

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

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of Debates  
(Hansard)**

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(Hansard)**

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Samedi  
15 septembre 2018

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Clerk: Todd Decker

Président : L'honorable Ted Arnott  
Greffier : Todd Decker

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### Consideration of Bill 31

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## LEGISLATIVE ASSEMBLY OF ONTARIO

Saturday 15 September 2018

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

Samedi 15 septembre 2018

*The House met at 1300.*

**The Speaker (Hon. Ted Arnott):** Let us pray.  
*Prayers.*

### INTRODUCTION OF VISITORS

**The Speaker (Hon. Ted Arnott):** Before I ask for introductions of guests, I would like to introduce a special guest who is here today. A former member of provincial Parliament for Parkdale–High Park in the 38th, 39th, 40th and 41st provincial Parliaments, Rev. Cheri DiNovo, is here with us today.

Introduction of visitors.

**Mr. Percy Hatfield:** I would like to introduce to you and to the House my son, Andrew, who is visiting from Windsor this afternoon. Andrew and his friend Amy Peirone are here for the Toronto International Film Festival, but thought they might see a good show here in the House as well. Welcome to Queen's Park.

**M. Gilles Bisson:** Ce n'est pas bien souvent qu'on a la chance d'avoir notre personnel descendre directement de la ville de Timmins. On a avec nous autres Courtney Laforest, qui travaille dans mon bureau de circonscription à Timmins. J'aimerais qu'on lui dise tous bienvenue ici à Queen's Park.

**Le Président (L'hon. Ted Arnott):** Merci beaucoup.

**Mr. Peter Tabuns:** It's my pleasure to welcome Chris Moise, trustee of the Toronto District School Board, and his niece Sabrina Shillingford here in the chamber today. Enjoy your time.

**M<sup>me</sup> France Gélinas:** I have a visitor from Nickel Belt who is here with me this weekend. This is Mr. Kent MacNeill, who will be taking in the proceedings this afternoon. Welcome, Kent.

**The Speaker (Hon. Ted Arnott):** Any more introductions of visitors?

### NOTICES OF REASONED AMENDMENTS

**The Speaker (Hon. Ted Arnott):** I beg to inform the House that, pursuant to standing order 71(c), both the member for Guelph and the member for Hamilton Centre have filed with the Clerk a reasoned amendment to the motion for second reading of Bill 31, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001, the Municipal Elections Act, 1996 and the Education Act and

to revoke two regulations. The order for second reading of Bill 31 may therefore not be called today.

### MEMBERS' STATEMENTS

#### GOVERNMENT'S AGENDA

**Ms. Catherine Fife:** On the first day of school this year, I received a letter from my daughter's school informing me that there were unacceptable levels of lead in the water. The school is doing everything they can, but the fact of the matter is that the Waterloo Region District School Board, where I once served as trustee and Chair, does not have the funds to address systemic infrastructure needs. In fact, no school board in this province can make these fundamental maintenance upgrades on their own, be they for furnaces, roofs, heating or cooling systems. Provincial governments at one time understood this and invested in education, but today we have a \$16-billion backlog.

But we're not here today at this emergency session on a Saturday in September discussing this important issue; we're here addressing the new culture of politics in Ontario, the Ford culture, which involves dismantling our democracy with the introduction of the "notwithstanding" clause. This clause overwrites basic charter rights in order to cut Toronto city council in half, a decision that was already determined to be unconstitutional by a Superior Court judge. People across this province are reeling from this move. To quote the columnist Martin Regg Cohn, "That the Premier chose to invoke the 'notwithstanding' clause for such a nonsensical cause—a grudge match that, forgive me, rhymes with hissing match—is a gratuitous violation of our democratic norms."

I believe the citizens of this province will remember this. I would urge my PC colleagues across the floor to vote your conscience and deny this Premier his revenge.

### RECOVERY DAY OTTAWA JOURNÉE DU RÉTABLISSEMENT D'OTTAWA

**M<sup>me</sup> Nathalie Des Rosiers:** This weekend in my riding of Ottawa–Vanier, the Community Addictions Peer Support Association, CAPSA, is hosting its annual Recovery Day. I was supposed to be there this afternoon, and I want to say how sad I am that I cannot be there with them.

