



No. 17

N° 17

Votes and Proceedings

Procès-verbaux

Legislative Assembly
of Ontario

Assemblée législative
de l'Ontario

Monday
April 19, 2010

Lundi
19 avril 2010

2nd Session,
39th Parliament

2^e session
39^e législature

PRAYERS
10:30 A.M.

PRIÈRES
10 H 30

The Speaker delivered the following ruling:-

Le Président a rendu la décision suivante :-

On Tuesday, March 30 the Member for Whitby-Oshawa (Mrs. Elliott) raised a point of privilege concerning the statutory requirement in the Local Health System Integration Act, 2006, that a legislative committee undertake a review of that Act within a stated period of time.

Specifically, subsection 39(1) of the Act states that:-

A committee of the Legislative Assembly shall,

(a) begin a comprehensive review of this Act and the regulations made under it no earlier than three years and no later than four years after this Act receives Royal Assent; and

(b) within one year after beginning that review, make recommendations to the Assembly concerning amendments to this Act and the regulations made under it.

The deadline for the commencement of the legislative committee's review was March 28 of this year – four years to the day that the Act received Royal Assent. The Member for Whitby-Oshawa contended in the first instance that the failure of the government to take the necessary steps to enable a legislative committee to carry out the required review amounts to a contemptuous flouting of the oversight role of the Legislative Assembly. Secondly, the Member further contended that the provision in the Budget bill currently before the House, Bill 16, to repeal and replace clause 39(1)(a) of the Local Health System Integration Act, 2006, and thereby defer the statutory requirement for the review of the Act, was likewise contemptuous of the Legislative Assembly, particularly because the provision would have retroactive effect.

The Government House Leader (Ms. Smith) responded to the point of privilege, and later wrote to me to bolster her contention that the existence of Bill 16 and its introduction in the House before March 28, 2010 was indicative of the government's proactive effort to ensure that there would not be non-compliance with a statutory provision. She further argues that, even if there is an issue with the current situation, such issue would be "purged" by the eventual passage of the amendment, if and when that occurs, since the legal framework would ultimately contain no gap during which a required review of the Act remained unstarted and incomplete.

The Third Party House Leader (Mr. Kormos) contends that the Government House Leader's comments revealed not only foreknowledge that the provision in the statute would not be complied with, but also an effort by the government to frustrate the required review. According to the member, this aggravated rather than bolstered the House Leader's position.

In reviewing this matter, I was first of all influenced by Speakers' rulings, including some of my own, in which Speakers have rather consistently declined to deal with legal issues or to become involved in the interpretation of the law. To the extent that this point of privilege revolves around such a legal issue, the Speaker simply is not in a position to interpret a statutory requirement as found in Section 39(1) of the Act or to consider the legal ramifications presented by the Assembly's ostensible non-compliance with a statutory requirement.

Moreover, while I note that commencement clauses in bills providing for the retroactive coming into force of all or part of a bill are not at all an uncommon feature of legislation, their legal orderliness is beyond the jurisdiction of the Speaker to consider.

However, in the case at hand, it is not the legal question that is at issue. There is no dispute between parties that the statutorily required review of the Act by a legislative committee has not been set in motion by the date mandated in the Act. Additionally, though the Government House Leader defends the government partly on legal grounds, the Member for Whitby-Oshawa did not base her contempt

argument on such a legal interpretation. The Member contends that the government's failure to take the steps necessary to bring the House into compliance with the existing law, and its introduction of legislation to set aside the requirement in any event, amounts to a contempt of the House because these actions deprived the House of part of its role to oversee the government of the day.

The Member supported her argument by referring to rulings in the Canadian House of Commons by Speaker Sauvé and Speaker Fraser, and to a 1997 ruling in this House by Speaker Stockwell.

It is worthwhile to consider what constitutes a contempt of the House. As is noted in House of Commons Procedure and Practice:-

Any conduct which offends the authority or dignity of the House, even though no breach of any specific privilege may have been committed, is referred to as a contempt of the House. 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.

