

**COMMUNICATION BY HON SPEAKER DR. KENDAL MAJOR IN
RESPONSE TO THE INJUNCTION ISSUED BY HON JUSTICE
CHARLES AGAINST TWO MEMBERS AND ONE SENATOR
RESTRAINING THEM FROM FURTHER DISCLOSING, SAVE
THE BAYS CONFIDENTIAL INFORMATION IN PARLIAMENT
ON FRIDAY APRIL 22ND, 2016**

Kendal Major
25/4/2016

Hon Members, on Friday April 22nd, 2016 a captioned on the Lower right section of the front page of the Tribune read as follows: MPS ORDERED NOT TO DISCLOSE MORE CONFIDENTIAL INFORMATION.

As Speaker I was astonished and offended at its contents. I proceeded to procure a copy of the Injunction Order and the Affidavits, submissions and testimonies presented to the Court.

For complete clarity I will read an excerpt of the Injunction Order:

IN THE MATTER OF ARTICLES 15, 23 & 28 OF THE CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS BETWEEN

COALITION TO PROTECT CLIFTON BAY (1st Applicant) AND ZAHARY HAMPTON BACON III (2nd Applicant) AND THE HON FREDERICK A MITCHELL MP (Min of Foreign Affairs and Immigration)—1st Respondent AND THE HON JEROME FITZGERALD MP (Minister of Education, Science and Technology)- 2nd Respondent AND THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS- 3RD Respondent

ORDER- (Granting Interlocutory Injunction)

BEFORE THE HONOURABLE MS. JUSTICE INDRA CHARLES this 21st day of April, 2016:

UPON THE APPLICATION of the Applicants by an Ex Parte Summons (on Notice) filled herein on 21st April 2016;

AND UPON READING the written submission of Counsel for the Applicants dated 21st, April, 2016

AND UPON HEARING Mr. Frederick Smith Q.C of Counsel for the Applicant appearing with Mr. Ferron Bethell, Ms. Camille Cleare, Mr. Dawson Malone, Mr. Adrian Gibson, and Mr. Crispin Hall;

AND NO APPEARANCE by or on behalf of the Respondents, notice having been duly given to the Respondents through the Office of the Attorney General;

AND UPON AN UNDERTAKING by the Applicants that in the event the Respondents succeed at trial and proves that they have suffered damage as a result of the Injunction ordered by paragraph 1 below, the Applicant will

abide by any order which the Court may make for payment for damages to the Respondents;

IT IS HEREBY ORDERED AS FOLLOWS:

1. Until Thursday 12th May 2016 at 11:00am (the return date) or until further order of this Honourable Court, the Respondents (whether acting directly or through their employees and/or their officers and/or agents or otherwise) be forthwith prohibited and restrained from any or any further appropriation and/or perusal and/or use and/or publication and/or communication and/or disclosure **in Parliament** or in any other place or through any medium or to any person or entity whatsoever of any correspondence (including emails and their attachment) belonging to the Applicants or sent or received by the 2nd Applicant including any information derived from or contained therein ("the injunction");
2. The Respondents are at liberty to apply to vary or discharge the injunction at paragraph 1 hereof upon 3 clear days' notice to the Applicants;
3. The cost of and occasioned by this Summons be costs in the cause.

Hon Members, I regard this Interlocutory Injunctive Order as a preemptive onslaught against the independence of the Parliament and its attempted execution usurps the authority of the Chair and amasses contempt upon our institution.

In my view the Order violates the principle of separation of powers critical to a Parliamentary Democracy and should attract outrage from every Member of this place and Senator in the other place. In short, it is a blatant breach of parliamentary privilege and utterly disdainful on many levels.

As Chair I defy this or any attempt by any court to direct or affect in any way the conduct of our business in this place. I have the honor to preside over this House at this juncture in our history and will therefore jealously guard its rights and privileges.

Before continuing I will seek to regulate myself in my denouncement of this assault by abiding by the same Rules we have instituted to protect our democracy and show mutual respect to all branches of government.

Lets place what happened here into perspective:

Our Rules of Procedure cautions us in Rule 30(20). It speaks to the principle of Sub judice. This means when matters are waiting judicial decisions the House is obliged to avoid discussion in great detail to curtail prejudice. The Sub judice principle is an ideal but it is not a decree. This means the **House** determines whether any matter is discussed and to what degree it is discussed in debate.

Secondly, Rule 30(22) states, "The conduct of the Queen, Governor General, either House of Parliament or any Member thereof, the Judiciary, or the

performance of judicial functions by any person may not be referred to except on a substantial motion. In other words, our level of criticism directed toward the Judiciary to some degree will be restrained.

In these Rules the House as a courtesy has determined that this is appropriate for each branch of government to function. Then, the Courts in its wisdom ought to be careful not to violate the same tenets between branches.

Yet as Chair I will be guided by our self-imposed Rules because I respect the fact that we are mutually exclusive yet necessary to our co-existence.

These Rules regulate the House. So when the courts decide to meddle and extend its reach into the halls of parliament democracy is not well served.

