



No. 80

N° 80

Votes and Proceedings

Procès-verbaux

Legislative Assembly
of Ontario

Assemblée législative
de l'Ontario

Monday
October 27, 2008

Sessional Day 88

Lundi
27 octobre 2008

Jour de session 88

1st Session,
39th Parliament

1^{re} session
39^e législature

**PRAYERS
10:30 A.M.**

**PRIÈRES
10 H 30**

INTRODUCTION OF VISITORS

Pursuant to Standing Order 36, visitors were introduced.

PRÉSENTATION DES VISITEURS

Conformément à l'article 36, les visiteurs sont présentés.

ORAL QUESTIONS

Pursuant to Standing Order 37, the House proceeded to Oral Questions.

QUESTIONS ORALES

Conformément à l'article 37, la chambre passe aux questions orales.

Pursuant to Standing Order 9(a), the Speaker recessed the House at 11:36 a.m. until 1:00 p.m.

Conformément à l'article 9 a), le Président ordonne une pause à l'Assemblée à 11 h 36 jusqu'à 13 h.

1:00 P.M.

13 H

MEMBERS' STATEMENTS

Pursuant to Standing Order 31, Members made statements.

DÉCLARATIONS DES DÉPUTÉS

Conformément à l'article 31, des députés font des déclarations.

INTRODUCTION OF BILLS

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

Bill 117, An Act to amend the Highway Traffic Act to prohibit the driving and operation of motorcycles with child passengers. Ms. Jaczek.

DÉPÔT DES PROJETS DE LOI

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

Projet de loi 117, Loi modifiant le Code de la route afin d'interdire la conduite et l'utilisation de motocyclettes transportant des enfants comme passagers. M^{me} Jaczek.

PETITIONS

Petition relating to Pope John Paul II Day (Sessional Paper No. P-22) Mr. Delaney.

Petitions relating to construction of an Ambulatory Surgery Centre to serve the Mississauga Halton area (Sessional Paper No. P-23) Mr. Delaney and Mr. Leal.

Petition relating to unlawful firearms in vehicles (Sessional Paper No. P-75) Mr. Colle.

Petition relating to requesting an amendment to the Children's Law Reform Act (Sessional Paper No. P-95) Mr. Craitor.

Petition relating to the Huronia District Hospital (HDH) and the Penetanguishene General Hospital (PGH) (Sessional Paper No. P-115) Mr. Dunlop.

Petition relating to treating workplace harassment and violence as a serious health and safety issue by passing Bill 29 (Sessional Paper No. P-126) Ms. Horwath.

PÉTITIONS

Petition relating to ensuring that emergency dispatch services continue to be provided locally by Muskoka Ambulance Communications Service (Sessional Paper No. P-152) Mr. Miller (Parry Sound–Muskoka).

Petition relating to allowing hospices across the province to be exempt from municipal taxes (Sessional Paper No. P-153) Mr. Colle.

Petition relating to the people of Restoule and the Nipissing Forest Management Plan (Sessional Paper No. P-155) Mr. Miller (Parry Sound–Muskoka).

Petition relating to Systemic Lupus Erythematosus (Sessional Paper No. P-157) Mr. Craitor.

Petition relating to In Vitro Fertilization Funding (Sessional Paper No. P-158) Mr. Hoy.

The Speaker delivered the following ruling:-

On Thursday, October 23, 2008, the Minister of Tourism (Ms. Smith) rose on a point of order to express her concerns about the Opposition Day motion that appeared on that day's *Orders and Notices Paper* and that is scheduled for debate tomorrow. The motion calls for a public inquiry into the circumstances surrounding the release on bail of an individual who is named in the motion. The Member was of the view that the motion, which stands in the name of the Leader of the Opposition (Mr. Runciman), violates the *sub judice* convention as well as the *sub judice* provision in our Standing Orders. The Member for Whitby–Oshawa (Mrs. Elliott) also spoke to the matter, and I have also reviewed the written submission of the Leader of the Opposition.

Having had an opportunity to review the Members' submissions in Thursday's *Hansard*, other recent *Hansards*, the written submission of the Leader of the Opposition, previous rulings and precedents, and the parliamentary authorities on *sub judice*, I am now ready to rule on the point of order.

