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# LEGISLATIVE COUNCIL

*How Barry House*

*Standing <sup>Orders</sup> ~~Committee~~ Committee*

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**Subject:** *Report concerning proposed alterations to Chapter 10 (Petitions) as referred to the Committee by the House following the report of the Select Committee of Privilege into the Easton Petition.*

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# REPORT OF THE STANDING ORDERS COMMITTEE

## RE: PROPOSED ALTERATIONS TO CHAPTER 10

On June 22 1994, the House referred proposed alterations to the standing orders governing petitions to the Standing Orders Committee for its consideration and recommendation.

The Committee has considered the proposals, agrees that they accord with the recommendations of the Select Committee of Privilege on the *Easton Petition*, and recommends:

**That the House amend Chapter 10 of Standing Orders in the form set out in the reference made to the Standing Orders Committee on June 22 1994.**

I move that the report do lie upon the Table and be printed.



Barry House MLC  
Deputy Chairman  
Standing Orders Committee

August 17 1994



## STANDING ORDERS COMMITTEE

### MEMORANDUM: PROPOSED ALTERATIONS TO CHAPTER 10

#### Background

10 The proposed alterations to the standing orders governing petitions arise from the recommendations of the Select Committee of Privilege re the *Easton Petition*. In the committee's opinion, the changes would strengthen the standing orders to the extent that they are intended to prevent the presentation of frivolous or vexatious petitions, or those that are presented with intent to harm others by making allegations protected by privilege.

#### The Proposed Alterations

To assist the committee, a reprint of Chapter 10 is attached to this memorandum showing the effect of the proposals.

20 Each alteration is now explained in the order appearing in the reference:

1. Standing order 132 is amended by adding the words:

"The Clerk shall not be concerned to inquire into the factual correctness of any statement or allegation contained in a petition but shall, nonetheless, decline to certify a petition that is submitted contrary to the provisions of SO 134."

30 The committee concluded that the Clerk should not assist petitioners to frame their petitions. Neither should the Clerk, as was the case with Easton, request evidence of a petitioner that supports the allegations of fact made in a petition.

The committee stated that the Clerk is placed in a conflict of interest situation if, having assisted a petitioner as outlined, he/she then certifies that the petition complies with the requirements of standing orders; the ability to judge compliance freely has been compromised.

40 The alteration removes any doubt as to the role of the Clerk prior to giving the certificate under SO 132. Additionally, the Clerk will not be permitted to certify a petition that does not comply with SO 134 as proposed to be amended.

2. Standing order 133 is amended by:

(a) adding to subparagraph (a) (i) before the word "addressed" the words "drafted by, or at the direction of, the person promoting it, couched in reasonable terms, and";

(b) deleting subparagraph (a) (v);

(c) inserting as subparagraphs (c) (v), (vi) and (vii) the following:

"(v) contain statements adverse to, or make allegations of improper, corrupt or illegal conduct against, a person whether by name or office;

(vi) contain or disclose matter in breach of a secrecy provision of, or order imposed or made under the authority of, a written law;

(vii) seek relief or a declaration in circumstances where the matter is justiciable and legal remedies available to the petitioner have not been exhausted".

Adding the words "drafted by, or at the direction of, the person promoting it" to (a) (i) is an expression of the existing usage and presumption, viz, that the promoter of a petition is the person who drafted it or who takes responsibility for its content.

The other words in the amendment "couched in reasonable terms, and" are transferred as a result of the amendment to repeal existing subpara (v). The remainder of that subpara is made superfluous by the amendments to para (c) and the insertion of a new SO 134.

The new subparas (v), (vi) do not prevent petitioners from making the allegations or disclosures described; they merely forbid such material appearing on the petition when presented.

The purpose of the amendments is to deny a petitioner an ability to make allegations or disclosures, adverse to others, under cloak of privilege before the House has been given an opportunity to test their worth or truthfulness.

New subpara (vii) is the same in substance as existing SO 134 which would be repealed consequentially.

3. Standing order 134 is deleted and the following substituted:

**Additional requirements for certain petitions**

134. (a) Where a petition would, but for the provisions of this Chapter:

(i) contain statements or allegations of the type described in SO 133 (c) (v);

(ii) disclose matter in breach of SO 133 (c) (vi),

the petition shall be confined to a request for relief and be accompanied by a statement of the facts supporting the request.

(b) The statement required under paragraph (a) shall disclose all relevant facts including those adverse to the petitioner and have affixed an affidavit in the form set out in the Schedule to this order.

10 (c) A petition subject to SO 133 (c) (vii) shall be accompanied by a copy of the judgment of the court of first instance and on appeal.

(d) The statement required by paragraph (a), the affidavit made under paragraph (b), and the copy of judgment required by paragraph (c) are not to be tabled or presented with a petition but shall be retained by the Clerk pending their transmission to the committee to which the petition is, or stands referred after presentation.

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#### SCHEDULE

#### AFFIDAVIT FOR PURPOSES OF SO 134

Re the Petition of A B

I, X Y, solicitor/counsel for the the petitioner A B, make oath and say as follows:

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The statements of fact made by the petitioner in paragraphs . . . of the petition are true to the best of my knowledge, information and belief, and the allegations made are, in my professional opinion, sustainable.

Sworn etc

The proposed para (a) restricts the form of a petition to one "praying for relief" if it is one subject to SO 133 (c) (v), (vi). In such a case, the allegations or disclosures grounding or supporting the petition are to be contained in a separate statement.

