



No. 166

N° 166

Votes and Proceedings

Procès-verbaux

Legislative Assembly
of Ontario

Assemblée législative
de l'Ontario

Monday
September 28, 2009

Sessional Day 174

Lundi
28 septembre 2009

Jour de session 174

1st Session,
39th Parliament

1^{re} session
39^e législature

PRAYERS
10:30 A.M.

PRIÈRES
10 H 30

INTRODUCTION OF VISITORS

PRÉSENTATION DES VISITEURS

Pursuant to Standing Order 36, visitors were introduced.

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

The Speaker addressed the House as follows:-

Le Président s'adresse à l'Assemblée comme suit:-

On Monday, September 14, 2009, the Member for Leeds-Grenville (Mr. Runciman) rose on a question of privilege alleging that certain government ministers had misled the House when they indicated last June that a private company had been retained to conduct an outside audit into eHealth Ontario. The Member for Welland (Mr. Kormos) and the Member for Nipissing (Ms. Smith) also made submissions on this point of privilege.

I have had an opportunity to review Hansard, and relevant precedents and parliamentary authorities, and I am now prepared to rule on the matter.

As the Member for Welland indicated when he spoke to this matter last Monday, there is a difference between privilege and contempt. Let me briefly explain the meaning of each. *Erskine May* (at page 75 of the 23rd edition) describes privilege as follows:

“... privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity.”

Erskine May (at page 128 of the 23rd edition) defines contempt as follows:

“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.”

That is what *Erskine May* says on privilege and contempt.

It is important to be aware of the distinction between the two because, having reviewed our precedents and parliamentary authorities, I am of the view that a question of privilege alleging that a member has misled the House falls under the rubric of contempt as opposed to a breach of privilege. The same view was taken by Speaker McLean in an October 17, 1995 ruling and by Speaker Carr in a June 17, 2002 ruling.

In the 2002 ruling Speaker Carr explained the parameters for finding a *prima facie* case of contempt relating to a charge of misleading the House as follows:

“The threshold for finding a *prima facie* case of contempt against a Member of the Legislature, on the basis of deliberately misleading the House, is therefore set quite high and is very uncommon. It must involve a proved finding of an overt attempt to intentionally mislead the Legislature. In the absence of an admission from the Member accused of the conduct, or of tangible confirmation of the conduct, independently proved, a Speaker must assume that no honourable Members would engage in such behaviour or that, at most, inconsistent statements were the result of inadvertence or honest mistake.”

In coming to this view, Speaker Carr examined the infamous Profumo incident in 1963, when the UK House of Commons passed a resolution to the effect that a minister was “guilty of a grave contempt of this House” after he admitted that he had misled the House when it was revealed that parts of a prepared personal statement he had made in the House earlier that year were not true.

The value of citing the Profumo incident lies in demonstrating how different that situation is from what is before me now. In that case, there was not only clear evidence that the House had been misled, but that Profumo had deliberately set out with the intention of doing so; I would submit that that is not the case here.

Also in his 2002 ruling, Speaker Carr examined a February 1, 2002 ruling by the Speaker of the Canadian House of Commons, a ruling that was mentioned by both the Member for Leeds-Grenville and the Government House Leader. In that ruling, Speaker Milliken dealt with an allegation that then-National Defense Minister Art Eggleton had deliberately misled the House. By the time Speaker Milliken ruled on the matter, Mr. Eggleton had admitted to the House that incorrect information had previously been provided, but that “at no time did I intend to mislead the House. I was answering with what I believed to be the correct information...”

This fact situation in the House of Commons is thematically more similar to the case at hand, in that there is an absence of any evidence of a deliberate intent to mislead the House. Indeed, the Member for Welland, during his arguments on this point of privilege, conveyed his belief that back in June “neither the Minister of Health nor the Premier had full possession of all the accurate facts.”

This question of intent is of utmost importance. David McGee in the Third Edition of *Parliamentary Practice in New Zealand* addresses this effectively at page 653 and 654 of that volume:-

“There are three elements to be established when it is alleged that a member is in contempt by reason of a statement that the member has made: the statement must, in fact, have been misleading; it must be established that the member making the statement knew at the time that it was incorrect; and, in making it, the member must have intended to mislead the House.”

In the absence of any such criteria establishing intent, Speaker Milliken did not find a *prima facie* case of privilege had been made out in the Eggleton case. Nevertheless, he allowed a motion to be put to refer the matter to a standing committee, without objection from any member of the House. I have no reason to believe there would be similar tolerance of me taking such a liberty in this case.

In that vein, let me address the Opposition House Leader’s suggestion that I could make a direct referral of this matter under Standing Order 108(g) to the Standing Committee on the Legislative Assembly, without the House having dealt with a privilege motion in response to a finding of a *prima facie* case of contempt of the Legislature. This is simply not possible. The Member will know that Standing Order 108(g) only allows the Speaker to request that the Standing Committee on the Legislative Assembly review the Standing Orders, and the procedures in the House and its committees. Nothing in that Standing Order cloaks the Speaker with the authority to make a referral concerning a member's conduct to the committee.