Through its person-driven approach, CAPSA links individuals affected by addiction with recovery services

and a sense of community. Recovery Day celebrates the many pathways to recovery in our communities while striving to reduce stigma and raise awareness about addiction. I'm very proud to support organizations such as this for the work that they do, and I am particularly happy to support CAPSA today in Ottawa.

Le soutien de ses pairs lorsqu'on tente de sortir d'une dépendance est crucial; le soutien de la communauté nous encourage et nous donne de l'espoir. C'est ça le message de Recovery Day, et je veux continuer de leur exprimer tout mon appui.

Mental health care is a priority, and I think we should stop working on trying to destroy local democracy and move on to support and increase the services to our fellow citizens. I call on the Premier to step up to the plate, act like the leader of Ontario and not the mayor of Toronto, stop trampling on local democracy, and please come up and do what your job is supposed to do.

### HOSPITAL FUNDING

**M<sup>me</sup> France Gélinas:** I want to bring forward to the House something that is happening in Sudbury right now. Our hospital, Health Sciences North, is facing an \$11-million deficit. They were really encouraged when they heard the Premier say that there would not be any layoffs of nurses, that he would make sure, moving forward, that hospitals would be staffed with the right amount of personnel to look after us. Well, this is not at all what is happening.

In Sudbury right now, we have already lost 70 nurses. Just this week, Health Sciences North announced that it is closing its breast screening clinic, which helps women who are diagnosed with breast cancer access services in a timely fashion.

Here we are, sitting on the weekend. This is extremely important to the people I represent, but we're not going to be talking about health care; we're not going to be talking about the needs of these women who go for their mammography, are diagnosed, and then are put on endless wait-lists before they are helped. We're going to be talking about the "notwithstanding" clause that the Premier wants to come forward.

There are some real needs out there. There are promises that have been made to people who count on this government to be there for them. Those are the people I represent, and those are the priorities that this chamber should be occupied with.

### GOVERNMENT'S AGENDA

**Mr. Peter Tabuns:** I had an opportunity last night to go canvassing in my riding, talking about the municipal election. It was interesting to get first-hand responses from people in my riding. I should note that the Tories came second in my riding; the Liberals came third. So there are quite a few Tory voters there.

People couldn't believe that the Legislature was being derailed to go on this attack on Toronto. They understand what's important in this province. They understand the need to deal with jobs, the environment, education, health

care. They couldn't believe that we were spending all this time on this tangent. Why on earth would the Premier do that? And there were other people who said, "Okay, I don't particularly like the size of council, but, seriously, you're going to use the 'notwithstanding' clause?" Seriously? I thought this was for issues that were of national importance, importance across the province, and yet we're wasting our time doing that.

**1310**

I spoke to a parent whose child is on the third floor at Bruce Public School, where it hits well over 30 degrees centigrade. The kids are hot, and they aren't hearing from a government about how they're going to fix the schools. In fact, they cut \$100 million that should have gone to fix those schools—\$100 million.

Instead of dealing with those urgent issues that are on people's tables, we're here today talking about how to beat up on Toronto. This is a waste of time and, frankly, a betrayal to that government's mandate.

### GOVERNMENT'S AGENDA

**Mr. John Vanthof:** In June, we had a provincial election, and the people of northern Ontario thought that it was an election for the province. Yet, here we are, in a manufactured crisis about a case that the government has created about Toronto.

Let's talk about real crises in this province, Speaker. For a child with mental illness, with suicidal thoughts, the average waiting time in the province to seek professional counselling is 20 days. In the district of Cochrane, if a child with mental illness expresses suicidal thoughts, the average wait time is 400 days. In the case of many children, that is longer than a lifetime. That is a crisis. That is a case of something that we could have—it's an emergency that's happening right now. It's one that was already created.

There are lots of things to fix; you don't have to manufacture the problems. There are huge problems to deal with already. Please do it.

**The Speaker (Hon. Ted Arnott):** Members' statements? Reports by committees? Introduction of bills? Motions? Government House leader.

**Hon. Todd Smith:** I seek unanimous consent to put forward a motion without notice regarding—

*Interjections.*

**The Speaker (Hon. Ted Arnott):** The government House leader is seeking unanimous consent to do something or other. I couldn't hear what it was, but I heard, audibly, a lot of noes.