Parliament can be messy yet it is self-regulating and the people ultimately cause it to correct herself. Members are often wrong and make mistakes. However for the system to work there must be mutual cooperation and respect between branches of government. Our Rules operate through the discretion of the Chair and through this vehicle we regulate the Members. Parliament has its own checks and balances, i.e. Rules, Chair, Committees, private Members, diversity, elections every five years, etc.

This matter is not about politics or who is right or wrong for what they said or did. This action by the Court is a violation of a clear-cut principle in constitutional law and separation of powers.

The privilege of freedom of speech is both the least questioned and the most fundamental right of the Member of Parliament on the floor of the House and in committee.

Origins of parliamentary privilege

Maingot, in his classic text on *Parliamentary Privilege in Canada*, states, in speaking to the essential nature of freedom of speech, “*No one in the free world will argue to the contrary*”. Freedom of speech is expressly guaranteed by article 9 of the English *Bill of Rights* of 1689, which states that: “... *the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place outside of Parliament.*”

What does our Constitution say about privilege?

Parliamentary Privilege refers to the rights and immunities that are essential for the Parliament as an institution and its Members as representatives of the electorate to perform their functions unimpeded. These powers and immunities, to some extent, accord parliamentarian’s peculiar rights and special advantages not enjoyed by other citizens. But Members are not outside of or above the laws, which govern Bahamian citizens.

Article 52 (1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of The Bahamas.

Article 53(1) of the Constitution empowers the House to determine by law its own privileges, immunities and powers.

Article 55(1) of the Constitution authorizes and empowers each House to regulate its own procedures by making Rules of Procedure. Both Senate and House of Assembly have drafted and adopted Rules of Procedures, which govern and regulate the meetings of the chambers.

The Principles of Parliamentary Privilege preserves the authority of both Houses of Parliament therefore the right to restrain and even punish their Members who by conduct, offend the House.

Statute Law: The Powers and Privileges (Senate and House of Assembly) Act established in Bahamian state law those powers, privileges and immunities of parliamentarians:

Article 3. Senators and Members shall have the like privileges and immunities as are enjoyed for the time being in the United Kingdom by members of the Commons House of Parliament, and without derogation from the generality of the privileges and immunities conferred by this section, in particular shall have such privileges and immunities as are provided hereafter in this Act.

- **Freedom of Speech** –No civil or criminal proceedings may be instituted against any Member for words spoken in the House or Committee, written in any report to the House or Committee, or brought to the House by a Member in a Petition, Bill or Motion.
- **Freedom from Arrest-** No Member shall be liable to arrest for any civil debt while going to, attending or while returning from any sitting of the House or Committee and no Member shall be liable to arrest for any criminal offence within the precincts of the House while the House or Committee is sitting without the consent of the Speaker.
- **Restrictions on Service of Process-**No process issued by any court shall be served or executed within the precincts of the House through the Speaker or any officer of the House while the House is sitting.
- **Power to issue summons for attendance of a witness-** when the attendance of any person is required to give evidence before the House or a Committee the Speaker is empowered to inform the Clerk to issue a summons requiring the attendance of such person.
- **Power to regulate admission to the House -** The Speaker is empowered to issue orders such as are necessary to regulate the admission of visitors to the House.
- **Power to punish persons for false printing of House documents-** Any person who prints any document of the House falsely shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding two years

Contempt- Contempt of the House and Breach of Privilege are two terms often used interchangeably. However, the two terms are not synonymous. Breach of Privilege is a violation of one of those privileges which have been

codified in statute law and which have been listed above. Contempt, on the other hand, occurs when an individual disobeys or ignores a Resolution passed by the House or disobeys or ignores an Order by the Speaker or generally impedes or obstructs the business of the House. The power of both Houses to punish for contempt is similar to that possessed by the Supreme Court and its enforcement is discretionary.

Erskine May defines the privilege of freedom of speech as follows: "*Subject to the rules of order in debate... a Member may state whatever he thinks fit in debate, however, offensive it might be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation.*"

Implicit in the concept of freedom of speech is the immunity of Members from civil or criminal prosecutions for words spoken within the legislature. There is lengthy judicial precedent supporting this ancient privilege and reinforcing the deference of the Courts to the legislature, at least in regards to matters spoken in the legislature.

The purpose of the privilege is to protect freedom of speech and debate in Parliament. However, Members are not protected by this privilege outside the walls of the House. I will continue to demand that Members be responsible in their Speech in this House so as to prevent any perceived abuse of this parliamentary privilege.

In Conclusion:

I am advised that the Office of the AG will seek to have the order set aside.

Meanwhile, the Parliament will continue to function as it wishes. As Chair I am unaware of any jurisdiction anywhere in the commonwealth where the court could curtail the actions of parliament.

The Committee on Privilege is empowered to function and investigate all matters where a possible Breach of Privilege and/or Contempt have taken place. In my view all parties who have contributed to this contemptuous debacle may be found wanting in breaching the privileges of parliament. See Powers and Privileges statute law (part 8) Offences-Art 25.

Meanwhile, our exclusive jurisdiction over the conduct of our affairs will continue unimpeded.

I stand ready to defend the parliament and its freedoms even to the point of having persons brought to the Bar of the House if necessary.

Thank you Hon Members.

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