



No. 6

N° 6

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## Votes and Proceedings

## Procès-verbaux

Legislative Assembly  
of Ontario

Assemblée législative  
de l'Ontario

**Thursday**  
**May 8, 2003**

Morning and  
Daytime Meeting - Sessional Day 8

**Jeudi**  
**8 mai 2003**

Séance du matin et  
de l'après-midi - jour de session 8

**4th Session,**  
**37th Parliament**

**4<sup>e</sup> session**  
**37<sup>e</sup> législature**

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**PRAYERS  
10:00 A.M.**

**PRIÈRES  
10 H**

Mr. Tascona moved,

M. Tascona propose,

That, in the opinion of this House, the Government of Ontario should enter into discussions with the federal government forthwith pursuant to which responsibility for immigration matters pertaining to the Province of Ontario would be transferred to the Government of Ontario.

A debate arising, at 11:00 a.m., further proceedings were reserved until 12:00 noon.

À 11 h, la suite du débat est réservée jusqu'à midi.

Mr. Sorbara then moved,

Ensuite, M. Sorbara propose,

That, in the opinion of this House, the Ontario Government should adopt Dalton McGuinty's Growing Strong Communities platform to tackle gridlock by dedicating 2 cents of the existing gas tax to municipalities to use for transit, and by creating the Greater Toronto Transportation Authority and giving it the resources and mandate to repair the damage from years of neglect by:

- Putting more GO trains on existing lines
- Expanding GO parking
- New vehicles for the TTC
- Removing highway bottlenecks
- Establishing a seamless integrated ticket system allowing users to move across the GTA region with a single ticket.

The question having been put on Mr. Tascona's Resolution Number 1, it was carried on the following division.

La motion, mise aux voix, sur la résolution numéro 1 de M. Tascona est adoptée par le vote suivant.

**AYES / POUR - 63**

Arnott	Curling	Hastings	Miller	Sampson
Baird	DeFaria	Hudak	Molinari	Spina
Barrett	Dombrowsky	Johns	Munro	Sterling
Bartolucci	Duncan	Johnson	Mushinski	Stockwell
Beaubien	Ecker	Kells	Newman	Tascona
Bisson	Elliott	Klees	O'Toole	Tsubouchi
Boyer	Flaherty	Levac	Parsons	Turnbull
Bradley	Galt	Marland	Patten	Wettlaufer
Chudleigh	Gerretsen	Martiniuk	Peters	Wilson
Clement	Gilchrist	Maves	Prue	Witmer
Coburn	Gill	Mazzilli	Runciman	Wood
Crozier	Gravelle	McDonald	Ruprecht	Young
Cunningham	Hardeman	McLeod		

**NAYS / CONTRE - 12**

Agostino	Caplan	Di Cocco	McMeekin	Smitherman
Bountrogianni	Colle	Kennedy	Phillips	Sorbara
Bryant	Cordiano			

The question having been put on Mr. Sorbara's Resolution Number 2, it was lost on the following division.

La motion, mise aux voix, sur la résolution numéro 2 de M. Sorbara est rejetée par le vote suivant.

**AYES / POUR - 26**

Agostino	Colle	Dombrowsky	Levac	Peters
Bartolucci	Cordiano	Duncan	McLeod	Phillips
Bountrogianni	Crozier	Gerretsen	McMeekin	Ruprecht
Bradley	Curling	Gravelle	Parsons	Smitherman

Bryant  
Caplan

Di Cocco

Kennedy

Patten

Sorbara

## NAYS / CONTRE - 48

Arnott	Ecker	Johnson	Munro	Stockwell
Baird	Elliott	Kells	Mushinski	Tascona
Barrett	Flaherty	Klees	Newman	Tsubouchi
Beaubien	Galt	Marland	O'Toole	Turnbull
Bisson	Gilchrist	Martiniuk	Prue	Wettlaufer
Chudleigh	Gill	Maves	Runciman	Wilson
Clark	Hardeman	Mazzilli	Sampson	Witmer
Coburn	Hastings	McDonald	Spina	Wood
Cunningham	Hudak	Miller	Sterling	Young
DeFaria	Johns	Molinari		

**1:30 P.M.****13 H 30**

The Speaker addressed the House as follows:-

Members will be aware that there appears on today's *Orders and Notices Paper*, two notices of an Opposition Day to be debated next week.