### PETITIONS

#### HIGHWAY TOLLS

**Ms. Jennifer K. French:** I have a petition to "Stop the Unfair Tolling of Highways in Durham Region.

"To the Legislative Assembly of Ontario:

“Whereas Highway 412 and the planned Highway 418 are community highways that are primarily used for local traffic travelling to and from Durham region; and

“Whereas Highway 412 and the planned Highway 418 are the only north-south 400-series highways in the entire greater Toronto and Hamilton area that are tolled; and

“Whereas tolls on the 412 have left the highway under-utilized, resulting in additional congestion across residential roadways in the region; and

“Whereas residents across Durham region have been advocating for the removal of these unfair tolls since their introduction;

“We, the undersigned, petition the Legislative Assembly as follows:

“Immediately remove the tolls from the 412 highway and protect the planned 418 highway from any future tolls.”

I wholeheartedly support this, will affix my signature and send it with Omolola to the Clerks.

#### MUNICIPAL ELECTIONS

**Ms. Kathleen O. Wynne:** I want to read a petition that was brought in on Bill 31 by constituents from my riding.

“As residents of Toronto familiar with the workings of Toronto city council, we are convinced that the reduction to 25 wards and councillors in our city will destroy its ability to fulfill its essential civic responsibilities toward its residents. This will endanger life and limb of its residents and expose the Ontario government to endless legal actions and very significant financial costs.

“We are also convinced that the provincial government through Bill 31 is subjecting all Toronto residents to blatantly discriminatory treatment. No other city in Ontario is being ordered to reduce the size of its municipal council by this bill. This fact will also expose the Ontario government to legal actions and substantial financial costs.

“We, the undersigned, petition the Legislative Assembly of Ontario to rescind or withdraw Bill 31, the Efficient Local Government Act.”

I support this, Mr. Speaker, and I will ask Omolola to take it to the table.

#### PHARMACARE

**Mr. Joel Harden:** I present today a petition entitled “Universal Pharmacare for All Ontarians.

“To the Legislative Assembly of Ontario:

“Whereas prescription medications are a part of health care, and people shouldn’t have to empty their wallets or rack up credit card bills to get the medicines they need;

“Whereas over 2.2 million Ontarians don’t have any prescription drug coverage and one in four Ontarians don’t take their medications as prescribed because they cannot afford the cost;

“Whereas taking medications as prescribed can save lives and help people live better; and

“Whereas Canada urgently needs universal and comprehensive national pharmacare;

“We, the undersigned, express our support for a universal provincial pharmacare plan for all Ontarians.”

I want to thank John MacDonald for sending me this petition. I’m going to pass this to page Omolola and affix my signature to it.

#### CURRICULUM

**Mr. Mike Schreiner:** I have a petition my constituents of Guelph have asked me to bring forward on sex education.

“Whereas young children and adolescents across Ontario are being lured into the sex trade and being sexually exploited every day;

“Whereas many youth have no idea what exploitation entails or that they may fall victim to it;

“Whereas prevention is the best strategy in eradicating human trafficking, education and awareness is key to prevention;

“Whereas incorporating mandatory human trafficking education will ensure our province is doing everything legally possible to protect our precious youth;

“Whereas our younger generations must be properly informed about true consent, the reality of sexual exploitation and the dangers of online predators...;

Therefore “we, the undersigned, petition the Legislative Assembly of Ontario to include informed consent, sexual exploitation, the warning signs of human trafficking and the dangers of online predators into the Ontario sexual education curriculum.”

I support this petition, will sign it and send it with page Omolola to take it to the desk.

#### CURRICULUM

**Ms. Laura Mae Lindo:** My petition is entitled “Protecting Children: Forward, Not Backward, on Sex Ed.

“To the Legislative Assembly of Ontario:

“Whereas the health and physical education curriculum empowers young people to make informed decisions about relationships and their bodies;

“Whereas gender-based violence, gender inequality, unintended pregnancies, ‘sexting,’ and HIV and other sexually transmitted infections (STIs) pose serious risks to the safety and well-being of young people;

“Whereas one in three women and one in six men experience sexual violence in Canada, and a lack of age-appropriate education about sexual health and healthy relationships leaves children and youth vulnerable to exploitation;

“Whereas one in five parents reported their own child being a victim of cyberbullying; and

“Whereas Doug Ford and the Conservative government is dragging Ontario backward, requiring students to learn an outdated sex ed curriculum that excludes information about consent, sexual orientation, gender identity, sexting, cyberbullying and safe and healthy relationships;

“We, the undersigned, petition the Legislative Assembly of Ontario to direct the Ministry of Education to

continue the use of the 2015 health and physical education curriculum in schools and move Ontario forward, not backward.”

