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REPORT OF THE STANDING ORDERS COMMITTEE

ON

SO 155 – PROCEDURE FOR RAISING MATTER OF PRIVILEGE

AND

SO 134 PROVIDING FOR A RIGHT OF REPLY

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1. Procedure for raising matters of privilege – SO’s 104-106, 155

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Of the few matters of privilege brought to the House each session, most are raised under SO 155. That procedure is not exclusive and, on its proper construction, is narrow in its application. Essentially, it enables an issue touching the privileges of the House to be raised as a matter of priority and dealt with by the House on that basis – other business is set aside for the purpose.

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Strictly interpreted, SO 155 applies to an occurrence said to involve a matter of privilege that arose sometime between an adjournment of the Council and before the time when it first resumed sitting following that adjournment. However, the House has developed the practice of allowing a member to use the procedure in cases where the alleged breach has occurred outside the period mandated by the rule but immediately after it first comes to the member’s attention. Effectively, the rule is used to raise any matter of privilege regardless of when it is said to have occurred – the trigger is when the matter first came to a member’s attention.

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Because of the disparity that has emerged over time between the rule as drafted and the application of the rule, it is desirable that the matter be revisited and adjustments made to reconcile what the rule says with what the House permits.

5 The Committee sees no advantage in recommending a retreat to a strict application of SO 155 and associated SO's 104, 105. Matters of privilege that fall outside the scope of the rule must be raised by a notice of motion or, arguably, as a motion without notice during the daily routine of business set out in SO 125. The mere fact that non-SO 155 matters may not be able to be brought to the House's attention and dealt with promptly provides some clue as to the reason for the liberal interpretation that SO 155 has attracted.

10 However, if it is to be the case that SO 155 is turned into a general procedure, the Committee is of the opinion that the procedure itself must be adjusted to ensure that it is not employed for a dilatory, frivolous, or vexatious purpose. The intent should be to facilitate consideration of a matter of privilege as a matter of priority without encouraging protracted debate on the merits at the time that it is first raised.

15 It is the usage of the House - no rule requires it - that a matter of privilege, whether raised under SO 155 or otherwise, be referred to a select committee appointed for the purpose rather than deal with it "in the heat of the moment" on the floor. A committee reference is no more than an indication from the House that there appears to be a case to answer.

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This Committee believes that any change in procedure should include a requirement, where it is established that a matter of privilege is in issue, for the appointment of a select committee to inquire into the matter.

25 The following redraft of SO 155, if adopted by the House, will –

- permit a member to raise a matter of privilege whether or not it occurred sometime after the previous adjournment
- provide for the interruption of any business in order to raise the matter
- require a member to move for the appointment of a committee of privilege
- require that member to table any relevant "document"
- confine the member to a 10 minute speech in support of the motion restricted to facts or alleged facts
- adjourn debate automatically to give time for consideration

- bring the matter back when the House next meets
- ensure that the matter is a matter of privilege by requiring a ruling to that effect
- dispose quickly, by discharging the order of the day, of those matters that do not involve questions of privilege
- limit any debate for the appointment of a committee to 1 hour and each member to 10 minutes
- make the committee the tribunal of fact
- give the committee the necessary powers of coercion
- not interfere with the House's summary jurisdiction under s 10 of the *Parliamentary Privileges Act 1891* or prevent a committee from reporting a breach committed during its proceedings
- remove outmoded SO 106 and its restriction to newspapers
- do away with concepts of "recent occurrence".

As part of its review, the Committee proposes the repeal of SO's 104-106. Although SO 106 and its requirement to produce a relevant newspaper article was apt in 1907, technological advances should be recognized and the verification requirement ought now to include other media. It seems to the Committee that the most effective means of achieving this is to import into the proposed new SO 155 a definition of "document" drawn from the *Interpretation Act 1984* and appearing as subclause (9) of the redraft.

The Committee should also say something about the role proposed for the President. The existing right of the House to determine whether there is a case to answer is preserved and, as earlier observed, that determination is made through the House appointing, or declining to appoint, a select committee. What the redraft does ensure is that once the member raising the matter has outlined his or her case, debate is adjourned and the President, meantime, is required to decide on the basis of what has been said, whether or not the matter deals with a matter of privilege within the meaning of the *Parliamentary Privileges Act 1891*.

The Committee needs to stress that this is not the same question as that reserved to the House, but rather a preliminary decision that the privileges of the House are, in fact, in issue. Once that hurdle is cleared, the House retains the option to treat the matter as one meriting inquiry or not.

The President's intervention on the threshold question avoids a situation where the House appoints a committee only to find that no question of privilege is at stake.

5 The Committee also draws attention to the limited time debate proposed on the question to appoint a committee. Whatever the merits of the case, they should be traversed before the committee and not rehearsed in debate before all the facts and circumstances are known. In the Committee's opinion, the question for the appointment of a committee is a simple one and should be disposed of within a reasonably short timeframe.