Under Standing Order 42(d), the Speaker is required to select one of these notices for consideration, taking into account the order in which they were received.

I would like to advise Members that the motion by Mr. Bradley will be the one that will be selected for debate next week.

The Speaker delivered the following ruling:

On Thursday, May 1, 2003, the member for Renfrew-Nipissing-Pembroke (Mr. Conway) rose on a question of privilege to indicate that the circumstances surrounding the presentation of the Budget speech in a private facility in Brampton on March 27, 2003, a day on which the Legislature stood prorogued, amounted to a *prima facie* case of contempt of the House. According to the member, the events of that day were an offence against the authority and dignity of the House. He also indicated that the government made a clear and deliberative choice to deliver a Budget outside the House, thereby offending the convention of responsible government and undermining the financial function of Parliament.

The member for Niagara Centre (Mr. Kormos) also spoke to the incident. According to the member, the government breached the constitutional convention of presenting the Budget in the House. He indicated that the breach was conscious and premeditated, that the Budget was presented in a controlled environment with invited guests, that Budgets are confidence matters, and that the Speaker has the authority to remedy the breach.

The Government House Leader (Mr. Stockwell) responded to these arguments by indicating that the Speaker cannot deal with constitutional arguments, and that a Budget process should not be characterized as a matter of contempt; if anything, it is a matter of order, and as such the process that occurred on March 27 did not offend any Standing Order, practice or precedent.

I have had an opportunity to review the *Hansard* for last Thursday, the written submissions of the member for Renfrew-Nipissing-Pembroke and the member for Niagara Centre, and the relevant Standing Orders, precedents, practices and authorities.

I begin by addressing the arguments that were raised concerning the constitutionality of the Budget presentation, or the question of whether a constitutional convention exists respecting the Budget process.

As members will know, Speakers have ruled on numerous occasions that it is not open to the Speaker to

give a decision upon a constitutional question or decide a question of law.

It is settled in our precedents, and indeed in the practices and precedents of parliaments throughout the Commonwealth, that legal and constitutional issues are best left to the courts and to litigants.

For instance, the 4<sup>th</sup> edition of Australia's *House of Representatives Practice* indicates the following (at pages 189 and 190):

[T]he obligation to interpret the Constitution does not rest with the Chair.... [T]he only body fully entitled to do so is the High Court. Not even the House has the power to finally interpret the terms of the Constitution.... [I]t is not the duty of the Speaker to give a decision on (to interpret) a question of law....

Citation 168(5) of the 6<sup>th</sup> edition of *Beauchesne* states that “[t]he Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege,” as indeed has occurred here.

Therefore, the Speaker has no authority make a determination of *prima facie* breach of privilege or contempt where such a determination is based on the constitutionality or legality of the presentation of the March 27 Budget outside the House; this House is not the proper place for those questions to be resolved. However, I will consider the case that has been made by the member for Renfrew-Nipissing-Pembroke and the member for Niagara Centre to the extent that it does not put the Speaker in the position of having to decide a constitutional or legal issue.

Before doing so, I want to reflect on the argument of the Government House Leader, who suggests that the Speaker should address the Budget issue by looking to the Standing Orders. He also suggests that if the Standing Orders do not resolve the matter, then and only then the Speaker should look to practice and precedent, and that if practice and precedent do not resolve the matter, then and only then the Speaker should look to the parliamentary authorities. In effect, the Government House Leader contends that the Budget process on March 27 was in order and that as such it is not a matter of contempt. In view of this argument, I shall initially address whether anything about that process raises a matter of order.