I fully support this petition, will affix my name to it and give it to page Hillary.

#### MUNICIPAL ELECTIONS

**Ms. Rima Berns-McGown:** My petition is entitled “Stop Doug Ford from Interfering in Municipal Elections.

“To the Legislative Assembly of Ontario:

“Whereas Doug Ford’s decision to reduce Toronto’s wards from 47 to 25 was made without any public consultations;

1320

“Whereas Doug Ford’s meddling in municipal elections and the use of the ‘notwithstanding’ clause are abuses of power;

“Whereas Doug Ford is cancelling democratic elections of some regional chairs;

“Therefore we, the undersigned, petition the Legislative Assembly of Ontario to immediately reverse Doug Ford’s unilateral decision to dismantle Toronto city hall and cancel regional chair elections; to maintain the existing Toronto municipal boundaries; and ensure that the provincial government does not interfere with the upcoming Toronto municipal election for Ford’s political gain.”

I agree with this petition, will be affixing my name and signature to it and giving it to page Corey to take to the Clerk.

#### MUNICIPAL ELECTIONS

**Mr. Faisal Hassan:** A petition entitled, “Stop Doug Ford from Interfering in Municipal Elections:

“Whereas Doug Ford’s decision to reduce Toronto’s wards from 47 to 25 was made without any public consultation;

“Whereas Doug Ford’s meddling in municipal elections”—and the use of the ‘notwithstanding’ clause—“is an abuse of power;

“Whereas Doug Ford is cancelling democratic elections of some regional chairs;

“Therefore we, the undersigned, petition the Legislative Assembly of Ontario to immediately reverse Doug Ford’s unilateral decision to dismantle Toronto city hall and cancel regional chair elections; to maintain the existing Toronto municipal boundaries; and ensure that the provincial government does not interfere with the upcoming Toronto municipal election for Ford’s political gain.”

I’ve affixed my name to this and I’m supporting this petition. I will be giving it to Hillary.

#### MUNICIPAL ELECTIONS

**Ms. Doly Begum:** My petition is titled, “Stop Doug Ford from Interfering in Municipal Elections.

“To the Legislative Assembly of Ontario:

“Whereas Doug Ford’s decision to reduce Toronto’s wards from 47 to 25 was made without any public consultation;

“Whereas Doug Ford’s meddling in municipal elections is an abuse of power;

“Whereas Doug Ford is cancelling democratic elections of some regional chairs;

“Therefore we, the undersigned, petition the Legislative Assembly of Ontario to immediately reverse Doug Ford’s unilateral decision to dismantle Toronto city hall and cancel regional chair elections; to maintain the existing Toronto municipal boundaries; and ensure that the provincial government does not interfere with the upcoming Toronto municipal election for Ford’s political gain.”

I fully support this petition, will affix my signature to it and give to page Hillary.

#### INDIGENOUS AFFAIRS

**Mr. Percy Hatfield:** “To the Legislative Assembly of Ontario:

“Whereas Ontario is situated on the traditional territory of Indigenous peoples, many of whom have been on this land since time immemorial;

“Whereas in 2015 the Truth and Reconciliation Commission of Canada released its final report: ‘Honouring the Truth, Reconciling for the Future’ which made 94 recommendations or ‘Calls to Action’ for the government of Canada;

“Whereas reconciliation must be at the centre of all government decision-making;

“We, the undersigned, petition the Legislative Assembly of Ontario to:

“—continue reconciliation work in Ontario by implementing the recommendations of the Truth and Reconciliation Commission”—the TRC;

“—reinstate the Ministry of Indigenous Relations and Reconciliation;

“—work with First Nations leaders to sign cooperative, government-to-government accords;

“—support TRC education and community development (e.g. TRC summer writing sessions);

“—support Indigenous communities across the province (e.g. cleaning up Grassy Narrows).”

I fully agree. I’ll sign this petition and give it to page Hillary to bring up to the table officers’ desk.

#### HEALTH CARE

**Ms. Peggy Sattler:** I have a petition signed by many residents of London West and it is entitled “Ontarians Need Access to Medical Specialists.

