



No. 9

N° 9

Votes and Proceedings

Procès-verbaux

Legislative Assembly
of Ontario

Assemblée législative
de l'Ontario

Tuesday
March 5, 2013

Mardi
5 mars 2013

2nd Session,
40th Parliament

2^e session
40^e législature

PRAYERS
9:00 A.M.

PRIÈRES
9 H

ORDERS OF THE DAY

Second Reading of Bill 11, An Act to amend the Ambulance Act with respect to air ambulance services.

Debate resumed and after some time the House recessed at 10:15 a.m.

ORDRE DU JOUR

Deuxième lecture du projet de loi 11, Loi modifiant la Loi sur les ambulances en ce qui concerne les services d'ambulance aériens.

Le débat reprend et 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 February 20, 2013, the Member for Prince Edward–Hastings (Mr. Smith) rose on a point of privilege concerning the government's incomplete production of documents relating to its decision to cancel the construction of two power plants in 2010 and 2011. According to the Member, in the previous Session government Members had made deliberately misleading statements about the extent of production, and the Minister of Energy had failed to produce all documents responsive to an Order of the House. The Government House Leader (Mr. Milloy) and the Member for Timmins–James Bay (Mr. Bisson) also spoke to the matter. Having reviewed the notice provided by the Member for Prince Edward–Hastings, the written submissions of the Government House Leader and of the Official Opposition House Leader, relevant Hansards from the current and previous Sessions, and various parliamentary authorities, I am now prepared to rule on the matter.

Let me begin by providing some background. The Member's point of privilege arises out of the government's initial non-production of all documents that were the subject of a May 16, 2012 order of the Standing Committee on Estimates, a September 13, 2012 Speaker's ruling to the effect that a *prima facie* case of privilege had been established with respect to the non-production, and an October 2 Order of the House directing “the Minister of Energy and the Ontario Power Authority to table immediately with the Clerk of the House all remaining documents ordered by the Standing Committee on Estimates on May 16, 2012.”

As Members are aware, many responsive documents were tabled on September 24 and October 12, and then more recently on February 21. The September 24 tabling, which was made in the aftermath of the September 13 Speaker's ruling, included a cover letter from the Minister of Energy to the effect that he had been “advised by Ministry staff that the documents attached to this letter comprise all documents that are responsive to the committee's request regardless of privilege or confidentiality”, as well as a cover letter from the Chief Executive Officer of the Ontario Power Authority to the effect that “[t]hese documents comprise responsive material” related to the Committee's May 16 requests.

In the first few days after the September 24 tabling, many government Members indicated that the tabled documents constituted full production of the documents sought. However, these statements did not appear to be accurate because many more documents - including a cover letter from the Deputy Minister of Energy and another from the Chief Executive Officer of the Ontario Power Authority - were tabled on October 12. At the outset of the next Sessional day, October 15, the Minister of Energy and the Government House Leader corrected their records concerning post-September 24 statements that they had made inside and outside the House to the effect that the September 24 tabling constituted full production.

On a point of privilege raised later the same day, the Member for Prince Edward–Hastings alleged that statements many government Members had made in the House after September 27 were misleading. According to the Member, government Members indicated in the House after September 27 that all documents responsive to the May 16 request for documents by the Standing Committee on Estimates and to the September 13 Speaker's ruling had been tabled on September 24 when, according to information contained in letters tabled on October 12, they purportedly knew by September 27 that this was not the case.

My ruling on this point of privilege was reserved, but the ruling was never made in the previous Session because prorogation occurred the same day - hence the reason for the Member rising on a point of privilege on February 20.

I first want to clarify that the September 13 ruling did not constitute an Order to produce the documents in question. The Speaker has no authority to order production; only the House and its committees can do so. As already noted, the authority to order production was exercised in the previous Session on May 16 (in the case of the Standing Committee on Estimates) and on October 2 (in the case of the House).

In written submissions on this point of privilege, the Official Opposition House Leader points me to two rulings in the Canadian House of Commons by Speaker Milliken that he believes are instructive in the case at hand and supportive of the point of privilege raised by the Member for Prince Edward–Hastings.

The most recent was made on March 9, 2011, and arose from a point of privilege raised as a result of a report by the Standing Committee on Foreign Affairs and International Development. In that report, the committee noted that the Minister of International Cooperation, Bev Oda, made inconsistent statements in the House and in the committee concerning the funding of a foreign aid organization called KAIROS. The crux of this ruling surrounded the fact that sufficiently different statements were made in two parliamentary venues, such that they caused confusion that had not been cleared up. In the face of these contradictory statements, which remained unreconciled, Speaker Milliken found that sufficient doubt existed to warrant a finding of *prima facie* privilege in that case.