Let me begin by reviewing the meaning of *sub judice*. As I indicated in an address to the House on May 8, 2008:

Sub judice in brief, is a voluntary restriction on the part of a legislative body to refrain from discussing matters that are before a judicial or quasi-judicial body. In other words, it is a self-imposed restriction that the Legislative Assembly places upon itself so as to avoid prejudice to a judicial case. At its core is the principle that the separation between legislative and judicial bodies is to be respected.

As the Leader of the Opposition points out in his written submission, Ontario Speakers have been generally predisposed to giving considerable leeway to Members who exercise their parliamentary responsibilities and privileges – for example, when they introduce bills, move motions, place oral questions, present petitions, table written questions, and participate in debate pursuant to the Standing Orders. This predisposition is tantamount to a presumption, albeit a rebuttable one, that the Member should not be unduly fettered in the exercise of his or her parliamentary responsibilities and privileges.

My responsibility as Speaker in the case at hand is to determine first whether the Opposition Day motion offends our *sub judice* rule, and then whether it offends our *sub judice* convention, and so I shall address each issue in turn.

Though a strict interpretation of Standing Order 23(g) would limit the rule to “debate”, in my view this does not necessarily save a motion from its application.

A motion provides the context of the debate, and is the prelude to it. A motion is not exempt from debate – quite obviously – so it must be subject to the rules of debate. I am therefore satisfied that the motion is not exempt from being looked at by me in the light of the Standing Order. Nevertheless, even if I were to accept an argument to the contrary, this is moot because I still must turn to whether the motion offends the *sub judice* convention.

I begin by noting that, in other jurisdictions, the convention does apply to motions. For example, Marleau and Montpetit's *House of Commons Procedure and Practice* states as follows at page 534:

During debate, restrictions are placed on the freedom of Members of Parliament to make reference to matters awaiting judicial decisions in the interests of justice and fair play. Such matters are also barred from being the subject of motions or questions in the House.

In a similar vein, the UK House of Commons has a *sub judice* rule that codifies its convention; according to page 437 of the 23rd edition of *Erskine May*, it applies to "any motion, debate or question." In addition, the Australian *House of Representatives Practice* states the following at page 505 of the 5th edition:

Notwithstanding its fundamental right and duty to consider any matter if it is thought to be in the public interest, the House imposes a restriction on itself in the case of matters awaiting or under adjudication in a court of law. This is known as the *sub judice* convention. The convention is that, subject to the right of the House to legislate on any matter, matters awaiting adjudication in a court of law should not be brought forward in debate, motions or questions.

The application of the convention to motions has been specifically accepted in Ontario by virtue of a ruling that can be found at page 305 of the *Journals* for June 21, 2006. I too accept the view that motions are subject to our *sub judice* convention.

In doing so, I am cognizant of what happened on May 14, 2001, a day when there was a debate on an Opposition Day motion seeking a commission of inquiry into the 1995 shooting death of Dudley George at Ipperwash Provincial Park. No point of order was raised on the orderliness of that motion, but it is noteworthy that while there was an ongoing civil proceeding at the time of that debate, related criminal proceedings had been fully disposed of. Parliamentary authorities are in agreement that the *sub judice* rule and convention are more relevant to criminal proceedings than to civil proceedings because there is more potential for prejudice to the former compared to the latter. Moreover, the motion was worded in a general way: it simply called for an inquiry into the incident. In his written submission, the Leader of the Opposition also referred to an Opposition Day motion that was debated on November 28, 2006; this motion called on the government to make certain changes to the justice system, including the bail system. Like the Ipperwash motion, it did not identify the name of any individual who might be involved in an ongoing court proceeding.

In the case at hand, I appreciate the efforts of the Member for Whitby–Oshawa to create a work-around on the issue before me. The Member suggests that the debate on the motion could focus on the general application of the rules regarding the apprehension of persons charged with serious criminal offences, instead of on the specifics of any case before the courts. The difficulty that I have with this approach is that it cannot be reconciled with the motion. This motion not only does not address the general application of such rules, but also identifies – in every one of its clauses – the names of individuals associated with a very serious incident that is still before the criminal courts. It also draws conclusions on certain evidence and on the actions of officials involved in the administration of criminal justice in Ontario. Absent these specifics and written a different way, it is likely such a motion could have proceeded, as was the case with the Opposition Day motion about the justice system in Ontario that was put forward in November, 2006.