“To the Legislative Assembly of Ontario:

“Whereas Ontario is behind international standards for specialist wait times, particularly in the specialties of neurosurgery, gastroenterology and rheumatology; and

“Whereas London consistently has the longest orthopaedic surgical wait times in the province, particularly for knee and hip replacement surgery; and

“Whereas many Ontarians are forced to wait ... months, or even years, before getting treatment from a medical specialist in Ontario; and

“Whereas medical specialists report a lack of funding often resulting in surgical rooms sitting empty;

“We, the undersigned, petition the Legislative Assembly as follows:

“Address gaps in funding to ensure an end to long waits for the medically necessary procedures of patients.”

I affix my signature to this petition. I support it and will give it to page Omolola to take to the table.

### MUNICIPAL ELECTIONS

**Ms. Marit Stiles:** I would like to present a petition entitled “Stop Doug Ford from Interfering in Municipal Elections.” It reads as follows:

“To the Legislative Assembly of Ontario:

“Whereas Doug Ford’s decision to reduce Toronto’s wards from 47 to 25 was made without any public consultation;

“Whereas Doug Ford’s meddling in municipal elections is an abuse of power;

“Whereas Doug Ford is cancelling democratic elections of some regional chairs;

“Therefore we, the undersigned, petition the Legislative Assembly of Ontario to immediately reverse Doug Ford’s unilateral decision to dismantle Toronto city hall and cancel regional chair elections; to maintain the existing Toronto municipal boundaries; and ensure that the provincial government does not interfere with the upcoming Toronto municipal election for Ford’s political gain.”

I’m very happy to support this petition, and I will be affixing my name. I will then ask page Omolola to table it for me.

### CURRICULUM

**M<sup>me</sup> France Gélinas:** I’m very honoured to present this petition from the members of the United Church of Toronto. Thank you to Rev. Cheri DiNovo for sending those forward. It reads as follows:

“Whereas for six years the Truth and Reconciliation Commission of Canada (TRC) listened to thousands of former students of residential schools and their families testify to the devastating legacy of this national policy of assimilation;

“Whereas the TRC calls upon ‘the federal, provincial and territorial governments, in consultation and collaboration with survivors, Aboriginal peoples and educators, to make age-appropriate curriculum on residential schools, treaties and Aboriginal peoples’ historical and contemporary contributions to Canada a mandatory education requirement for kindergarten to grade 12 students’ (CA 62.1); and

“Whereas on July 15, 2015, Canada’s Premiers indicated their support for all 94 Truth and Reconciliation Commission calls to action and said they would act on them in their own provinces and territories;”

They “petition the Legislative Assembly of Ontario as follows:

“That the Legislative Assembly of Ontario urge the government of Ontario to fully implement such a curriculum for kindergarten through grade 12...;

“That the Ontario Ministry of Education immediately complete and implement the comprehensive revision of history, social studies, civics and other curriculum for kindergarten through grade 12 to fulfill the goals cited in call to action 62.i from the Truth and Reconciliation Commission report.”

I fully support this petition, will affix my name to it and ask my good page Alex to bring it to the Clerk.

### MUNICIPAL ELECTIONS

**Ms. Sandy Shaw:** I have a petition entitled “Stop Doug Ford from Interfering in Municipal Elections,” and it reads as follows:

“To the Legislative Assembly of Ontario:

“Whereas Doug Ford’s decision to reduce Toronto’s wards from 47 to 25 was made without any public consultation;”—

*Interruption.*

**Ms. Sandy Shaw:** “Whereas Doug Ford’s meddling in municipal elections is an abuse of power;

“Whereas Doug Ford is cancelling democratic elections of some regional chairs;

“Therefore we, the undersigned, petition the Legislative Assembly of Ontario to immediately reverse Doug Ford’s unilateral decision to dismantle Toronto city hall and cancel regional chair elections; to maintain the existing Toronto municipal boundaries; and ensure that the provincial government does not interfere with the upcoming Toronto municipal election for Ford’s political gain.”

I wholly endorse this petition. I will be affixing my name, and I will be giving it to page Omolola to present to the Clerk.

**1330**

**The Speaker (Hon. Ted Arnott):** That concludes the time we have available for petitions.

I must address the people who are visitors here today. We welcome your presence here in the Ontario Legislature. We’re delighted that you’re here. But there can be no outbursts from the visitors’ gallery. They will not be tolerated. The Legislature has to be able to do its business without outbursts from the visitors’ gallery.

