



No. 26

N° 26

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**Votes and Proceedings**

**Procès-verbaux**

Legislative Assembly  
of Ontario

Assemblée législative  
de l'Ontario

**Tuesday**  
**May 4, 2010**

**Mardi**  
**4 mai 2010**

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

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

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**PRAYERS**  
**9:00 A.M.**

**PRIÈRES**  
**9 H**

**ORDERS OF THE DAY**

A debate arose on the motion for Second Reading of Bill 46, An Act respecting the care provided by health care organizations.

After some time, the House recessed at 10:15 a.m.

**ORDRE DU JOUR**

Il s'élève un débat sur la motion portant deuxième lecture du projet de loi 46, Loi relative aux soins fournis par les organismes de soins de santé.

Après quelque temps, à 10 h 15, l'Assemblée a suspendu la séance.

**10:30 A.M.**

**10 H 30**

The Speaker delivered the following ruling:-

Le Président a rendu la décision suivante :-

On March 25, 2010, shortly after the House had resumed meeting at 4 p.m., the Member for Renfrew-Nipissing-Pembroke (Mr. Yakabuski) rose on a point of order just after the Minister of Finance had moved the Budget motion but before the Pages had begun delivering the Budget papers to members in the Chamber. The Member indicated that the members of the Official Opposition who were in the Budget lock-up had not been allowed to leave the lock-up in a timely manner, and that they were still on their way to the Legislative Chamber. The Member for Wellington-Halton Hills (Mr. Arnott) added that the reason for the delay was that the Ontario Provincial Police were waiting to hear from the office of the Minister of Finance before releasing members from the lock-up. Members will recall that I delayed proceedings for a few moments so that more members could arrive, after which the Budget papers were tabled and distributed to members, and the Minister of Finance presented the Budget.

On April 6, I received from the Member for Parry Sound-Muskoka (Mr. Miller) a notice of intention to raise a point of privilege, and on April 12, the Member raised a point of privilege on this matter in the House. In the notice and in his oral submissions, the Member invited the Speaker to find that a *prima facie* case of privilege had been established on the basis that members of the Official Opposition were physically obstructed, impeded and interfered with when they tried to make their way to the Chamber for the Budget presentation. According to the Member, this obstruction occurred against members' will, and contrary to the lock-up protocol issued by the Ministry of Finance. The Member for Welland (Mr. Kormos), the Government House Leader (Ms. Smith), and the Member for Whitby-Oshawa (Mrs. Elliott) also spoke to the matter at that time. I also received written submissions from the Government House Leader, the Member for Parry Sound-Muskoka and the Member for Welland.

Having had an opportunity to review the notice, our Hansard, the written submissions, and the relevant precedents and authorities, I will now rule on this matter.

First, dealing with the issue of timeliness raised by the Government House Leader, I will say that the procedural authorities – but not Standing Order 21(b) – indicate that members should raise points of privilege in a timely manner. In the case at hand, the matter was initially raised in the House within minutes of members being released from the lock-up; admittedly it was raised at that time on a point of order as opposed to a point of privilege, but it cannot be denied that the matter was brought to the attention of the House within minutes of members' release from the lock-up. Given the time it can take to prepare a meaningfully comprehensive notice of a point of privilege, and that the Easter long weekend and a Constituency Week intervened during this period, I cannot say that the Member for Parry Sound-Muskoka failed to exercise due diligence in raising his point of privilege.

The second consideration on this matter is the issue of whether the alleged interference prevented members from attending to their parliamentary work. According to the procedural authorities and many previous Speakers' rulings, parliamentary privilege protects members in the execution of their strictly parliamentary duties – not the constituency or other duties that may fairly be said to be part of their job descriptions. On this point, the 2<sup>nd</sup> edition of Maingot's *Parliamentary Privilege in Canada* states the following (at pages 222 and 223):

The interference, however, must not only obstruct the Member in his capacity as a Member, it must obstruct or allege to obstruct the Member in his parliamentary work.

The demarcation between members' parliamentary and non-parliamentary duties that Maingot addresses is important because the members of the Official Opposition who were in the lock-up did not want to leave the lock-up in order to tend to their constituency or other non-parliamentary duties; they wanted to leave the lock-up in order to make their way to the precincts, and in particular to attend and participate in a parliamentary proceeding. Those members who spoke to or made a written submission on the point of privilege raised by the Member for Parry Sound-Muskoka did not dispute this important point.