...

Contempts, as opposed to "privileges", cannot be enumerated or categorized. As Speaker Sauvé explained in a 1980 ruling, "... 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."

Just as it is not possible to categorize or to delineate what may fall under the definition of contempt, it is not even possible to categorize the "severity" of contempt. Contempts may vary greatly in their gravity; matters ranging from minor breaches of decorum to grave attacks against the authority of Parliament may be considered as contempts.

The Government House Leader has described the steps the government took, before the arrival of the date mandated in the Act, to change the statutory provision and how, once Bill 16 is passed, the new provision will retroactively have the effect of erasing what might be called the 'limbo period' since March 28. How can the House be out of compliance with a legal requirement that will not exist if Bill 16 becomes law and comes into force? So goes, in effect, the argument of the Government House Leader.

The Member for Whitby-Oshawa referred to Speaker Stockwell's January 22, 1997 ruling, where he found a *prima facie* case of contempt was established with respect to government advertisements that he found conveyed the impression "that the Assembly and the Legislature had a *pro forma*, tangential, even inferior role in the legislative and law-making process, and in doing so, they appear to diminish the respect that is due to the House."

A similar level of disrespect of the institution of parliament was found by Speaker Fraser in the House of Commons, on April 19, 1993. On that occasion, the Speaker ruled concerning the failure of the Government of Canada to table in the House of Commons an Order-in-Council that was required by statute to be tabled by a specific date. As this was the second occurrence of this same failure, about which the government had been previously warned, the Speaker found a *prima facie* case of contempt had been established.

Does the current situation rise to this level? Does the failure of this Legislature – or more precisely, the persons in responsible leadership of it – to put itself in compliance with the Local Health System Integration Act, 2006, by whatever means one might normally expect this to occur, constitute a contemptuous disregard of the Legislature by the government?

The provision in the Local Health System Integration Act, 2006 for a committee review was not some secret or obscure provision, nor was it recent. The government would or should have known about the approaching deadline and could easily have taken the necessary steps to deal with this well before now. The government should have done so much earlier. But does this amount to a contempt of the House?

In comparison with the situations ruled on by Speakers Stockwell and Fraser that I just cited, I do not find that the matter raised by the Member for Whitby-Oshawa represents either a flagrant or disdainful dismissal of the role of the Legislature, intended to diminish or devalue this institution, nor is it a swift repetition of a transgression about which the government has relatively recently been warned.

The Speaker does not control the government's agenda, nor can the Speaker compel a motion or any other kind of business to be brought before the House for decision. I will say, though, that a bit more advance deference to the House, and outside of an omnibus bill, would have been a far preferable way for this to be dealt with. But, it is still the case that the consent of the Legislature must be secured before the change to the Act can be made. As well, notice to the Legislature of the intended change was given in advance of the deadline date by way of amending legislation. I cannot find, therefore, that a *prima facie* case of contempt has been made out.

However, I do think this matter deserves some serious consideration. Despite the existence of Bill 16 and its provision to repeal and replace the LHIN review process, this House is nevertheless, right at this moment, seemingly not in compliance with a statute. This is not the only such occurrence. For instance, section 76(5) of the Commodity Futures Act requires a legislative committee to review the report of the Ontario Commodity Futures Act Advisory Committee. The report was issued in 2007 and while a standing committee was assigned an order of reference to conduct the review, this was interrupted by the dissolution of the House before the committee devoted a single meeting to the issue. The review was never renewed and to this day the provision of the Act remains unfulfilled.

Frankly, the purpose of these types of provisions baffles me. When the House passes legislation that embeds a statutorily required future review by a legislative committee, the House is in effect ordering itself to do some subsequent thing, something which it already has the full power to do at any time. Such provisions seem superfluous, especially when they go unobserved by the very body that mandated them in the first place. They are a recipe for precisely the type of complaint raised by the Member for Whitby-Oshawa.