### ORDERS OF THE DAY

#### CONSIDERATION OF BILL 31

**Mr. Gilles Bisson:** Point of order.

**The Speaker (Hon. Ted Arnott):** I recognize the member for Timmins.

**Mr. Gilles Bisson:** Mr. Speaker, as you know, I gave you notice last week that New Democrats are bringing forward two points of order: one on standing order 23 and one on standing order 52. I'm going to first deal with standing order 23, if that's okay with you.

Standing order 23: "In debate, a member shall be called to order by the Speaker if he or she....

"(g) Refers to any matter that is the subject of a proceeding,

"(i) that is pending in a court or before a judge for judicial determination; or

"(ii) that is before any quasi-judicial body constituted by the House or by or under the authority of an act of the Legislature,

"where it is shown to the satisfaction of the Speaker that further reference would create a real and substantial danger of prejudice to the proceeding."

That's what's in the standing order.

Speaker and Parliament, two of our key responsibilities are to respect the authority of the judiciary and to understand that what comes up in the Legislature has an impact on public opinion and the judiciary. The sub judice convention exists because we know that talking about matters that are before the courts can prejudice the outcome of the proceeding, and misuse of our power of free speech in this chamber has the potential to negatively impact matters that are being heard by the judiciary.

The issue of the proposed changes to the Toronto municipal election is still in the process of being determined by the courts. We know that there will be a hearing this Tuesday. To avoid the possibility of interfering with the administration of justice, we're asking you to rule that Bill 31 is out of order on the basis of standing order 23(g).

**The Speaker (Hon. Ted Arnott):** I appreciate the member for Timmins. Are there any other members who wish to speak to this point of order?

**Hon. Todd Smith:** Further to this point of order.

**The Speaker (Hon. Ted Arnott):** Government House leader.

**Hon. Todd Smith:** I do feel the need to rise to respond to the point made by the member from Timmins under standing order 23(g) and 52. We will be making further submissions in writing, Mr. Speaker.

I want to start by dealing with 23(g) because it's the lesser of the two arguments: 23(g) refers to the rules of debate and is governed as a subclause to the general standing order, which states, "In debate, a member shall be called to order by the Speaker if he or she"—and 23(g) therefore only governs what is said in a debate, not whether a debate can occur in the first place. It's possible to call a member to order under 23(g) but not prevent the House from deciding a question.

Here are O'Brien and Bosc on the relevant authority, and it states, on page 268, "The convention does not apply to legislation or to the legislative process as the right of Parliament to legislate may not be limited. If the sub judice convention were to apply to bills, the whole legislative

process could be stopped simply by the initiation of legal proceedings in any court in Canada."

Turning to standing order 52: It's vague enough to allow for an interpretation of what constitutes similar subject matter, and it's that point that has to be decided. It would seem obvious that a line-by-line or word-for-word reintroduction of the same bill or amendment would be what was intended by this standing order. Here the Chair may wish to review the relevant rulings on this question, as decided by what other presiding officers have had to say. Speaker Fraser established a test for this issue in a ruling on November 2, 1989: "I should say that in the view of the Chair, two or more items are substantially the same if, first, they have the same purpose and, second, they obtain their purpose by the same means.

"Accordingly, there could be several bills addressing the same subject, but if they took a different approach to the issue the Chair would judge them to be sufficiently different so as not to be substantially the same."

The view provided the basis for Speaker Peters's ruling in this chamber on May 18, 2011, on a matter governed by standing order 52: "There is no question that there is a linkage between these two elements"—

**The Speaker (Hon. Ted Arnott):** Thank you. We're discussing a point of order related to standing order 23. You're talking about another standing order. More presentation with respect to the actual point of order that was raised?

**Hon. Todd Smith:** Thank you, Speaker. Again, we will be providing further submissions in writing. We have stood on those points now, and we will provide you that in writing after today's proceedings.

**The Speaker (Hon. Ted Arnott):** I acknowledge the member for Timmins's point of order and the response of the government House leader. I will need to review the Hansard as well as the relevant—

**Mr. Gilles Bisson:** Just a very short point of order.

**The Speaker (Hon. Ted Arnott):** The member for Timmins.

**Mr. Gilles Bisson:** Thank you very much, Mr. Speaker.

I hear what the government House leader is saying. Obviously, we read the same precedents. The difference here is, we're in an extraordinary circumstance where the government is trying to use something that has never been done in the province before. The debate here may have an effect on the judiciary; that's why we raise it.