Let me now say a few words about Budget lock-ups. For many decades, the government of the day has allowed members and the media an opportunity to preview the Budget papers and receive a briefing on the Budget in secure facilities in the hours preceding the presentation of the Budget in the House. Access to the lock-up is conditional on agreeing to the terms and conditions of the lock-up protocol. Members are generally amenable to these restrictions on their personal liberty because the preview and briefing facilitate their parliamentary duties and enable members of the Legislative Assembly to hold the government of the day to account.

In the case at hand, there is no issue taken with the protocol set out for the lock-up itself. Indeed, it seems clear that if the terms of the protocol had been followed and the Members released in time to make their way to the Chamber for the start of proceedings we might not be dealing with this point of privilege at all. Let me be clear, we are concerned here with an allegation that certain members were obstructed in their attempt to leave the lock-up at a time when they should reasonably have expected to be allowed to leave in order to attend the proceedings of the House.

This brings me to the nub of the point of privilege raised; that is the right of members of the Legislative Assembly to attend to their parliamentary duties without interference or obstruction.

I note that the *House of Commons Procedure and Practice* states the following (at page 110):

In circumstances where Members claim to be physically obstructed, impeded, interfered with or intimidated in the performance of their parliamentary functions, the Speaker is apt to find that a *prima facie* breach of privilege has occurred.

The case before me is one in which members are indeed claiming that they were prevented from getting to the Legislative Chamber, thereby obstructing them in the performance of their parliamentary duties. Moreover, the Government House Leader acknowledges that members of the Official Opposition were detained in the lock-up longer than they should have been; specifically, she says that members were delayed by OPP personnel.

But the Government House Leader says that, in mitigation, members were in the Chamber when the Budget was presented. This contention presumes that it is more important that members be in the Chamber for the presentation of the Budget than for the moving of the Budget motion itself or for any other proceeding. I cannot agree with such a presumption because it would require the Speaker to accede to the questionable proposition that some parliamentary proceedings are more important than others, and that members should not get worked up about missing the so-called less important parliamentary proceedings. It is not the responsibility of the Speaker to slice-and-dice proceedings in Parliament. To my mind, it is for individual members – not the Speaker, not the government, not security personnel – to decide whether they should be in the Chamber for the moving of the Budget motion, the tabling of the Budget, the presentation of the Budget, or all of them.

In the case at hand, there appears to be no disputing that some members of the Official Opposition missed the moving of the Budget motion, that they missed it because they were not released from the lock-up in a timely manner, and that had I not delayed proceedings for a few moments shortly after 4 p.m. on Budget day, they might have missed part of the Budget presentation itself.

For a *prima facie* case of privilege to be established, it is enough to ascertain that members wanted to attend the House and were at least for a time, and against their will, prevented from doing so. It is of no significance where such an obstruction occurred or what parliamentary proceeding members were prevented from attending.

Further investigation may well reveal a plausible explanation or mitigating circumstances for what occurred in the Budget lock-up on March 25, but I do believe that such further investigation is warranted.

I find therefore, that a *prima facie* case of privilege has been established.

As there has been some confusion in the past, I want to clarify what this finding means.

Maingot states (at page 221):

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 and to send it to a committee to investigate whether the privileges of the House have been breached or a contempt has occurred and report to the House.

...

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.

In short, a *prima facie* finding by the Speaker does not mean that the Speaker has found anyone guilty of such an allegation. Rather, *prima facie* means the Speaker has determined that on the face of it, the information presented points toward the likelihood that a breach of privilege has occurred, and that it is in the interests of the House to give priority consideration to such a serious matter, and for a parliamentary committee to inquire into it.

When he raised this matter on April 12, the Member for Parry Sound-Muskoka indicated that he was prepared to move a motion to refer the matter to a legislative committee. Having now found that there is a *prima facie* case of privilege, I will call upon the Member to move his motion. Pursuant to Standing Order 21(b), this debatable motion, upon being moved, has precedence and will displace consideration of regular business until it is disposed of.