However, we are dealing with the motion as it is written, so for the reasons already cited I am satisfied that the presumption against the application of the convention has been rebutted. I find that the motion offends the *sub judice* convention in that it offers much potential for prejudice to an ongoing criminal proceeding, and so I am ordering that the motion be removed from the *Orders and Notices Paper*.

In his written submission, the Leader of the Opposition made remarks about the placement of oral questions in past Question Periods, including the placement of questions in recent Question Periods on the same matter as that mentioned in the Opposition Day motion. As I have indicated, oral questions are approached differently than motions. However, I do have concerns about the recent questions that address

the same matter as the Opposition Day motion. I note that the Attorney General in every instance declined to address the substantive question on the basis that the matters being raised were still before the courts. The Attorney General's approach was consistent with pre-existing practice. In a ruling at page 305 of the *Journals* for June 21, 2006, the Speaker addressed this very issue in the following terms:

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....

[T]he 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.

I also want to quote from paragraph 192 of the 1999 *First Report* of the UK Parliament's Joint Committee on Parliamentary Privilege, as follows:

It is important that a debate, a committee hearing, or any other parliamentary proceeding should not prejudice a fair trial, especially a criminal trial. But it is not only a question of prejudicing a fair trial. Parliament is in a particularly authoritative position and its proceedings attract much publicity. The proper relationship between Parliament and the courts requires that the courts should be left to get on with their work. No matter how great the pressure at times from interest groups or constituents, Parliament should not permit itself to appear as an alternative forum for canvassing the rights and wrongs of issues being considered by the judicial arm of the state on evidence yet to be presented and tested. Although the risk of actual prejudice is greater in a jury trial, it would not be right to remove appeal cases or other cases tried without a jury from the operation of the rule. Restrictions on media comment are limited to not prejudicing the trial, but Parliament needs to be especially careful: it is important constitutionally, and essential for public confidence, that the judiciary should be seen to be independent of political pressures. Thus, restrictions on parliamentary debate should sometimes exceed those on media comment.

I hope that these statements offer Members some helpful guidance when they exercise their parliamentary responsibilities and privileges in the future.

Before concluding, I want to address the timing of this point of order last Thursday. I think it would have been preferable, and helpful to the Speaker, if the point had been raised when the Leader of the Opposition, in whose name the motion stands, was in the Chamber so that he could listen and respond to the point of order. Members will know that a point of order does not require notice and that the Speaker cannot direct that such a courtesy be extended. Moreover, notice is not often feasible, since a point of order has to be raised at the earliest opportunity, regardless of whether or not a Member affected by it is in the Chamber. Nevertheless, I am left with a lingering unease; I think there was room for greater consideration in this case, especially since Opposition Day motions are such an important means by which the Opposition holds the government of the day to account.

I thank the Minister of Tourism and the Member for Whitby–Oshawa for speaking to this matter last

Thursday, and the Leader of the Opposition for his written submission. Again, I hope that this ruling offers all Members some guidance on *sub judice* issues.

With unanimous consent, it was agreed that a notice of motion be placed on the Order Paper in substitution of the notice for Opposition Day Number 3 ruled out of order by the Speaker.

ORDERS OF THE DAY

A debate arose on the motion for Second Reading of Bill 114, An Act respecting Budget measures, interim appropriations and other matters, to amend the Ottawa Congress Centre Act and to enact the Ontario Capital Growth Corporation Act, 2008.

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

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

ORDRE DU JOUR

Il s'élève un débat sur la motion portant deuxième lecture du projet de loi 114, Loi concernant les mesures budgétaires, l'affectation anticipée de crédits et d'autres questions, modifiant la Loi sur le Centre des congrès d'Ottawa et édictant la Loi de 2008 sur la Société ontarienne de financement de la croissance.

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

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

le président

STEVE PETERS

Speaker

**SESSIONAL PAPERS PRESENTED
PURSUANT TO STANDING ORDER 40**

Certificate pursuant to Standing Order 108(f)(1) re intended appointments dated October 24, 2008 (No. 282) (Tabled October 24, 2008).

**DOCUMENTS PARLEMENTAIRES
DÉPOSÉS CONFORMÉMENT À
L'ARTICLE 40 DU RÈGLEMENT**

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

Final Answers to Question Numbers: 100 to 103 inclusive.