By way of background, it should be noted that on March 27, just before the Minister of Finance presented the Budget in Brampton, the Budget and related papers were deposited with the Clerk of the House pursuant to Standing Order 39(a). That Standing Order reads as follows:

Reports, returns and other documents required to be laid before the House by any Act of the Assembly or under any Standing Order or Resolution of the House, or that any minister wishes to present to the House, may be deposited with the Clerk of the House, whether or not on a Sessional day, and such report, return or other document shall be deemed for all purposes to have been presented to or laid before the House. A record of any such document shall be entered in the *Votes and Proceedings* on the day it is filed except that where it is filed on a day that is not a Sessional day, it shall be entered in the *Votes and Proceedings* of the next Sessional day.

Standing Order 39(a) does not specifically indicate whether the Budget and related papers are "documents" within the meaning of that Standing Order. However, it gives ministers a wide latitude to deposit with the Clerk of the House any documents they wish to present to the House -- and even if the House is not meeting. I appreciate that Standing Orders 57 and 58 provide for a Budget process inside the House, but they do not prohibit a supplementary Budget presentation outside the House. I doubt that the House contemplated the occurrence of a supplementary Budget process outside the House when it created Standing Order 39(a), but I am satisfied that the House intended that this Standing Order should be given a broad interpretation, and so that is what I am giving it.

I am reinforced in this view by the knowledge that on April 20, 1988 the *Votes and Proceedings*, which were published under the authority of Speaker Edighoffer, indicate that the Budget and Budget papers were deposited with the Clerk of the House pursuant to what is now Standing Order 39(a).

I appreciate that the procedural circumstances in 1988 were different than what they are in 2003. In 1988, the calculated reading of petitions in the House by members of one of the Opposition parties prevented the Treasurer from making the traditional Budget presentation and speech on the floor of the House on Budget day. In addition, the House had denied the Treasurer's request for unanimous consent to end the routine proceeding "Petitions" at 4 p.m. on Budget day so that he could move the Budget motion and present the Budget. In the wake of these developments, the Treasurer deposited the Budget and related papers with the Clerk of the House in order to protect the confidentiality of the Budget process and to release the lock-up. I refer members to page 142 of the *Journals* and pages 2654 and 2655 of the *Hansard* for April 20, 1988. These extenuating circumstances were not present in the 2003 Budget process. Even if they were, I cannot see how they are relevant to determining whether or not the deposit of a particular document with the Clerk of the House pursuant to Standing Order 39(a) is a matter of order, the interpretation of which does not turn on the presence or absence of extenuating circumstances.

The other distinguishing feature about the 1988 Budget process is that the House was actually meeting. In the case before me now, the House was not meeting because the Legislature had been prorogued on March 12. I have reflected on whether the Standing Orders permit the Budget to be deposited with the Clerk of the House after the Legislature has been prorogued. I find that our practice has been that all manner of documents have been deposited with the Clerk of the House in the intersession period, and that these documents have been recorded in the *Votes and Proceedings* soon after the commencement of the new session. On this point, I refer members to the *Votes and Proceedings* for May 1, which indicates (at pages 9 and 10) that 37 items, including the 2003 Budget and related papers, were tabled in the interval between the third and fourth sessions.

If there was nothing out of order concerning the deposit of the Budget and related papers on March 27, was there anything out of order in what the government did next? I am referring here to the Budget-like speech by the Minister of Finance, in a private facility, not inside the House or the precincts, before an invitation-only audience selected by the government. The argument was made that the government was not respecting the traditions of the House -- in particular, the tradition that the Budget should be presented formally in the House.