In closing, I want to thank the Member for Parry Sound-Muskoka, the Member for Welland, the Government House Leader, and the Member for Whitby-Oshawa for speaking to this matter. I also thank the Government House Leader, the Member for Parry Sound-Muskoka and the Member for Welland for their written submissions.

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Mr. Miller (Parry Sound–Muskoka) moved,

M. Miller (Parry Sound–Muskoka) propose,

That the matter of the delayed release of certain members of this House from the March 25, 2010 Budget lock-up be referred to the Standing Committee on the Legislative Assembly for its consideration.

A debate arising, with unanimous consent, the Speaker recessed the House for five minutes.

The question then having been put on Mr. Miller's (Parry Sound–Muskoka) motion, it was declared carried.

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## ORAL QUESTIONS

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## QUESTIONS ORALES

The House recessed at 12:00 p.m.

À 12 h, l'Assemblée a suspendu la séance.

**3:00 P.M.**

**15 H**

The House observed a moment of silence in respect of the death in Afghanistan of Craig Blake, Petty Officer Second Class of the Fleet Diving Unit (Atlantic).

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## REPORTS BY COMMITTEES

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## RAPPORTS DES COMITÉS

The Speaker addressed the House as follows:-

I beg to inform the House that today the Clerk received the Report on Intended Appointments dated May 4, 2010 of the Standing Committee on Government Agencies. Pursuant to Standing Order 108(f)(9), the Report is deemed to be adopted by the House (Sessional Paper No. 89).

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## INTRODUCTION OF BILLS

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## 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 49, An Act proclaiming Physical Fitness Day. Mr. O'Toole.

Projet de loi 49, Loi proclamant la Journée de l'aptitude physique. M. O'Toole.

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## PETITIONS

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## PÉTITIONS

Petition relating to the creation of a psychiatric emergency service at the Thunder Bay Regional Health Sciences Centre (Sessional Paper No. P-2) Mr. Mauro.

Petition relating to climate change (Sessional Paper No. P-3) Mr. McNeely.

Petition relating to support for implementation of the HST (Sessional Paper No. P-32) Mr. Leal.

Petition relating to stopping cuts to pharmacies (Sessional Paper No. P-49) Mr. Clark, Mr. Hardeman, Mr. Miller (Parry Sound–Muskoka) and Mr. Wilson.

Pétition ayant rapport aux changements climatiques (document parlementaire n° P-51) M. McNeely.

Petition relating to cuts to frontline healthcare at pharmacies (Sessional Paper No. P-52) Mrs. Munro and Mr. O'Toole.

Petition relating to passing the government's legislation to lower the cost of prescription medications (Sessional Paper No. P-61) Mr. Brown, Mr. Hoy, Mr. Naqvi and Mr. Rinaldi.

Petition relating to the government stopping the cuts to rural pharmacies (Sessional Paper No. P-68) Mr. Murdoch.

Petition relating to putting a moratorium on any Renewable Energy Approvals for the construction of industrial wind farms (Sessional Paper No. P-75) Mr. Arnott.

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**ORDERS OF THE DAY**

Debate was resumed on the motion for Second Reading of Bill 44, An Act to implement the Northern Ontario energy credit.

At 6:00 p.m., the question "That this House do now adjourn" was deemed to have been proposed pursuant to Standing Order 38(b).

After two matters were considered, the question was deemed to have been carried.

The House then adjourned at 6:20 p.m.

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**ORDRE DU JOUR**

Le débat reprend sur la motion portant deuxième lecture du projet de loi 44, Loi mettant en oeuvre le crédit pour les coûts d'énergie dans le Nord de l'Ontario.

À 6 h, la motion portant «Que la présente Assemblée ajourne les débats maintenant» est réputée avoir été proposée conformément à l'article 38 b) du Règlement.

Après l'étude de deux questions, la motion d'ajournement des débats est réputée avoir été adoptée.

À 18 h 20, la chambre a ensuite ajourné ses travaux.

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le président

**STEVE PETERS**

Speaker

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**PETITIONS TABLED PURSUANT TO STANDING ORDER 39(a)**

Petition relating to stopping the 13% combined sales tax (Sessional Paper No. P-8) (Tabled May 4, 2010) Mr. Ouellette.

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

Final Answers to Question Numbers: 1 and 2.

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