legislature and contrary to the instructions of the Speaker. As I've said, I will not remain in the room should this motion pass.

The Chair (Mr. Bas Balkissoon): Further debate?

Mr. Norm Miller: If I may, from the perspective of the opposition, we've had quite a few people speak before the committee. But I do agree with Mr. Prue that we were given instructions by the Speaker and we're not quite finished our business. We think we're awfully close to being done; there may be one other person to come before the committee, but we don't have a big, long list of other people we wish to call.

As he pointed out, he has requested phone records and there's at least one person, being Mr. Till, to present to

the committee. I think the committee should be allowed to do its work, especially in light of the fact that it's a direction from the Speaker of the House. I certainly think that, from the government's perspective, they may want to think about it.

I don't think Mr. Prue is making idle threats. He's taking this matter seriously, and I'm sure he will be taking it up in the Legislature if you decide to end prematurely. As I say, I would only say to the government members that we think we're awfully close to being done listening to people speak. I think you'd be creating more problems for yourselves and the government by not completing the work as we've been instructed by the Speaker.

The Chair (Mr. Bas Balkissoon): Further debate? Mr. Naqvi.

Mr. Yasir Naqvi: I just want to make one observation: I think we all want to ensure that we make the appropriate recommendations to the Speaker, as we were directed.

I think we've heard, per our agreement, from all relevant deputants in this matter. I think Mr. Shorthill's testimony, which was cross-examined as well by honourable members, highlighted some of the miscommunication that took place by which the errors or the delay that took place that day occurred. I think it's important that we work now to ensure that those types of miscommunications do not take place in the future.

I think we also know, in the research that has been done through the research staff, that the briefings or lock-ups around the budget are a courtesy that is granted by the Minister of Finance—and it's an important tradition—to ensure that all members have sufficient information as to the budget document until it's tabled in the House. Obviously, we want to continue that tradition, but we also want to make sure that any shortcomings or miscommunications that may have happened do not occur again.

This is the first time something like that happened in the seven years since this government has been in office, so it's not something that is a regular occurrence. It is simply a fact that there were some miscommunications.

I think we are at a good place, in terms of knowing the facts, to now ensure that we can start drafting the report and putting some concrete recommendations to the Speaker and to the assembly, so we can enhance and improve the protocol for next time so that something like that does not occur again.

The Chair (Mr. Bas Balkissoon): Further debate?

Ms. Sylvia Jones: Actually, it's a question: Will we be receiving the cellphone records prior to beginning the report-writing phase?

The Clerk of the Committee (Ms. Tonia Grannum): I don't really know. I've put the request forward. I followed up over the summer with emails and phone calls to the deputy minister's office, and I haven't received a response.

Ms. Sylvia Jones: When you say you haven't received a response: no verbal, no written—

The Clerk of the Committee (Ms. Tonia Grannum): No verbal. I've left a phone message, spoken to the deputy minister's assistant, who said she'd pass on the message. I didn't receive a phone call. I couriered; I sent by messenger; I emailed the letter. I even sent by email a copy of the Hansard to show the concern that members had that there was no response. I have received nothing to date.

Ms. Sylvia Jones: Chair, it sounds like the clerk has done a very thorough job of first transferring our request initially and following up to ensure that it was received. I have a lot of concerns that this standing committee of the Legislative Assembly is essentially being ignored. I don't think there's another word for it when you talk about emails, messages, messengers and phone calls by staff of the ministry.

Perhaps you could give me some direction in terms of what our next steps are. There was very clearly a motion brought forward in June from this committee requesting those cellphone records, because I think ultimately they become part of completing the picture of what exactly happened on that budget day and during the lockup. What are our next steps, in terms of repercussions, if we are being ignored? And it has a direct bearing on how I respond to the motion brought forward by Mr. Naqvi.

The Chair (Mr. Bas Balkissoon): Ms. Jones, the only advice I could give is, we've made the request. It hasn't come. When we write our report back to the assembly we will indicate that we made the request and it wasn't responded to.

Unfortunately, I have a motion in front of me that has been moved and I am obligated to take the vote unless the mover of the motion withdraws it.

