

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

Votes and Proceedings

No. 7

Procès-verbaux

N° 7

1st Session
42nd Parliament

Monday
July 23, 2018

1^{re} session
42^e législature

Lundi
23 juillet 2018

10:30 A.M.
PRAYERS

10 H 30
PRIÈRES

With unanimous consent,

Avec le consentement unanime,

On motion by Mr. Smith (Bay of Quinte),

Sur la motion de M. Smith (Baie de Quinte),

Following remarks by Mr. Ford, Ms. Horwath, Mr. Tabuns, Mr. Fraser, Ms. Wynne, and Mr. Schreiner, the House observed a moment of silence in respect of the death of the victims of the tragic events that took place in Toronto's Danforth community.

The Speaker delivered the following ruling:-

Le Président a rendu la décision suivante :-

On Monday, July 16, 2018, the House Leader of the Official Opposition (Mr. Bisson) rose on a question of privilege in order to indicate that Opposition Members had not been provided with advance copies of the Speech from the Throne at the same time that the media had been provided with advance copies. Initially the Member framed this omission as a possible breach of privilege; he subsequently framed it as a contempt of the House.

The Government House Leader (Mr. Smith (Bay of Quinte)) noted that there is no requirement that the government must provide advance copies of the Speech to Members – but that it had nevertheless done so shortly before its presentation in the House. He also indicated that the government had taken steps to protect the confidentiality of the embargoed media copies of the Speech to prevent its premature disclosure before it was read to members in the House by the Lieutenant Governor.

Having reviewed the statement provided under Standing Order 21(c), the written submissions of both House Leaders, and the relevant precedents and procedural authorities, I am now prepared to rule on the matter.

Let me begin by explaining the concepts of privilege and contempt. *Erskine May*, the pre-eminent authority on Westminster parliamentary procedure, defines parliamentary privilege in the following terms (at page 203 of its 24th edition):

“Parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the High Court of Parliament; and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute.”

Categories of ‘individual’ or Member privileges include freedom of speech, exemption from jury duty, and exemption from being subpoenaed to attend court as a witness. Categories of ‘collective’ or House privileges include the right to regulate internal affairs, the right to institute inquiries, and the power to discipline.

It is important to distinguish breaches of privilege from the separate but related concept of contempt. The 3rd edition of *House of Commons Procedure and Practice* explains the distinction in the following terms (at pages 80 and 81):

“Any disregard of or attack on the rights, powers and immunities of the House and its Members, either by an outside person or body, or by a Member of the House, is referred to as a “breach of privilege” and is punishable by the House. There are, however, other affronts against the dignity and authority of Parliament which may not fall within one of the specifically defined privileges. Thus, the House also claims the right to punish, as a contempt, any action which, though not a breach of a specific privilege: tends to obstruct or impede the House in the performance of its functions; obstructs or impedes any Member or officer of the House in the discharge of their duties; or is an offence against the authority or dignity of the House, such as disobedience of its legitimate commands or libels upon itself, its Members, or its officers.... In that sense, all breaches of privilege are contempts of the House, but not all contempts are necessarily breaches of privilege.”

Dealing first with the Opposition House Leader’s claim that there was a breach of privilege, I note that an October 23, 2007 ruling in the Canadian House of Commons (at page 283 of the *Debates*) indicated that there is “no procedural authority for the claim that the premature disclosure of the Speech from the Throne constitutes a breach of the privileges of the members of this House.” In that ruling, Speaker Milliken also indicated that the secrecy of the Throne Speech, like the secrecy of the Budget speech, “is a matter of parliamentary convention, rather than one of privilege.” Speakers of this Assembly have arrived at the same conclusion with respect to Budget secrecy. I refer Members to rulings at page 37 of the *Journals* for May 9, 1983 and page 62 of the *Journals* for March 25, 2008. In the latter ruling, the Speaker declined to find that a *prima facie* case of privilege was established on a question of privilege raised by the then-Member for Wellington—Halton Hills, and emphasized that:

“A successful question of privilege must convince the Speaker that the peculiar rights that are accorded to members of parliament to permit them to discharge their parliamentary duties have in some way been violated. These rights are extremely narrow and specific – for instance, the right to speak freely in this place; or to attend here without obstruction. They relate to the Member’s functions in this Chamber.”

