



Speech By  
**Michael Berkman**


**MEMBER FOR MAIWAR**

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Record of Proceedings, 14 November 2023

**MOTION**

**Member for South Brisbane, Finding of Contempt**

 **Mr BERKMAN** (Maiwar—Grn) (6.39 pm): I begin my contribution to the debate by noting, first of all, that we have been given absolutely no notice that this was coming on and have been given no notice of the terms of the motion.

**Ms Boyd** interjected.

**Mr BERKMAN:** We have been given no notice of the terms of this motion. For the member for South Brisbane to be so tightly constrained in the debate when the terms of the motion have not been made available to us and for the Leader of the House to take points of order on it is genuinely disappointing. I ask that in future we are at least given the courtesy of knowing the terms of a motion that purports to eject a member from the precinct.

I also want to raise the point initially that this House is responsible for making a finding of contempt. The Ethics Committee makes recommendations on which this House acts. You said it yourself just a moment ago, Mr Speaker: this House is the master of its own destiny. It is the master of its own proceedings. It is the House that makes that determination, not the Ethics Committee. Until such time as this House, based on the Ethics Committee's report, makes a finding that the member for South Brisbane is in contempt she, indeed, is not in contempt. It is vitally important that the issues that were considered by the Ethics Committee—

**Mr SPEAKER:** I will stop you there, member. This is not an opportunity to re prosecute the reasons the committee made its finding. It has given its report to the House. It was tabled at a previous sitting, allowing ample time to consider what may have been the consequence of there not being an apology. I will give you the same courtesy as the member for South Brisbane: if you can be relevant to the motion before the House I encourage you to do so, otherwise I will also ask you to resume your seat.

**Mr BERKMAN:** Mr Speaker, I can only reiterate how surprising I find it that the House is being asked to make a decision to suspend a member from the precinct for a day and that it is being asked to do so without any debate being allowed on the contents of the report that makes that recommendation. Frankly, I find that kind of surprising. Indeed, the contribution that I had intended to make was based precisely on the contents of the Ethics Committee's report. What else is there that we might use to contribute to a debate other than the contents of the report that the motion says we are to note and that the motion says we are to act upon? I will proceed as I was intending to and see how far I go, I suppose. That is all I can do.

The very first page of this committee report sets out, as the committee does in almost every piece of correspondence I have seen from it—

The committee has established procedures and practices for dealing with referrals which ensure procedural fairness and natural justice is afforded to all parties.

That is a reference to chapters 44 and 45 of the standing orders. Chapters 44 and 45 do no such thing. They absolutely do not ensure procedural fairness before the Ethics Committee. There is no body to which the Ethics Committee is held accountable beyond this chamber, so they can conduct themselves as they see fit and we are at the whim of the committee. Whether or not we are given adequate particulars of an issue that we are considering is entirely up to them.

I will say this very carefully, referring only to matters that the committee has reported back on, I believe. When I have sought from the committee additional particulars in the course of an inquiry to be able to make the case as to why a contempt has not been committed, I have been told by the committee, in essence, that their deliberations are out of bounds for any discourse within the committee and, in fact, this House in this very debate is the body that is responsible for considering all of those leaps of logic that I would suggest the committee has made in this report. I will move on.

The committee has made the observation that you, Mr Speaker, in your referral suggested four examples of contempt under standing order 266 that might be relevant to the member's conduct. It goes on to state that it is 'the committee's role to determine any potential contempt, that is, satisfaction of section 37 of the POQA, based on the referral and the information it gathers'. That is kind of shorthand for saying that the committee can quite literally make up new types of conduct that are a contempt as long as they fall, as far as the committee is concerned, within the definitions of 'contempt' under section 30 of the Parliament of Queensland Act.

Those examples within the standing orders are not in any way a constraint on the actions of the Ethics Committee and it can, in effect, just make stuff up. Let us remember that all of this happens behind closed doors. We do not have any opportunity for these issues to be aired until right now, when these reports come back to the House. That is the point at which the arguments that the Ethics Committee has adopted, the rationale behind any recommendation of contempt, are to be considered in its entirety. Up until that point we are simply told that the facts are the facts, we can make our submissions based on that and that is essentially all we are going to be allowed to consider.