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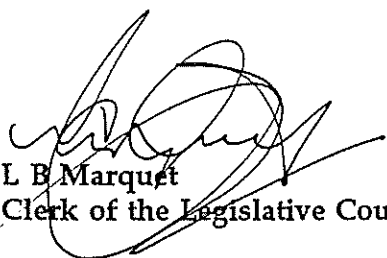
Facts contained in that statement are to be verified independently by the petitioner's lawyer (new para (b) and Schedule) and the facts are to include those that do not support the petitioner's case. The Privileges Committee was highly critical of the selective evidence used by Easton to support his petition and equally critical of the misleading assertions contained in the petition itself. Had all relevant evidence been made available, it is clear that many of the assertions could not have been substantiated.

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Because the Clerk should not, and cannot, examine the accuracy of facts and allegations supporting the petition, the best means of ensuring some objective judgment on the matter, before presentation, is to secure an affidavit from the petitioner's lawyer. Swearing of an affidavit later found to be false or misleading renders the lawyer liable to punishment for a contempt and/or a prosecution for perjury.

Where the petitioner relies on (an unsuccessful) exhaustion of legal remedies, new para (c) requires production of a copy of the judgment evidencing the fact that pursuit of the matter through the legal system is no longer an option.

The proposed alterations, if adopted, have no financial significance and would not increase the costs of services provided to the House.



L. B. Marquet  
Clerk of the Legislative Council

August 15 1994

The Chairman and Members  
Standing Orders Committee  
Legislative Council

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## Chapter X.

### *PETITIONS.*

#### **Manner of presentation.**

130. A petition is presented by delivery to the Clerk or tabling in the Council, and in either case the Member presenting it shall endorse his name across the petition before presenting it.

Where a petition is presented by tabling, the Member presenting it shall confine himself to naming the parties promoting it, stating the number of signatories, its subject matter or a summary thereof. The petition shall then be brought to the Table without any question being put.

#### **Members to present petitions.**

131. No person other than a Member shall present a petition, and no Member shall present a petition from himself.

#### **Clerk's certificate required.**

132. A petition is not presented or capable of being presented unless the Clerk:
- (a) in a case of presentation by delivery, certifies at the time of delivery; or
  - (b) in a case of presentation to be made by tabling, certifies not less than one hour prior to tabling,

that the petition complies in all substantive respects with the requirements of this Chapter. The Clerk shall not be concerned to inquire into the factual correctness of any statement or allegation contained in a petition but shall, nonetheless, decline to certify a petition that is submitted contrary to the provisions of SO 134.

#### **Rules governing petitions.**

133. A petition shall be:
- (a) (i) drafted by, or at the direction of, the person promoting it, couched in reasonable terms, and addressed to the President and Members of the Council;
  - (ii) in English or accompanied by a certified English translation;
  - (iii) legible, and unamended whether by insertion or deletion or interlineation;

## PETITIONS

(iv) signed by the person or persons promoting it and if such person, or one or more of them, is a corporation, the common seal of the corporation or corporations shall be affixed to the petition.

~~(v) couched in reasonable terms and devoid of, statements that would constitute a breach of the Council's standing orders or, irrelevant material.~~

(b) A petition shall state the number of signatories and contain a prayer or formal request at the end.

(c) A petition shall not:

(i) have any other document attached to it;

(ii) quote or refer to a discussion on any question considered by either House in the same session;

(iii) bear other than original signatures, or have signatures pasted on or otherwise attached to it or to sheets (if any) bearing additional signatures;

(iv) seek a direct grant of money from the Council.

(v) contain statements adverse to, or make allegations of improper, corrupt or illegal conduct against, a person whether by name or office;

(vi) contain or disclose matter in breach of a secrecy provision of, or order imposed or made under the authority of, a written law;

(vii) seek relief or a declaration in circumstances where the matter is justiciable and legal remedies available to the petitioner have not been exhausted.

### ~~Certain petitions not receivable.~~

~~134. The Council will not receive or consider a petition whose subject matter constitutes or discloses a cause of action and the promoter has not exhausted legal remedies otherwise available to him.~~

### Additional requirements for certain petitions

134. (a) Where a petition would, but for the provisions of this Chapter:

(i) contain statements or allegations of the type described in SO 133 (c) (v);

(ii) disclose matter in breach of SO 133 (c) (vi),



## PETITIONS

the petition shall be confined to a request for relief and be accompanied by a statement of the facts supporting the request.

- (b) The statement required under paragraph (a) shall disclose all relevant facts including those adverse to the petitioner and have affixed an affidavit in the form set out in the Schedule to this order.
- (c) A petition subject to SO 133 (c) (vii) shall be accompanied by a copy of the judgment of the court of first instance and on appeal.
- (d) The statement required by paragraph (a), the affidavit made under paragraph (b), and the copy of judgment required by paragraph (c) are not to be tabled or presented with a petition but shall be retained by the Clerk pending their transmission to the committee to which the petition is, or stands referred after presentation.

### SCHEDULE

#### AFFIDAVIT FOR PURPOSES OF SO 134

##### Re the Petition of A B

I, X Y, solicitor/counsel for the the petitioner A B, make oath and say as follows:

The statements of fact made by the petitioner in paragraphs . . . of the petition are true to the best of my knowledge, information and belief, and the allegations made are, in my professional opinion, sustainable.

Sworn etc

### **Petitions to be notified**

135. As soon as practicable after presentation, the following information shall be printed in the Notice Paper relating to a petition:
- (a) the name of the promoter;
  - (b) the number of signatories;
  - (c) a description of the subject matter;
  - (d) the name of the member presenting it and the manner of presentation;
  - (e) the date of referral (if any) to a committee,

and upon presentation of the committee's report, the same information, together with a summary of the committee's findings and recommendations (if any) shall again be printed in the Notice Paper.