



No. 94

N° 94

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## Votes and Proceedings

## Procès-verbaux

Legislative Assembly  
of Ontario

Assemblée législative  
de l'Ontario

**Wednesday**  
**June 21, 2006**

Daytime Meeting - Sessional Day 142  
Evening Meeting - Sessional Day 143

**Mercredi**  
**21 juin 2006**

Séance de l'après-midi - jour de session 142  
Séance du soir - jour de session 143

**2<sup>nd</sup> Session,**  
**38<sup>th</sup> Parliament**

**2<sup>e</sup> session**  
**38<sup>e</sup> législature**

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**PRAYERS**  
**1:30 P.M.**

**PRIÈRES**  
**13 H 30**

The Speaker addressed the House as follows:-

I beg to inform the House that I have today laid upon the Table the Individual Members' Expenditures for the fiscal year 2005-2006 (Sessional Paper No. 177).

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**REPORTS BY COMMITTEES**

**RAPPORTS DES COMITÉS**

Ms. Horwath from the Standing Committee on Estimates presented the Committee's report as follows:-

Pursuant to Standing Order 60(a), the following Estimates (2006-2007) are reported back to the House as they were not previously selected by the Committee for consideration and are deemed to be passed by the Committee:-

**OFFICE OF THE ASSEMBLY**

201 Office of the Assembly	\$ 108,762,900
202 Commission(er)'s	\$ 15,091,600

**OFFICE OF THE AUDITOR GENERAL**

2501 Office of the Auditor General	\$ 13,662,200
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**OFFICE OF THE CHIEF ELECTION OFFICER**

501 Office of the Chief Election Officer	\$ 7,516,900
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**OMBUDSMAN ONTARIO**

2301 Ombudsman Ontario	\$ 9,451,200
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Pursuant to Standing Order 60(b), the report of the Committee is deemed to be received and the Estimates of the offices named therein as not being selected for consideration by the Committee are deemed to be concurred in.

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**INTRODUCTION OF BILLS**

**DÉPÔT DES PROJETS DE LOI**

The following Bill was introduced and read the first time:-

Le projet de loi suivant est présenté et lu une première fois:-

Bill 132, An Act to include members of the Legislative Assembly in the Public Service Pension Plan and to make related amendments to other Acts. Mr. Sterling.

Projet de loi 132, Loi visant à faire participer les députés à l'Assemblée législative au Régime de retraite des fonctionnaires et à apporter des modifications connexes à d'autres lois. M. Sterling.

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**MOTIONS**

**MOTIONS**

With unanimous consent, on motion by Mr. Bradley,

Ordered, that an humble address be presented to the Lieutenant Governor in Council as follows:-

“To the Lieutenant Governor in Council:-

We, Her Majesty's most dutiful and loyal subjects, the Legislative Assembly of the Province of Ontario, now assembled, request the appointment of Jim McCarter as Auditor General for the Province of Ontario, as provided in section 4 (1.1) of the Auditor General Act, RSO 1990, c. A35, to hold office under the terms and conditions of the said Act.”

And, that the Address be engrossed and presented to the Lieutenant Governor in Council by the Speaker.

Mr. Bradley moved,

M. Bradley propose,

That pursuant to Standing Order 9(c)(i), the House shall meet from 6:45 p.m. to 9:30 p.m. on Wednesday, June 21, 2006, for the purpose of considering government business.

The question being put on the motion, it was carried on the following division:-

La motion, mise aux voix, est adoptée par le vote suivant:-

AYES / POUR - 51

Arthurs	Delaney	Kwinter	Munro	Ruprecht
Barrett	Dombrowsky	Lalonde	Oraziotti	Sandals
Bentley	Duguid	Martiniuk	O'Toole	Smith
Berardinetti	Duncan	Matthews	Peters	Smitherman
Bradley	Flynn	Mauro	Phillips	Sterling
Brotten	Fonseca	McNeely	Qaadri	Tory
Brownell	Hardeman	Meilleur	Racco	Van Bommel
Chambers	Hoy	Miller	Ramal	Wynne
Chudleigh	Klees	Mitchell	Ramsay	Yakabuski
Colle	Kular	Mossop	Runciman	Zimmer
Crozier				

NAYS / CONTRE - 5

Bisson	Horwath	Kormos	Marchese	Prue
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The Speaker delivered the following ruling:-

On Tuesday, June 6, the Member for Leeds—Grenville (Mr. Runciman) raised a point of order under Standing Order 23(g), relating to the *sub judice* rule. The *sub judice* rule refers to the practice that the House should not discuss matters that are pending or currently before a court of law for adjudication.

Standing Order 23(g) states:-

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

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.

In his point of order, the Member for Leeds—Grenville asserted that the Premier had offended the *sub judice* rule while answering a question on the topic of the ongoing land dispute in Caledonia. Specifically, the Member stated that the Premier's comments had the potential to prejudice the Ipperwash Inquiry currently being conducted by the Honourable Sidney Linden.