**Mr SPEAKER:** Member for Maiwar, I refer to standing order 211 regarding the confidentiality of proceedings in terms of committees and requesting information from a committee that has not been released publicly. You need to be very careful in terms of not breaching that standing order. I want to make sure you understood that clearly.

**Mr BERKMAN:** Indeed, Mr Speaker. I took great care that I was only referring to the one matter in respect of which the report had been tabled. I had to go to some lengths to ensure that the Ethics Committee, in publishing that report, included all of the correspondence—all of the toing and froing in the background—because my previous experience is that that has not been the case. You can, if you would like, see all of the relevant correspondence appended to the Ethics Committee report which was tabled alongside this one that I am holding.

The committee makes the observation again that one of the fundamental questions here is whether or not your ruling, Mr Speaker, can be considered an order of the House. That is a fundamental question. There is no precedent for that, as I understand it. Your rulings are your rulings and the committee has had to go to some length to convince itself or to provide a rationale that they are orders of the House for the purpose of this contempt.

**Mr SPEAKER:** Member, can I clarify: I have been trying to follow your contribution. Are you speaking to report 216 or 217? It appears that 217 is being brought into your contribution.

**Mr BERKMAN:** I am speaking to report 216. The important point here is that, as the committee has acknowledged, rulings from the chair—from you, Mr Speaker—are not binding. You are not bound by your own decisions. You could have made an entirely different decision about each and every one of the bills that was introduced, as to whether or not it is in order.

**Mr SPEAKER:** Member, are you now asking whether my rulings were in order? I would ask you to be very careful in terms of reflecting on the chair. I have made my ruling and there are Speaker precedents that come into effect. I ask you to be very cautious.

**Mr BERKMAN:** I am endeavouring to be as cautious as I possibly can within the terms of the committee's report. At paragraph 45 the report states—

With respect to the nature of Speaker's rulings, the committee acknowledges that while authoritative, rulings from the Chair are not binding.

That is the point that I am making. It is an observation made directly by the committee itself. As I said a moment ago, Mr Speaker, your rulings are not binding on you. Therefore, until such point as a private member's bill is introduced and ruled in or out of order, as is discussed in here, the member for South Brisbane's position, as I understand it, was that they must be ruled out of order. Yet, before a ruling was made by you, it says here that they consider that these non-binding rulings create a proactive duty for members to comply with them.

I move on to a further paragraph in the committee's report, which states—

Further, the Speaker's ruling in respect of the Member's previous revenue bill had been upheld via the Member's failed motion of dissent, confirming the Speaker's ruling—

So again we have this additional element of the House making a decision on that dissent motion, but again the House is the master of its own destiny. It is the master of its own proceedings. The House could have made a different decision on a subsequent dissent motion, unless we are going to assume that each and every one of the decisions made by this Assembly is stitched up before we get here. Heaven forbid anyone think that there is no real scrutiny here! In reference to the failure of the dissent motion, the committee continues—

thus, making it a higher, more authoritative source of procedure than a Speaker's ruling alone. In introducing the Empty Homes Levy Bill and Royalties and Cost of Living Relief bill, both revenue bills, the Member for South Brisbane disobeyed the order of the House.

As I understand it, this is quite literally the first time that the Ethics Committee has come to that conclusion. Throughout the committee's inquiry, the member for South Brisbane had no capacity to make submissions to the contrary, to say that it is not an order of the House, because this is a new—

**Mr SPEAKER:** Pause the clock. Member for Maiwar, the House has ruled on a dissent motion—you are correct—and that is binding. I have made rulings as Speaker which if it is the first becomes a Speaker precedent in terms of how future Speakers may consider. I will ask you again to come back to report 216 of the Ethics Committee or I will ask you to resume your seat.

**Mr BERKMAN:** The Ethics Committee process has some fundamental flaws in it, Mr Speaker. I want to put that to you and to every member of this House directly. It does not provide for a member who is referred to the committee to understand the arguments that the Ethics Committee is going to include in these reports before they come back to the House. If that is to remain the status quo—that is, that members whose matters are referred are not to be provided any insight into the committee's reasoning before this point—at the very least these debates need to be treated as more than just a tick and flick. As I understand it, the Leader of the House did not even expect that anyone would speak on this. The intention was for it to be simply waved through. We have 10 minutes before adjournment. I have five seconds left on the clock. Had we had more notice of the motion, had I had time to—

*(Time expired)*