Earlier, I quoted part of a statement that the Member for Welland made when he argued this point of privilege on September 14. In fairness to him and to the record, let me finish the quote: The Member for Welland went on to say that “(w)hat we’re not prepared to live with is that they didn’t correct the record at the earliest opportunity.”

Here again David McGee in *Parliamentary Practice in New Zealand* is helpful. Specifically addressing ministerial replies to oral questions he says:

“A deliberate attempt to mislead the House would be a contempt, and if a Minister discovers that incorrect information has been given to the House the Minister is expected to correct the record as soon as possible. But subject to these circumstances, accuracy or otherwise is a matter that may be disputed and the Speaker is not the judge of it. It is a matter for political criticism of the Minister concerned if members believe that a Minister has answered incorrectly.”

It seems apparent, in the absence of any such corrections or retractions, that the Minister of Health is of the view not only that he and the Premier had not made a misstatement, but also that they believed their statements in the House were accurate at the time they were made and that there is nothing to correct. Presumably this view is bolstered by the fact that by the time the House resumed earlier this month, additional information had become common knowledge.

The Speaker is therefore left without any clear evidence of a deliberate attempt to mislead the House and instead with what comes down to a disagreement between members on opposite sides of the House as to the facts.

Since the circumstances that are the subject of this point of privilege fall short of establishing “a proved finding of an overt attempt to intentionally mislead the Legislature” I cannot find that a *prima facie* case of contempt has been established. I appreciate that members may hold divergent interpretations as to what transpired in June and during the adjournment, but these matters can be pursued, and have been pursued, in Question Period and other proceedings; it is not a matter of contempt.

In closing, I thank the Member for Leeds-Grenville, the Member for Welland, and the Member for Nipissing for their helpful submissions on this matter.

ORAL QUESTIONS

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

QUESTIONS ORALES

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

Pursuant to Standing Order 9(a), the Speaker recessed the House at 11:51 a.m. until 1:00 p.m.

Conformément à l'article 9 a) du Règlement, le Président ordonne une pause à l'Assemblée à 11 h 51 jusqu'à 13 h.

1:00 P.M.

13 H

INTRODUCTION OF VISITORS

Pursuant to Standing Order 36, visitors were introduced.

PRÉSENTATION DES VISITEURS

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

MEMBERS' STATEMENTS

Pursuant to Standing Order 31, Members made statements.

DÉCLARATIONS DES DÉPUTÉS

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

PETITIONS

Petition relating to getting GO Transit to extend the tunnel beyond St. Clair Ave. West (Sessional Paper No. P-6) Mr. Ruprecht.

PÉTITIONS

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

Petition relating to Temporary Care Assistance program for grandparents raising their grandchildren (Sessional Paper No. P-168) Ms. Jones.

Petition relating to a blended or harmonized sales tax (Sessional Paper No. P-224) Mr. Yakabuski.

Petition relating to stopping the 13% combined sales tax (Sessional Paper No. P-235) Mr. Ouellette.

Petition relating to removing the harmonized sales tax from the 2009-2010 budget (Sessional Paper No. P-236) Mr. Miller (Parry Sound–Muskoka).

Petition relating to the Clarkson Airshed Study area including Oakville and Mississauga south (Sessional Paper No. P-271) Mr. Flynn and Mr. Sousa.

Petition relating to making positron emission tomography (PET) scanning available through the Sudbury Regional Hospital (Sessional Paper No. P-272) M^{me} Gélinas.

Petition relating to maintaining the Donald Family as a license bureau in Whitby and the Region of Durham (Sessional Paper No. P-283) Mr. Dickson.

Petition relating to supporting the prohibition on shark finning (Sessional Paper No. P-286) Mr. Colle.

ORDERS OF THE DAY

Debate was resumed on the motion for Second Reading of Bill 201, An Act to provide for review of expenses in the public sector.

After some time, pursuant to Standing Order 47(c), the Government House Leader stated that the debate on Second Reading of Bill 201, An Act to provide for review of expenses in the public sector, would continue today beyond six and one half hours.

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

Le débat reprend sur la motion portant deuxième lecture du projet de loi 201, Loi prévoyant l'examen des dépenses dans le secteur public.

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**

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

Certificate pursuant to Standing Order 108(f)(1) re intended appointments dated September 25, 2009 (No. 508) (Tabled September 25, 2009).

Ontario Electricity Financial Corporation / Société financière de l'industrie de l'électricité de l'Ontario, 2009 Annual Report (No. 507) (Tabled September 25, 2009).

Ontario Financing Authority, Annual Report 2009 (No. 506) (Tabled September 25, 2009).

Public Accounts of Ontario / Comptes publics de l'Ontario, Annual Report 2008-2009 (No. 505) (Tabled September 25, 2009).