Looking to our precedents, I note that, apart from the 1988 Budget incident, there have been other occasions when a Budget or a Budget-type speech has not been presented inside the House. On April 21, 1993, Speaker Warner made the following statement (at page 160 of the *Hansard* for that day) concerning the government's intention to present its Social Contract proposals, which some members referred to as a mini-Budget, outside the House:

I think the honourable member for Parry Sound knows my views on this subject. I hold a very strong view that matters of substance dealing with Parliament should be announced in Parliament. I think that's a very sound principle.

The member will also know that for better or worse there is nothing in our standing orders or procedures which compels ministers to make statements in the House, including budgets, and indeed there is nothing out of order about announcing a budget outside of the House, and if memory serves, that in fact has occurred in this province.

But I would reiterate that all matters of substance of a parliamentary nature should be made here. I have no control over making that happen. I can only ask that people do that.

Immediately thereafter, the House refused a request for unanimous consent to allow the Treasurer to present his proposals to the House.

And on Budget day in 2001, the House refused two government requests for unanimous consent to recess the House so that the Budget could be presented to the House. After the first request was refused, the Speaker indicated that "if there is not unanimous consent [to recess], the Minister of Finance does not need to read the speech in here." Shortly after this ruling, the Budget speech was delivered in the House when the government was able to secure the adjournment of the House, which does not require unanimous consent. I refer members to pages 559 to 562 of the *Hansard* for May 9, 2001.

What I am essentially saying, then, is that the 2003 Budget process does not raise a matter of order. The

Government House Leader submits that if that is so, then that process is not a matter of contempt. I disagree because 'order' is conceptually distinct from both 'privilege' and 'contempt'. To exemplify the distinction, let me refer to the January 22, 1997 ruling that was mentioned by the member for Renfrew-Nipissing-Pembroke. In that ruling, a member rose on a question of privilege to indicate that government advertising amounted to contempt of the House, and the Speaker responded by finding that a *prima facie* case of contempt was established. Like the case before me now, the impugned incident occurred outside the House and the precincts. Were I to accept the Government House Leader's argument, it would have been open to the Speaker in 1997 to rule that there was no *prima facie* case of contempt -- and that it was not necessary for him to consider the merits of the arguments based on contempt -- because the advertising in question did not offend a House rule. In short, then, I say that a finding that nothing is out of order about the Budget process does not preclude the Speaker from assessing the merits of the arguments based on contempt. The tiered process that the Government House Leader referred to -- that is, first the Standing Orders, then practice and precedent, and then the authorities -- is applied to consideration of matters of order, not matters of privilege or contempt.

Before turning to those arguments, I want to explain the meaning of contempt, and the best way to do that is to first explain the meaning of privilege. Parliamentary privilege is defined at page 65 of the 22nd edition of *Erskine May*. Like *Erskine May*, Standing Order 21(a) indicates that there are two overarching categories of privilege. The first category consists of privileges that are enjoyed by the House collectively -- the power to discipline (that is, the right to punish persons guilty of breach of privilege or contempts, and the power to expel members), the right to regulate its own internal affairs, the authority to maintain the attendance and service of its members, the right to institute inquiries and to call witnesses and demand papers, the right to administer oaths to witnesses, and the right to publish papers containing defamatory materials. The second category consists of privileges that are enjoyed by individual members -- freedom of speech, freedom from arrest in civil actions, exemption from jury duty, and exemption from attendance as a witness in the courts.

Having outlined the meaning of privilege, I want to refer to a May 9, 1983 precedent in which Speaker Turner ruled on a question of privilege concerning a Budget leak. The Speaker made the following ruling, which can be found at pages 38 and 39 of the *Journals* for that day:

Budget secrecy is a political convention as is the practice that the Treasurer presents his budget in the House before discussing it in any other public forum. It has nothing to do with parliamentary privilege.

. . .

As I stated in my ruling of February 1st, 1983, "although it is a courtesy to the Assembly for a Minister to release information in the Assembly before releasing it to the press or the public, it is not a breach of the privileges or rules of the Assembly if this does not happen."