Ms. Sylvia Jones: As it stands, based on the information about the lack of response to our requests as a committee, I cannot support the motion brought forward. I would hope that the mover would withdraw or modify so that we can get the complete information before we get to the report-writing stage.

The Chair (Mr. Bas Balkissoon): Further debate? Mr. Prue.

Mr. Michael Prue: If I could, to go back again: I listened to Mr. Naqvi. I'm trying not to be angry—I'm trying to be very rational—but it seems to me that the parliamentary privilege enjoyed by all of us in this room is contingent upon hearing the information, and all of the information. Mr. Till is absolutely key. He was mentioned by at least two or three of the people who have so far given us information as having a key role in being in charge. You've called him in—I understand that he is here today—and for some reason members opposite, or at least one member opposite, do not want to hear what he has to say. For some reason unbeknownst to me, at least one member opposite does not want to see the phone records. Unbeknownst to me, at least one member opposite does not want to hear what Dan, whoever Dan is, who was also mentioned as being a participant on that day, has to say.

I am unaware, in any type of hearing like this, which hinges on the quasi-judicial, of any case where a fact-finder, a finder of fact, does not try to find out every piece of information that is germane or where a fact-finder would say, "I don't want to hear any more information," save and except in those very rare cases when it is obvious to all that the necessary facts are in. I am not sure that they are all in. I am particularly disturbed because Mr. Till played such a key role; he was not a bit player on that day. I am particularly disturbed because what will back up the actual sequence and timing of events is the cellphone records themselves.

And here it is; somebody's saying, "I've heard enough. I don't want to hear any more. I just want to write a report. I don't want to hear all of the facts," because that's in fact what's being said. I don't want to write a report not knowing those facts. I don't think I'm doing any justice to the Speaker, to the Legislature or to my role as a parliamentarian. I would hope the others opposite think the same thing.

You have to try to put yourselves into the shoes of ordinary Ontarians, some of whom didn't like what happened that day. This is not just inside baseball; it's not just what affected us. It affected a long parliamentary tradition, where parliamentarians were not allowed the privilege of being in their seat when the Parliament is in session. That's what this is about.

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I am somewhat flabbergasted at the motion and I'm equally flabbergasted that the Ministry of Finance has stonewalled the clerk's repeated, repeated request for information that could be printed on a piece of paper. What is being hidden here? That's the question. What are people attempting to hide? And I'm looking over here at you guys, too. What is it that is wanting to be hidden? What is it? You're hiding something, and I don't know why. Whatever it is, I don't like it, and if this motion passes, as I said, I will not participate further. I will not participate in the writing of the report, and I guess you would leave me no option but to go upstairs and file a motion of privilege. If that's what you want, that's what I'll do.

The Chair (Mr. Bas Balkissoon): Further debate?

Mr. Norm Miller: Just as I stated before, from our perspective, other than getting these requests to do with phone records fulfilled, we think we're pretty much done with presenters. We've got one or two, so we think we're very close to being finished with people presenting to the committee. It seems that the government or Mr. Naqvi, by putting this motion forward and if it's supported, is trying to shortchange and end the committee business before it's really heard all the facts.

As I say, from our perspective, we think we're pretty much near the end, so I'd ask them to rescind or remove the motion. Otherwise, we will support Mr. Prue and we won't be participating further in the committee.

The Chair (Mr. Bas Balkissoon): Further debate? There being none, I have a motion in front of me, that deputations to the committee end with the June 2, 2010,

presentation of Mr. Shortill, and that the committee move to report writing. All in favour? Against? That motion carries.

Mr. Michael Prue: Madam Clerk, I trust that the record will show that I left the room. Thank you.

Ms. Sylvia Jones: Enjoy your report.

The Chair (Mr. Bas Balkissoon): I'm in the hands of the committee now. The next stage is report writing. Would you like to give the research officer directions to put that report together today or would you like to meet another day to do that?

Mr. Yasir Naqvi: I have certain recommendations I would like to see in the report that I wanted to highlight for the researcher.