I do not see this decision as being applicable to the point raised by the Member for Prince Edward–Hastings because there has been no case made that confusingly contradictory statements have been made to this House.

The other Milliken ruling drawn to my attention was made on February 1, 2002 and concerned an allegation that then-National Defence Minister Art Eggleton had deliberately misled the House of Commons. This ruling has been referred to in this House before, and was directly addressed by Speaker Carr in his June 17, 2002 ruling, as follows:

I see no precedential value to Speaker Milliken's ruling - within the ambit of parliamentary privilege - since, if the ruling is carefully read, it becomes apparent that a *prima facie* case of privilege was not explicitly found. Rather, Speaker Milliken seems to have stopped himself short in that regard and chose instead a novel approach, finding ultimately - without mentioning privilege - that the matter deserved consideration by a committee, and inviting a motion to give effect to this result.

I would generally be hesitant to appropriate for myself such an original, informal approach since the precedents, traditions and customs of this House around questions of privilege reveal a more definitive tendency. In my view, there are no shades of grey when it comes to parliamentary privilege and I would not like to promote such a view by delivering a ruling that failed to address, squarely and solely on its procedural merits, the question raised.

I concur with the view taken by Speaker Carr, and later that of Speaker Peters, who similarly rejected the precedential usefulness of this Milliken ruling on September 28, 2009.

In the point raised by the Member for Prince Edward–Hastings, the allegation is that misleading information was knowingly given to the House. As was indicated in various oral and written submissions on this matter, the criteria for determining whether a Member has deliberately misled the House is described at pages 653 and 654 of the 3rd edition of McGee's *Parliamentary Practice in New Zealand* in the following terms:

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 the statement was made that it was incorrect; and, in making it, the member must have intended to mislead the House.

These criteria are, by their very nature, not easily satisfied. As Speaker Carr indicated (at page 102 of the Journals for June 17, 2002):

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.

I now turn to the application of the first criteria in the McGee test to what was said and done between September 24 and October 15. Were misleading statements made to the House? With respect to the September 24 tabling, the Minister of Energy indicated in his September 24 letter he had been “advised by Ministry staff” that the September 24 tabling constituted full production.

The Minister of Energy and the Government House Leader both subsequently used unequivocal language and described those documents as fully responsive to the Orders for their production, as did various other government members. As we all know, that was not the case so there can be no doubt that these statements were incorrect and thereby could have been misleading.

Did the members making the statements know at the time they were made that they were incorrect? The Member for Prince Edward–Hastings says that, according to information contained in the letters accompanying the October 12 tabling of documents, the government became aware of the existence of additional documents by September 27. However, a close reading of the letters suggests only that the government knew on that date that there was a possibility that there were additional responsive documents, and that based on that possibility a process was put in place to determine whether or not there actually were additional responsive documents.

After September 27, presumably equipped with the knowledge that the potential existed that there were further documents beyond those tabled on September 24, the unequivocal language ceased. In my mind, this represents a conscientious effort to ensure that subsequent statements to the House were correct. There is no evidence before me that convinces me that the former Minister of Energy and other members of the government had any reason not to accept the information they initially had that all of the documents had been tabled on September 24. Indeed, the letters tabled on September 24 confirm that this was the information they had been given. In my opinion they had an honest belief that their resulting statements were true; both the Minister of Energy and the Government House Leader avowed this to the House on October 15. I have not been convinced that the second McGee criterion has been established.

While the sequence of events certainly demonstrates that some statements were incorrect when they were made, as I have said, I accept that they were believed to be true at that time, not made with the intention of misleading the House, and corrected at the earliest opportunity when it became clear they were incorrect. There is no evidence before me that would support a contrary opinion.

For these reasons, I find that a *prima facie* case of contempt on the basis that a Member has deliberately misled the House has not been established.

In closing, I thank the Member for Prince Edward–Hastings, the Government House Leader, the Member for Timmins–James Bay for speaking to this matter, and the Government House Leader and Official Opposition House Leader for their written submissions.

ORAL QUESTIONS

The House recessed at 11:50 a.m.

3:00 P.M.

INTRODUCTION OF BILLS

The following Bills were introduced and read the first time:-

Bill 19, An Act to amend the Taxpayer Protection Act, 1999. Mr. Hillier.

Bill 20, An Act respecting the City of Toronto and the Ontario Municipal Board. Mr. Marchese.

Bill 21, An Act to amend the Employment Standards Act, 2000 in respect of family caregiver, critically ill child care and crime-related child death or disappearance leaves of absence. Hon. Mr. Naqvi.