**The Speaker (Hon. Ted Arnott):** Further interventions?

I will have to review the Hansard and consider the matters raised. I will rule on this in due course.

You had a second point of order?

#### CONSIDERATION OF BILL 31

**Mr. Gilles Bisson:** A second point of order, Mr. Speaker: We believe that Bill 31 is in violation of standing order 52, which reads: "No motion, or amendment, the subject-matter of which has been decided upon, can be again proposed during the same session." If you give me a

bit of time, Speaker, I'll give you the reasons why we think this is the case.

First, let me state the obvious: The "notwithstanding" clause has dominated the discussion around Bill 31, and with good reason. Something like this has never been done before in Ontario's history, and there are only a handful of times that this section of the charter has been invoked by any Legislature in the entire country. This government's use of this power is unprecedented, controversial and, to many, offensive. I think we can all agree on that.

However, Bill 31 isn't about the appropriate use of the "notwithstanding" clause. The focus of Bill 31 is changes to the municipal election process in Toronto, York, Peel, Niagara and Muskoka, which is identical to the subject matter that we, as a Legislature, debated and voted on in Bill 5 just a little over a month ago.

Standing order 52 is designed to reflect the parliamentary principle that says that a decision, once made, must stand in order to protect the House from the risk of making contradictory decisions on the same issue in the same session.

The fact that the government has a majority and has the numbers necessary to pass both bills is not relevant to the discussion. House of Commons Procedure and Practice notes: "If a decision is taken on the first bill, the other may not be proceeded with." This is to protect the principle that standing order 52 is based upon.

So the question that standing order 52 asks us to consider isn't whether the inclusion of the "notwithstanding" clause makes Bill 31 different from Bill 5; it asks us if the new language in Bill 31 makes it sufficiently different from Bill 5 to warrant consideration in the same session. In other words, is Bill 31 different enough from Bill 5 to be considered by this House? In our opinion, the answer is no.

In reviewing Bill 31, it is indisputable that much of the language is exactly what appeared in Bill 5. In many cases, the sections mirror each other word for word. While there are a few minor changes when it comes to things like the number of clauses and dates, there really aren't any substantive differences between the two bills.

I'd also like to add that even though standing order 52 emphasizes the similarity of the subject matter—the methods and intent of the two bills—over the similarity in language between the two bills, the fact that there are striking similarities between the measures proposed and the wording used in Bill 31 and Bill 5 makes it easy to make the argument that the bills are virtually identical from the perspective of standing order 52.

The subject matter of Bill 31 is changes to the municipal election processes of Toronto, York, Peel, Niagara and Muskoka, just as the subject matter of Bill 5 was changes to the municipal processes in Toronto, York, Peel, Niagara and Muskoka. The application of the "notwithstanding" clause has no impact on the why or how of the bill.

Speaker, we are aware that Bill 31 puts us all in an awkward spot for a variety of reasons. But because this is an unprecedented situation in Ontario's—and Canada's—

history, Legislatures across the country will look back at this ruling to see how the parliamentary principle of protecting Parliament from the risk of making contradictory decisions is to be interpreted in the future. Your ruling, however you decide, will ring a bell that can't be unringed and chart a path for other Speakers and assemblies to follow. It is our belief that finding Bill 31 to be out of order is the best way to set a precedent in keeping with established practice.

**1340**

And let's be clear: We're not voting on a government's right to use the "notwithstanding" clause. That's not what Bill 31 is designed to facilitate. We're being asked to vote, again, on a matter the House has already pronounced itself on. Bill 31 does exactly the same things exactly the same way that Bill 5 proposed to do, and we voted on Bill 5 just a few weeks ago.

House of Commons Procedure and Practice states clearly that there must be sufficient variance to constitute a new question. And Bill 31, Mr. Speaker, I argue, along with New Democrats, does not satisfy this requirement.

**The Speaker (Hon. Ted Arnott):** I thank the member for Timmins for the points he has made.

The government House leader wants to respond.

**Hon. Todd Smith:** I was a bit ahead of my time there on my previous remarks, but I can anticipate, I guess, what the opposition House leader was going to rise on here.