The Member for Niagara Centre (Mr. Kormos) and the Attorney General (Mr. Bryant) also made contributions on this point of order.

Let me spend a bit of time talking about *sub judice*. Translated literally from the Latin, *sub judice* means "under judgement", and while it is a parliamentary convention, in Ontario it is also a specific rule which entered our Standing Orders in 1970, and was modified to the current version in 1978. This convention exists as an acknowledgement that it is in the public interest, and in the interest of the administration of justice, broadly interpreted, that the Legislative Assembly will voluntarily refrain from debating or discussing matters before courts of law or largely similar judicial bodies.

The principle of the separation of powers in our system acts to ensure that the legislative, executive and judicial branches of government operate independently. The legislature should never discuss matters before the courts when doing so could undermine the work of the court, the rights of any individual to due process in a neutral environment, or when unproved allegations might irrevocably damage personal reputations.

As the presiding official in this place, it falls upon the Speaker to exercise his or her discretion whether or not to impose restraint upon the Assembly when, in a situation of the type I just described, it appears to the Speaker that Members may be venturing too far in their remarks.

The Speaker, however, has two other major considerations in mind when *sub judice* arises: first, the fundamental parliamentary privilege of freedom of speech and, second, the practical limitations on his ability to be fully aware of every matter before the courts. Let me address each of these important factors.

Freedom of speech is one of the most important and useful privileges enjoyed by Members of the Legislative Assembly. The Bill of Rights of 1688 first declared this privilege, and Canadian legislatures, even before Confederation, likewise claimed it. It was formally conveyed to the Parliament of Canada in the Constitution Act, 1867 and the provinces of Canada have since aggressively and successfully continued to claim this privilege. It is the basic building block of this legislature.

The Speaker, therefore, has a solemn obligation to uphold the right of every Member to speak freely in this place, and would only reluctantly interfere in debate in certain instances. One of these is when matters being discussed fall under the *sub judice* rule. However, in the absence of a blatant and obvious transgression of the *sub judice* convention, the Speaker will instead err on the side of the right of Members to debate and consider important public issues in the Legislature.

Marleau and Montpetit's House of Commons Procedure and Practice, at page 537, in a reference to the First Report of the House of Commons Special Committee on the Rights and Immunities of Members, explains this application of the *sub judice* convention as follows:

“...when there is doubt in the mind of the Chair, a presumption should exist in favour of allowing debate and against the application of the convention.”

On the second matter of knowledge of matters before the courts, as numerous of my predecessors in this chair have stated, Members can surely appreciate the difficulty the Speaker has, as he cannot be fully aware of every matter before every judicial body. Moreover, Standing Order 23(g) directs the Speaker to interfere in debate only when he or she is satisfied that continued reference to the specific matter may tend to prejudice the relevant proceeding. This is extremely difficult for a Speaker to gauge.

The specific case at hand refers to comments made during Question Period, and here again the authorities and our practice are instructive.

The voluntary nature of the *sub judice* convention means that every Member must be careful to refrain from making comments in debate, motions or questions.

In debate, this self-regulation is essential. In oral question period, Speakers largely rely upon the Ministers to whom questions are addressed to decide if further discussion of the matter might prejudice a matter before a court, or other judicial or quasi-judicial body, or tribunal. And while Ministers have every right to decline to answer a question which in their view rubs up against the *sub judice* convention, Members in framing questions must also be cognizant of their responsibility in this regard.

Indeed, the very posing of a question may cross the *sub judice* line, but the conundrum for all is that, regardless of the subsequent actions of the Speaker or anyone else, the damage may already have been done.

In the specific case at hand, I have reviewed the Hansard exchange from June 6 between the Member for Leeds—Grenville and the Premier. Beyond subjective inferences which a reader might draw from them – which is well beyond the concern of the Speaker – I do not find any of the comments go so far as to concern me with regard to *sub judice*.

I will end by noting again that the *sub judice* convention relies for its effectiveness upon the goodwill of all Members in voluntarily refraining from discussing matters before courts or judicial bodies. I think it is worth reminding Members that extreme caution should always be the order of the day whenever such matters arise as a topic of discussion in this Chamber.

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## PETITIONS

Petition relating to funding community agencies to ensure quality support and services to people who have an intellectual disability (Sessional Paper No. P-15) Mr. O'Toole.

Petition relating to identity theft (Sessional Paper No. P-113) Mr. Ruprecht.

Petition relating to increasing operating funding to Long Term Care homes (Sessional Paper No. P-136) Ms. Scott.

Petition relating to supporting the provincial government's efforts to improve access to family doctors and the Family Health Teams Program (Sessional Paper No. P-161) Mr. Ruprecht.

Petitions relating to amending the Ontario School Boards' Education Act to divert waste from Ontario high school classrooms and cafeterias (Sessional Paper No. P-168) Mr. Hardeman and Mr. O'Toole.

Petition relating to reviewing and amending the Workplace Safety Insurance Act (Sessional Paper No. P-197) Mr. Zimmer.