Bill 22, An Act to amend the Trades Qualification and Apprenticeship Act. Mr. Dunlop.

MOTIONS

With unanimous consent,

On motion by Mr. Milloy,

Ordered, That the requirement for notice be waived for ballot item number 12 in the Order of Precedence for Private Members' Public Business.

With unanimous consent,

On motion by Mr. Milloy,

Ordered, That, pursuant to Standing Order 110(a), the Standing Committee on Justice Policy shall be authorized to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation, and relocation of the Mississauga and Oakville gas plants;

QUESTIONS ORALES

À 11 h 50, l'Assemblée a suspendu la séance.

15 H

DÉPÔT DES PROJETS DE LOI

Les projets de loi suivants sont présentés et lus une première fois :-

Projet de loi 19, Loi modifiant la Loi de 1999 sur la protection des contribuables. M. Hillier.

Projet de loi 20, Loi portant sur la cité de Toronto et la Commission des affaires municipales de l'Ontario. M. Marchese.

Projet de loi 21, Loi modifiant la Loi de 2000 sur les normes d'emploi en ce qui concerne le congé familial pour les aidants naturels, le congé pour soins à un enfant gravement malade et le congé en cas de décès ou de disparition d'un enfant dans des circonstances criminelles. L'hon. M. Naqvi.

Projet de loi 22, Loi modifiant la Loi sur la qualification professionnelle et l'apprentissage des gens de métier. M. Dunlop.

MOTIONS

Avec le consentement unanime,

Sur la motion de M. Milloy,

Avec le consentement unanime,

Sur la motion de M. Milloy,

That the Committee be authorized to consider all documents filed with Clerk of the Legislative Assembly by the Minister of Energy, the Ministry of Energy and the Ontario Power Authority on September 24 and October 12, 2012 and February 21, 2013 and that such documents be deemed to have been ordered by that Committee;

That notwithstanding Standing Order 108(h), the Committee be authorized to consider any report prepared by the Auditor General with respect to the cancellation and relocation of the Mississauga and Oakville gas plants;

That pursuant to Standing Order 110(b), where the Committee exercises its authority to send for persons, each party shall be entitled to an equal number of witnesses;

That these terms of reference shall be incorporated into the terms of reference for the Standing Committee on Justice Policy adopted by the House on February 20, 2013.

PETITIONS

Public and municipal approvals and a moratorium on industrial wind farm development (Sessional Paper No. P-1) Mr. McDonell.

Acute and Chronic Lyme Disease diagnosis (Sessional Paper No. P-4) Mr. O'Toole.

Abolishing hospital parking fees for all seniors (Sessional Paper No. P-8) Mr. O'Toole.

Disbanding the College of Trades (Sessional Paper No. P-10) Mr. McDonell.

High gas prices in Ontario (Sessional Paper No. P-13) Mr. Clark.

Springwater Provincial Park (Sessional Paper No. P-15) Mr. Wilson.

The wpdCanada Fairview wind project (Sessional Paper No. P-16) Mr. Wilson.

A moratorium on industrial wind turbines at Settler's Landing and/or Snowy Ridge Wind Parks (Sessional Paper No. P-35) Ms. Scott.

Declawing cats (Sessional Paper No. P-38) Ms. Armstrong and Ms. Campbell.

Ontario Northland Transportation Commission (Sessional Paper No. P-39) Mr. Fedeli.

Community Start-Up and Maintenance Benefit and Home Repairs Benefit (Sessional Paper No. P-40) Mr. Smith.

PÉTITIONS

ORDERS OF THE DAY

Second Reading of Bill 6, An Act to protect and restore the Great Lakes-St. Lawrence River Basin.

Debate resumed and after some time the House adjourned at 6:00 p.m.

ORDRE DU JOUR

Deuxième lecture du projet de loi 6, Loi visant la protection et le rétablissement du bassin des Grands Lacs et du fleuve Saint-Laurent.

Le débat reprend et après quelque temps, à 18 h, la chambre a ajourné ses travaux.

le président

DAVE LEVAC

Speaker

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

**PÉTITIONS DÉPOSÉES
CONFORMÉMENT À L'ARTICLE
39a) DU RÈGLEMENT**

Personal Support Workers (Sessional Paper No. P-36) (Tabled March 5, 2013) Mr. Balkissoon.

Nortel disabled former employees (Sessional Paper No. P-37) (Tabled March 5, 2013) Mr. McDonell.

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

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

COMPENDIA:

Bill 21, An Act to amend the Employment Standards Act, 2000 in respect of family caregiver, critically ill child care and crime-related child death or disappearance leaves of absence (No. 9) (Tabled March 5, 2013).