I won't repeat Speaker Fraser's comments. They're already on the record, and people will be able to see those in the Hansard.

But I will move to the remarks from Speaker Peters and his ruling in this chamber on May 18, 2011, on a matter governed by standing order 52: "There is no question that there is a linkage between these two elements, and that the debate on the motion and the debate on the bill will likely produce similar speeches. But ultimately the House will be asked to decide two different questions. Though they are thematically similar, they are not the same. In this sense, the motion does not offend the anticipation rule or standing order 52."

Originally, Bill 5, as it was presented to the 42nd Parliament this summer, is substantially different than the bill now before the House, so it would be difficult for one to deem that the House is dealing with the same purpose. As Speaker Peters stated in his May 18 ruling, a similar subject matter, even were it to produce similar speeches, is not sufficient to violate standing order 52. Bill 5 had three schedules and dealt with substantially less subject matter than is being dealt with in this bill. This bill has four schedules, three of which have been fundamentally altered and one of which has been added, dealing with a question which has itself been changed from the question posed by similar schedules in Bill 5.

However, there is one key difference, and it's directly related to the second test put forward by Speaker Fraser in 1989, which is whether the House is striving to answer a question by different means. In this case, the different means changes both the substance of the question and its means. The use of section 33 of the Canadian Charter of

Rights and Freedoms is not taken lightly by the government, but it does fundamentally alter both the means of passage of the bill and the substance of the question. This House has never been asked to invoke section 33. The Leader of the Opposition was quoted in the *Globe and Mail* on September 10, saying, “Invoking the notwithstanding clause in a case like this is an unprecedented move....” The admission by the Leader of the Opposition that the House has never had to settle a question on section 33 is further proof that the mere presence of the question before the House is an entirely new one. And the presence of that one provision fundamentally alters both the question before the House and the means by which the House will resolve the remainder of the bill.

A preliminary scan of recent Parliaments shows two instances where a Speaker ruled a bill out of order under the auspices of standing order 52. Both occurred in the first session of the 39th Parliament: Bills 171 and 174. In those cases, there were no substantial differences between the bills which were ruled out of order and the bills which were defeated at second reading. In fact, the explanatory notes for Bill 171 and Bill 78 are verbatim similar, with only the amount of deferred income being changed. Therefore, the House was deemed to be deciding an issue that was substantively similar. Likewise, the difference between Bills 38 and 174 is almost non-existent, with only a few definitions added between the two bills. The House was not, in either case, debating substantively different means or questions. Here the difference is substantial and affects every clause of the bill, as section 33 applies to all of them.

In addition, the bill changes the nomination date from September 14 to two days after the bill is given royal assent, if the House consents.

In addition, the new bill provides powers and protections to the clerk of the city of Toronto which were absent from Bill 5.

All of this, in addition to the new schedule and the addition of section 33 of the Charter of Rights and Freedoms, makes the bill substantially different from the question that the House decided on earlier this summer. For that reason, I ask that you find that the bill in question does not conflict with Bill 5 under standing orders 23(g) or 52 and allow the House to proceed with the issues surrounding the bill at hand.

I thank you for the time, Mr. Speaker.

**The Speaker (Hon. Ted Arnott):** Are there any other members who wish to offer opinions on this matter? Member for Timmins.

**Mr. Gilles Bisson:** Just quickly, Mr. Speaker, I think we made the point pretty clear. If you look at what is in Bill 5, and you pick up Bill 31, and you stand them side by side to each other, it’s exactly the same bill—same language, word for word. It’s a mirror copy. The only difference is the “notwithstanding” clause, and that has irrelevancy when it comes to the bill. We’re going to end up in exactly the same place that we were with Bill 5. So we submit that they are the same bill and the second bill is out of order.

**The Speaker (Hon. Ted Arnott):** Are there any other members who wish to give a statement?

Once again, I will review the matter that has been raised. I will review the Hansard, as well as the other submissions, and make my ruling and respond to the House in due course.

Orders of the day? Government House leader.

**Hon. Todd Smith:** I move adjournment of the House, Speaker.

**The Speaker (Hon. Ted Arnott):** The government House leader has moved the adjournment of the House. Is it the pleasure of the House that the motion carry? Carried on division.

This House stands adjourned until Monday at 10:30 a.m.

*The House adjourned at 1346.*

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