In effect, Speaker Turner stated that the presentation of the Budget was not a matter that fell under any head of collective or individual privilege. Given this ruling, I find that a *prima facie* case of privilege has not been established with respect to the presentation of the 2003 Budget outside the House.

I now turn to the issue of whether the 2003 Budget process raises a matter of contempt. Let me begin this part of the ruling by indicating that *Erskine May* defines contempt in the following terms (at pages 108, 117, and 120 of the 22<sup>nd</sup> edition):

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary....

Indignities offered to the House by words spoken or writings published reflecting on its character or proceedings have been punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

Other acts besides words spoken or writings published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency to produce this result indirectly by bringing such House into odium, contempt or ridicule or by lowering its authority may constitute contempts.

That is what *Erskine May* says on contempt.

In the Canadian House of Commons, on October 10, 1989, Speaker Fraser explained the difference between privilege and contempt in the following terms (at page 4459 of the *Hansard* for that day):

[A]ll breaches of privileges are contempts of the House, but not all contempts are necessarily breaches of privilege. A contempt may be an act or an omission; it does not have to actually obstruct or impede the House or a member[;] it merely has to have the tendency to produce such results. Matters ranging from minor breaches of decorum to grave attacks against the authority of Parliament may be considered as contempts.

Maingot's *Parliamentary Privilege in Canada* indicates that contempt cannot be codified -- it has no limits. It states the following (at pages 226 and 227 of the 2<sup>nd</sup> edition):

[T]he "privileges" of the House cannot be exhaustively codified; there are many acts or omissions that might occur where the House would feel compelled to find that a contempt has taken place, even though such acts or omissions do not amount to an attack on or disregard for any of the enumerated rights and immunities.

As a Speaker said, "...the dimension of contempt of Parliament is such that the House will not be constrained in finding a breach of privileges of Members, or of the House. This is precisely the reason that, while our privileges are defined, contempt of the House has no limits. When new ways are found to interfere with our proceedings, so too will the House, in appropriate cases, be able to find that a contempt of the House has occurred."

I also want to remind members that the authority to decide whether or not there is a contempt of the House resides with the House -- not with the Speaker. In this regard, Maingot states the following (at page 221):

While the Speaker may find that a *prima facie* case of privilege exists and give the matter precedence in debate, it is the House alone that decides whether a breach of privilege or a contempt has occurred, for only the House has the power to commit or punish for contempt.

How, then, does the Speaker decide whether or not a *prima facie* case has been made out? Again, Maingot is helpful in this regard. It states the following (at pages 221 and 227):

A *prima facie* case of privilege in the parliamentary sense is one where the evidence on its face as outlined by the Member is sufficiently strong for the House to be asked to debate the matter....

If the Speaker feels any doubt on the question, he should ... leave it to the House.

Having reflected on these authorities, I will apply them to the case before me now. It is hard to recall a time in recent memory when a matter of parliamentary process has so incensed people inside and outside this province. Many Ontarians from all walks of life have complained in an overwhelmingly negative way -- to my office, to members directly, through various media, and to the government itself -- that the government's approach to communicating the 2003 Budget to Ontarians has undermined parliamentary institutions and processes.

As I have already indicated, there have been occasions in the past when a Minister of Finance or a Treasurer has neither personally presented the Budget in the House nor read the Budget speech in the House. In the case at hand, however, the government indicated that the events of March 27 were motivated by a desire (in the words of a March 12 press release issued by the Ministry of Finance) to have "a direct conversation with the people of Ontario."

To the extent that they imply that parliamentary institutions and processes in Ontario tend to interfere with the government's message to the public, such statements tend to reflect adversely on those institutions and processes. If the government has a problem with those institutions and processes, or if it wants to improve them, why did it not ask the House sometime during the last session to reflect on the problem and to consider appropriate changes? Traditional ways to do just that would be to introduce a bill, table a notice of motion, enter into discussions at the level of the House Leaders, or ask the Standing Committee on the Legislative Assembly to study and report on the problem. Given the public's reaction to the government's decision to stage a Budget presentation outside the House, I think Ontarians are rather fond of their traditional parliamentary institutions and parliamentary processes, and they want greater deference to be shown towards the traditional parliamentary forum in which public policies are proposed, debated and voted on.