Furthermore, in the face of such a self-made prior 'order', when the House itself fails to comply, what is to be made of such a lack of diligence, discipline and rigour? Specifically, to the point raised by the Member for Whitby-Oshawa, taken to its logical conclusion, is the House in contempt of itself in such a scenario? It certainly won't be this Speaker who tries to make that case. But I don't think it is wise to be casual about this kind of thing. It causes me concern, and I will therefore be writing to the Standing Committee on the Legislative Assembly, pursuant to Standing Order 108(g), to ask the committee to consider this issue and to provide me and the House with its advice on the potential for procedural remedies that might assist in these situations in the future.

In closing, I thank the Member for Whitby-Oshawa, the Government House Leader and the Third Party House Leader for their contributions.

ORAL QUESTIONS

The House recessed at 11:47 a.m.

1:00 P.M.

REPORTS BY COMMITTEES

Mr. Flynn from the Standing Committee on Finance and Economic Affairs presented the Committee's Report which was read as follows and adopted:-

Your Committee begs to report the following Bill as amended:-

Bill 236, An Act to amend the Pension Benefits Act.

Ordered for Third Reading.

INTRODUCTION OF BILLS

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

Bill 38, An Act respecting criminal record checks for volunteers. Ms. Jones.

MOTIONS

With unanimous consent, the following motion was moved without notice:-

Ms. Smith moved,

That this House commemorates 2010 as the Year of the Métis; and that the Ontario Legislature recognizes and honours the distinct culture, identity and heritage of the Métis people in the Province as well as the historic and ongoing contributions of the Métis in Ontario.

A debate arose, and after some time, it was,

Resolved, That this House commemorates 2010 as the Year of the Métis; and that the Ontario Legislature recognizes and honours the distinct culture, identity and heritage of the Métis people in the Province as well as the historic and ongoing contributions of the Métis in Ontario.

PETITIONS

Petition relating to making PET scans available through the Sudbury Regional Hospital (Sessional Paper No. P-14) M^{me} Gélinas.

QUESTIONS ORALES

À 11 h 47, l'Assemblée a suspendu la séance.

13 H

RAPPORTS DES COMITÉS

M. Flynn du Comité permanent des finances et des affaires économiques présente le rapport du comité qui est lu comme suit et adopté:-

Votre comité propose qu'il soit permis de faire rapport sur le projet de loi suivant avec des amendements:-

Projet de loi 236, Loi modifiant la Loi sur les régimes de retraite.

Ordonné pour la troisième lecture.

DÉPÔT DES PROJETS DE LOI

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

Projet de loi 38, Loi concernant les vérifications du casier judiciaire des bénévoles. M^{me} Jones.

MOTIONS

Petition relating to eco-energy grants (Sessional Paper No. P-45) Mr. Chudleigh.

ORDERS OF THE DAY

Debate was resumed on the motion for Second Reading of Bill 16, An Act to implement 2010 Budget measures and to enact or amend various Acts.

ORDRE DU JOUR

Le débat reprend sur la motion portant deuxième lecture du projet de loi 16, Loi mettant en oeuvre certaines mesures énoncées dans le Budget de 2010 et édictant ou modifiant diverses lois.

At 4:52 p.m., pursuant to Standing Order 47(c), the Acting Speaker (Mrs. DiNovo) interrupted the proceedings and announced that there had been six and one-half hours of debate on Second Reading of Bill 16, An Act to implement 2010 Budget measures and to enact or amend various Acts, and that the debate would be deemed adjourned, at which point the Government House Leader specified otherwise, whereupon debate continued.

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

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

le président

STEVE PETERS

Speaker

PETITIONS TABLED PURSUANT TO STANDING ORDER 39(a)

Petition relating to cuts to frontline healthcare at pharmacies (Sessional Paper No. P-52) (Tabled April 19, 2010) Mrs. Van Bommel.

**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 April 16, 2010 (No. 50) (Tabled April 16, 2010).