10 The Committee **recommends** –

That SO's 104-106 and 155 be repealed and the following substituted –

155. Procedure for raising matter of privilege

- (1) A member may raise a matter alleging a breach of privilege at any time without notice whether or not other business is under consideration at the time.
- (2) The member raising a matter of privilege under this order –
 - (a) must move for the appointment of a select committee to consider and report on the matter raised; and
 - (b) in speaking to that motion, do no more than state succinctly the facts and circumstances said to constitute or show that a breach of privilege has occurred; and
 - (c) table any relevant document;
 - (d) cannot speak for more than 10 minutes.
- (3) At the conclusion of the member's speech the matter is adjourned without question put.
- (4) At the next sitting, and despite any other rule or order, the order of the day for further consideration of the matter is to be taken immediately after Prayers at which time the President shall rule whether the matter is one affecting the privileges of the House under *the Parliamentary Privileges Act 1891*.
- (5) A ruling given under subclause (4) is final.
- (6) Where the President rules –
 - (a) that no matter of privilege is involved, the order of the day is discharged;
 - (b) that there is a matter of privilege, the order of the day is to be called forthwith and the question must be determined at that day's sitting.

- (7) Debate under subclause (6)(b) must not exceed 1 hour and no member may speak for more than 10 minutes.
- (8) Any committee appointed under this order has power to send for persons, papers, and records.
- (9) In this order, “document” has the meaning given to that expression in s 5 of the *Interpretation Act 1984*.
- (10) This order does not apply to proceedings taken under section 10 of the *Parliamentary Privileges Act 1891* or to proceedings dealing with a matter of privilege reported from a committee.

2. Right of reply – SO 134

5 On September 8 1998, this Committee tabled its Report #3 recommending the
addition to SO 134 of a procedure intended to provide a right of reply to a
person who maintains that he or she had been the subject of adverse comment
in a parliamentary proceeding and who is thus precluded from commencing
legal proceedings against the member making the comment. The Committee’s
10 proposal went further and provided that where a matter of privilege arose from
the complaint, the committee receiving the petition was to be reconstituted as a
committee of privilege for the purpose by the addition to the membership of the
Leader of the House and the Leader of the Opposition or their respective
nominees.

15 Although the proposal has been debated, the House has yet to adopt the
Committee’s recommendations. The Committee restates its view that the
procedure recommended in the 1998 Report be adopted with one amendment.
viz , in proposed paragraph (e), delete the lines between subparas (ii) and (iii)
20 and substitute –

*and the President, on a reference from the committee to which it
stands referred (the “committee”), rules that the petition:*

25 This amendment harmonizes the threshold question – a matter of privilege is
involved – with the way in which the Committee intends that the question
should be dealt with under the proposed SO 155.

The Committee **recommends** that the procedure set out in Report #3 1998 as amended in the manner set out above, be adopted and that SO 134 be amended accordingly. The text of the amendments, incorporating the amendment in this report, is appended in the Schedule.

Schedule

- " (e) A petition that alleges, whether directly or by necessary inference, that a member of the Legislative Council or other person, in the course of a proceeding in Parliament has:
- (i) attributed to the petitioner statements or acts that are denied by the petitioner; or
 - (ii) misrepresented the scope, purpose, or intent of any statement or act of the petitioner,
- and the President, on a reference from the committee to which it stands referred (the "committee"), rules that the petition:
- (iii) is one to which SO 133 (c) (vii) applies; or
 - (iv) raises a matter of privilege,
- the committee shall not further deal with the petition where subparagraph (iii) applies or, where subparagraph (iv) applies, shall not deal further with the petition except in the manner prescribed in the succeeding paragraphs. The committee must make and report its determination under this paragraph not later than 7 sitting days of the day on which the petition stood referred.
- (f) For the purpose of its inquiry on a petition involving a matter of privilege, the committee is reconstituted by the appointment ex officio of the Leader of the House and the Leader of the Opposition or their respective nominees. The committee as so reconstituted may proceed to deal with the petition in the manner, and to the extent, as if it were a select committee of privilege appointed for the purpose and, unless otherwise ordered, shall report finally on the matter not later than 30 days of the days on which it was reconstituted..
- (g) Where the committee's findings sustain the prayer of a petition that is subject to paragraphs (e) (iv) and (f), the committee:
- (i) having regard to the nature and severity of the harm caused to the petitioner or other person, shall recommend what action the House or a person might take in order to mitigate that harm;
 - (ii) where a breach of privilege or a contempt is found, shall recommend what penalty might be imposed by the House.
- (h) A member shall not sit as a member or as an ex officio member of the committee if —
- (i) the member presented the petition; or
 - (ii) the subject matter of the petition involves or relates to the conduct of that member,
- and in either case a substitution must be made under SO 326A. Leave cannot be granted under SO 326 and, except as provided in this paragraph, no substitution can be made under SO 326A in relation to a committee reconstituted under paragraph (f).
- (i) A petition to which paragraph (e) (i) or (ii) applies but not paragraph (e) (iii) or (iv) may be dealt with as the committee thinks fit. "■

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