When the government or a member claims that a Budget presentation is needed outside the House well before it happens inside the House in order to communicate directly to the people or because of a perceived flaw in the parliamentary institution, there is a danger that the representative role of each and every member of this House is undermined, that respect for the institution is diminished, and that Parliament is rendered irrelevant. Parliamentary democracy is not vindicated by the government conducting a generally one-sided public relations event on the Budget well in advance of members having an opportunity to hold the government to account for the Budget in this Chamber.

I can well appreciate that parliamentary proceedings can be animated and often emotional, and they can be cumbersome. It may not be the most efficient of political systems, but it is a process that reflects the reality that members, like the people of Ontario, may not be of one mind on matters of public policy. A mature parliamentary democracy is not a docile, esoteric or one-way communications vehicle; it is a dynamic, interactive and representative institution that allows the government of the day to propose and defend its policies -- financial and otherwise. It also allows the opposition to scrutinize and hold the government to account for those policies. It is an open, working and relevant system of scrutiny and accountability. If any members of this House have a problem with the concept of parliamentary democracy, then they have some serious explaining to do.

I have a lingering unease about the road we are going down, and my sense is that the House and the general public have the same unease. Let me summarize it by posing the following questions:

First, what does the planned presentation of a Budget speech outside the House suggest about the relevancy and primacy of Parliament? It is one thing not to make the traditional Budget presentation in the House because the government is backed into such a decision by an ongoing House process or a Budget leak; it is quite another for the government to have a deliberate plan not to do so.



Second, if left unchallenged, will this incident not embolden future governments to create parallel, extra-parliamentary processes for other kinds of events that traditionally occur in the House?

Third, why is an extra-parliamentary process needed if there is already a process in the House? If the answer is that it enables direct communication with the public, to what extent does such an answer undermine the representative, scrutiny and accountability functions of Parliament?

From where I stand, the 2003 Budget process has raised too many questions for the House not to reflect on them. In order to facilitate that exercise, I am finding that a *prima facie* case of contempt has been established. I want to reiterate that while I have found sufficient evidence to make such a finding, it is now up to the House to decide what to do. As I have said, only the House, not the Speaker, can make a finding that there has been a contempt of the House.

Before turning to the member for Renfrew-Nipissing-Pembroke to move the appropriate motion, I want to thank him, the member for Niagara Centre, and the Government House Leader for speaking to these matters last Thursday.

Mr. Conway then moved,

Ensuite, M. Conway propose,

That this House declares that it is the undoubted right of the Legislative Assembly, in Parliament assembled, to be the first recipient of the Budget of Ontario.

After some time, pursuant to Standing Order 9(a), the motion for adjournment of the debate was deemed to have been made and carried.

Après quelque temps, conformément à l'article 9(a) du Règlement, la motion d'ajournement du débat est réputée avoir été proposée et adoptée.

The House then adjourned at 6:00 p.m.

À 18 h, la chambre a ensuite ajourné ses travaux.

le président

**GARY CARR**

Speaker

**SESSIONAL PAPERS PRESENTED  
PURSUANT TO STANDING ORDER 39(A):-**

**DOCUMENTS PARLEMENTAIRES  
DÉPOSÉS CONFORMÉMENT À L'ARTICLE  
39(A) DU RÈGLEMENT**

Board of Funeral Services / Conseil des services funéraires, Annual Report 2001 (No. 17).

Electrical Safety Authority, Annual Report 2002 and 2003-2005 Business Plan (No. 16).

Technical Standards & Safety Authority, 2001/2002 Annual Report, (No. 18).