One of the things that research always has to do is capture the testimony that was presented. I think what was most important was Mr. Shortill's testimony under cross-examination in terms of the miscommunications he highlighted where, perhaps, the problem arose which we are dealing with. Through his testimony, there were three recommendations that come to mind that I think will be important to make to the Legislature. One is that in the future, we let the opposition go first to the House as opposed to the government members. The other is that we double the number of staff on doors, especially at the opposition lock-up, so that there is no—sorry, am I going too fast?

The Chair (Mr. Bas Balkissoon): He's writing, so go slower.

Mr. Yasir Naqvi: Second is to perhaps double the number of staff at lock-up, especially at opposition lock-up, so that there is no miscommunication and we're not just relying on one individual.

The Chair (Mr. Bas Balkissoon): I think you should clarify that, where you're saying "opposition"—just to make sure we understand that it's the opposition and the third party.

Mr. Yasir Naqvi: Opposition and third party, yes.

The Chair (Mr. Bas Balkissoon): Just to make sure.

Mr. Yasir Naqvi: And I think one of the recommendations I recall Mr. Shortill suggested was perhaps the use of closed-circuit televisions, which could ensure that there is no confusion in the future if something like that occurs again. So perhaps using of more closed-circuit television to ensure that there's a smooth flow of individuals back to the Legislature.

Those are three that come to mind. I'm sure if one goes through Hansard, there may be some other ideas that research staff might want to propose to us for consideration.

The Chair (Mr. Bas Balkissoon): Any other direction? Do you have any requests?

Mr. Mario Sergio: Chair, just for clarification from our member, are we doing anything with the ministry staff? Are we just asking to double the presence of staff of the two other parties, or are we doing anything with respect to our own ministry staff as well? Are we increasing our own ministry staff, so there is no possible miscommunication by having more staff?

Mr. Yasir Naqvi: I think we just want to make sure there are more clear lines of communication—

Mr. Mario Sergio: From the ministry as well?

Mr. Yasir Naqvi: —from the ministry, because the whole mechanism that day is run by the ministry. It is a courtesy offered by the Ministry of Finance.

Mr. Mario Sergio: Thanks.

The Chair (Mr. Bas Balkissoon): Any further comments or directions?

Mr. Sibenik, how long do you think you need to do this?

Mr. Peter Sibenik: Three weeks.

The Chair (Mr. Bas Balkissoon): What does that take us to? October 6? Okay. The research officer will have his draft report and we will schedule a committee meeting for October 6.

Do you have a question?

Mr. Peter Sibenik: I've got a question for the committee. I take it that in the early part of the report you want some background information as to what happened—how we got to this point—to set up the recommendations. Is that correct?

Mr. Yasir Naqvi: Yes, and I think the Speaker's ruling is probably sufficient in terms of giving you some of the context on that.

Mr. Peter Sibenik: Right. Are there any other findings that the committee wants in this particular report, or just the background information that was in the Speaker's ruling, plus the recommendations? That will be the sum total of the report. Is that correct?

The Chair (Mr. Bas Balkissoon): What about the deputations?

Mr. Yasir Naqvi: Maybe a summary of the deputations.

Mr. Peter Sibenik: Should there be any reference in this particular report about how the committee is deciding on the matter that is before it? There has been a ruling by the Speaker—there has been a prima facie case of breach of privilege—so the House adopted a motion to refer that matter to the committee. In a sense, it's in the hands of the House, delegated to the committee, to make a final determination as to whether or not there has been a breach of the privileges of members. Should the draft report, at this stage, make any indication one way or the other about that particular issue?

Mr. Yasir Naqvi: From my point of view, and again recalling the evidence that was presented to us, there was a delay, as was found by the Speaker, in terms of a prima facie basis. I think it's clear from the report that it was not intentional in nature, that there was some miscommunication that took place. We had the chief of staff taking clear responsibility for that. So from our perspective, I think there has not been a breach of privilege in that respect. Regardless, we do know that there was a delay that took place, and we want to make sure we rectify that and make recommendations in that regard for the future.

Mr. Peter Sibenik: Thank you.

The Chair (Mr. Bas Balkissoon): Anybody else?

Our next meeting will be on October 6. The clerk will send out notice. We're adjourned.

The committee adjourned at 1327.

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