I note that the Opposition House Leader’s objection to what happened on Throne Speech day was not that the Speech was released before it was read in the House, but rather that Members – particularly Opposition Members – did not receive advance copies of the Speech when the media received advance copies under embargo. But if even the premature disclosure of a Throne Speech does not rise to a valid question of privilege, it is difficult to see how failure to provide it in advance to any Member somehow could – the one is the corollary of the other. Nevertheless, according to the Member, this deprived Members of equitable access to the Speech, and compromised the Opposition’s ability to effectively engage with the media and to scrutinize government initiatives. However, a purported right to equitable access to advance copies of the Throne Speech or to effectively engage with the media is not a recognized individual or collective privilege. I can well appreciate any Member’s desire to be well informed and well prepared before engaging with the Press Gallery, but this relates to a member’s role as a public official, and not their role as a parliamentarian. For the purposes of parliamentary privilege, the distinction between the two is crucial.

As for the contention that Members were denied information that they required in order to carry out their duties effectively, many Speakers’ rulings have indicated that Members’ right to information in the parliamentary workplace is a function of what the Standing Orders provide – not privilege. I note that the Standing Orders do not provide for the pre-release of the Speech from the Throne to Members.

Turning now to the case for contempt, the Opposition House Leader referenced Speaker Milliken's March 19, 2001 and October 15, 2001 rulings, which found a *prima facie* case of contempt in the context of a flawed embargo on a government bill that was at notice stage and awaiting introduction in the House. The legislative process of the House of Commons varies from our own, in that the introduction of any public bill in the House of Commons requires 48 hours' written notice. During this notice period, it is expected that the confidentiality of all information relating to the bill on notice is maintained. In our House, however, there is no mandatory notice stage for bills, so these rulings from a different jurisdiction are not directly applicable either to procedure in this House, or to the case at hand because they were not given in relation to any proceedings around the Speech from the Throne.

The Opposition House Leader takes no issue with the government's distribution of advance copies of the Speech from the Throne before it is read in the House. Although this practice does not rise to the level of contempt, it is reasonable to expect that, as a matter of courtesy, all members be on the distribution list.

In the final analysis, neither the House nor any member was obstructed or impeded in their strictly parliamentary functions. Members were able to be present in this Chamber to hear the Speech and for subsequent proceedings that took place that day.

For the reasons indicated, I find that neither a *prima facie* case of privilege nor a *prima facie* case of contempt has been established. However, I would encourage the government to give due consideration to the important role and duties of the Opposition in our parliamentary democracy and to foster document release practices that respect parliamentary sensibilities.

In closing, I thank both House Leaders for their oral and written submissions.

ORAL QUESTIONS

QUESTIONS ORALES

The House recessed at 12:08 p.m.

À 12 h 08, la Chambre a suspendu la séance.

1:00 P.M.

13 H

PETITIONS

PÉTITIONS

Truth and Reconciliation Commission of Canada (Sessional Paper No. P-1) Ms. Karpoche.

Health and physical education curriculum (Sessional Paper No. P-2) Mr. Harden, Ms. Karpoche and Ms. Stiles.

Hydro costs (Sessional Paper No. P-3) M^{me} Gélinas.

Film Classification Act and on-screen smoking (Sessional Paper No. P-10) M^{me} Gélinas.

The Long-Term Care Homes Act (Sessional Paper No. P-13) M^{me} Gélinas.

ORDERS OF THE DAY

Second Reading of Bill 2, An Act respecting Hydro One Limited, the termination of the White Pines Wind Project and the labour disputes between York University and Canadian Union of Public Employees, Local 3903.

Debate resumed, during which the Speaker interrupted the proceedings and announced that there had been more than six and one-half hours of debate and that the debate would be deemed adjourned.

The Minister of Energy, Northern Development and Mines directed that the debate should continue.

Debate resumed and after some time the House adjourned at 5:59 p.m.

ORDRE DU JOUR

Deuxième lecture du projet de loi 2, Loi concernant Hydro One Limited, l'annulation du projet de parc éolien White Pines et les conflits de travail entre l'Université York et la section locale 3903 du Syndicat canadien de la fonction publique.

Le débat a repris. Le Président a interrompu les travaux et a annoncé qu'il y avait eu plus de six heures et demie de débat et que le débat est réputé ajourné.

Le ministre de l'Énergie, du Développement du Nord et des Mines a indiqué que le débat devrait se poursuivre.

Le débat a repris et après quelque temps, à 17 h 59, la Chambre a ajourné ses travaux.

le président

TED ARNOTT

Speaker