Petition relating to supporting the Fair Access to Regulated Professions Act, 2006 (Sessional Paper No. P-202) Mr. Leal.

Petition relating to stopping repairs, securing funding and constructing a new facility for St. Paul's Elementary School (Sessional Paper No. P-207) Mr. Wilson.

Petition relating to supporting the Ombudsman having the power to probe decisions and investigate complaints concerning the Children's Aid Societies (Sessional Paper No. P-211) Ms. Horwath.

Petition relating to investing in energy sources for the future (Sessional Paper No. P-217) Mr. Delaney.

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## ORDERS OF THE DAY

Debate was resumed on the motion for Second Reading of Bill 52, An Act to amend the Education Act respecting pupil learning to the age of 18 and equivalent learning and to make complementary amendments to the Highway Traffic Act.

After some time, there being no further debate, the question having been put, the Acting Speaker (Mr. Prue) declared his opinion that the Ayes had it, and a recorded vote having been demanded,

The Acting Speaker directed that the Members be called in, for which purpose the division bells were rung.

During the ringing of the bells, the Acting Speaker addressed the House as follows:-

## PÉTITIONS

Le débat reprend sur la motion portant deuxième lecture du projet de loi 52, Loi modifiant la Loi sur l'éducation concernant l'apprentissage des élèves jusqu' à l'âge de 18 ans et l'apprentissage équivalent et apportant des modifications complémentaires au Code de la route.

Après quelque temps, comme il n'y a plus de débat, la motion mise aux voix, le président par intérim, M. Prue déclare qu'à son avis les voix favorables l'emportent et un vote par appel nominal ayant été demandé,

Le Président par intérim donne des directives pour convoquer les députés et la sonnerie d'appel se fait entendre.

Pendant la sonnerie d'appel, le Président par intérim s'adresse à l'Assemblée en ces mots:-

I have received a request from the Chief Government Whip, under Standing Order 28(h), that the vote on the motion for Second Reading of Bill 52, An Act to amend the Education Act respecting pupil learning to the age of 18 and equivalent learning and to make complementary amendments to the Highway Traffic Act, be deferred until Thursday, June 22, 2006.

Therefore the vote is accordingly deferred.

Debate was resumed on the motion for Third Reading of Bill 117, An Act to amend the Income Tax Act to provide for an Ontario home electricity payment.

After some time, the motion was declared carried and the Bill was accordingly read the third time and was passed.

Mr. Bartolucci moved, That the House do now adjourn.

The question, having been put on the motion, was declared carried.

The House then adjourned at 5:35 p.m.

**6:45 P.M.**

### **ORDERS OF THE DAY**

Mr. Sorbara moved,

That the Minister of Finance be authorized to pay the salaries of civil servants and other necessary payments pending the voting of supply for the period commencing July 1, 2006, and ending on December 31, 2006, such payments to be charged to the proper appropriation of the 2006-07 fiscal year following the voting of supply.

A debate arose and, after some time, the motion was declared carried.

Mr. Bartolucci moved, That the House do now adjourn.

The question, having been put on the motion, was declared carried.

J'ai reçu une requête du Whip en chef du gouvernement, conformément à l'article 28 h) du Règlement, que le vote sur la motion portant deuxième lecture du projet de loi 52, Loi modifiant la Loi sur l'éducation concernant l'apprentissage des élèves jusqu' à l'âge de 18 ans et l'apprentissage équivalent et apportant des modifications complémentaires au Code de la route, soit différé jusqu'au jeudi 22 juin 2006.

En conséquence, le vote est différé.

Le débat reprend sur la motion portant troisième lecture du projet de loi 117, Loi modifiant la Loi de l'impôt sur le revenu pour prévoir un paiement au titre des factures d'électricité résidentielle de l'Ontario.

Après quelque temps, la motion est déclarée adoptée et en conséquence, ce projet de loi est lu une troisième fois et adopté.

M. Bartolucci propose que l'Assemblée ajourne les débats maintenant.

Cette motion, mise aux voix, est déclarée adoptée.

À 17 h 35, la chambre a ensuite ajourné ses travaux.

**18 H 45**

### **ORDRE DU JOUR**

M. Sorbara propose,

Il s'élève un débat et après quelque temps, la motion est déclarée adoptée.

M. Bartolucci propose que l'Assemblée ajourne les débats maintenant.

Cette motion, mise aux voix, est déclarée adoptée.

The House then adjourned at 7:50 p.m.

À 19 h 50, la chambre a ensuite ajourné ses travaux.

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le président

**MIKE BROWN**

Speaker

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**PETITIONS TABLED PURSUANT TO STANDING ORDER 38(a)**

Petition relating to withdrawing or amending Bill 102 to ensure fairness to patients and pharmacies (Sessional Paper No. P-193) Mrs. Witmer.

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**QUESTIONS ANSWERED (SEE SESSIONAL PAPER NO. 5):-**

Final Answers to Question Numbers: 179, 181 and 182.

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