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CASE SUMMARY: APPLICATION TO ADD THE SPEAKER OF THE ALBERTA LEGISLATIVE ASSEMBLY TO A JUDICIAL REVIEW APPLICATION CONCERNING A BREACH OF ETHICS BY ONE OF THE ELECTED MEMBERS OF THE ASSEMBLY IS GRANTED

An application to add the Speaker of the Alberta Legislative Assembly to a judicial review application concerning a breach of ethics by one of the elected members of the Assembly is granted.

**Administrative law – Decisions reviewed – Ethics Commissioner – Jurisdiction;
Judicial review – Applications; Freedom of information and protection of privacy –
Parliamentary privilege**

[Mclver v. Alberta \(Ethics Commissioner\)](#), [2017] A.J. No. 1214, 2017 ABQB 695, Alberta Court of Queen’s Bench, November 15, 2017, J.T. Eamon J.

The Ethics Commissioner found that Mr. Mclver, an elected member of the Alberta Legislative Assembly (the applicant) breached the *Conflict of Interest Act*, RSA 2000, c C-23 by asking a question in the Assembly about energy policies. The Commissioner recommended in its report that the applicant apologize, pay a small fine, and recuse himself from all legislative activity relating to the electrical utility industry in Alberta as long as his spouse continued to do business in competitive rate retailing of electricity. Mr. Mclver applied for judicial review of the report on the grounds that the questions he asked did not constitute “influencing”, that there was no pending decision to be influenced, there was no intention to further a private interest, and the interest at issue was not a private interest.

The Speaker of the Alberta Legislative Assembly applied to be joined as a respondent in the judicial review. He had initially been a respondent, but the parties had signed a consent order discontinuing the application as against the Speaker. Following the discontinuance, Mr. Mclver raised constitutional questions, i.e., that the Report broke parliamentary privilege and therefore Mr. Mclver’s freedom of speech under the 1689 Bill of Rights. The Speaker claimed it is the guardian of the rights and privileges of the Assembly and should have the opportunity to respond to these claims as a respondent. Mr. Mclver opposed the Speaker’s request.

The Court noted there were very few cases in which a respondent sought to be added when the applicant opposed the joinder, so it reviewed cases under the previous Rules. The Court summarized principles for adding a respondent against the claimant’s wishes at para. 32. It held that the role of the Speaker was as a guardian of the rights and privileges of the Assembly, including to maintain order and decorum in the Assembly. The Speaker’s interest in lawsuits concerning the privileges and immunities of the Assembly are well recognized.

The Court held that the decision on whether to quash the Commissioner's report would not significantly affect the Speaker's rights, but the issues that could arise in the judicial review, i.e., the extent to which the Assembly may regulate the speech of opposition members, would significantly affect the Speaker's legal rights and obligations.

Additionally, the judicial review application would likely raise the issue of the border between the Court's jurisdiction and the Speaker's jurisdiction. In these respects, the Speaker's interest was unique and would not be sufficiently accounted for by the participation of the Ethics Commissioner as a respondent.

The Court went on to say that even if the Speaker's legal interest were not engaged, it would exercise its residual discretion to add the Speaker as a respondent. The application to add the Speaker as a respondent was granted.

This case was digested by [Kelsey A. Rose](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Kelsey A. Rose at krose@harpergrey.com.