

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

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Votes and Proceedings

No. 23

Procès-verbaux

N° 23

1<sup>st</sup> Session  
42<sup>nd</sup> Parliament

Monday  
September 17, 2018

1<sup>re</sup> session  
42<sup>e</sup> législature

Lundi  
17 septembre 2018

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**12:01 A.M.  
PRAYERS**

*O Canada*

**00 H 01  
PRIÈRES**

*Ô Canada*

**ORDER IN COUNCIL**

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Whereas the First Session of the 42<sup>nd</sup> Parliament of the Province of Ontario is currently adjourned until Monday, September 17, 2018, at 10:30 a.m.,

Pursuant to Standing Order Number 10(a) of the Legislative Assembly of Ontario, the Speaker be advised that it is deemed that the public interest requires the Assembly to reconvene at an earlier time during the adjournment than September 17, 2018, at 10:30 a.m.,

And that the Speaker be requested to give notice accordingly to reconvene the First Session of the 42<sup>nd</sup> Parliament of the Province of Ontario at 12:01 a.m. on Monday, the 17<sup>th</sup> day of September, 2018.

Recommended:

Doug Ford  
Premier and President of the Council

Concurred:

Christine Elliott  
Chair of Cabinet

Approved and Ordered: September 15, 2018

V. Elizabeth Dowdeswell  
Lieutenant Governor

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**DÉCRET**

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure de l'Ontario, sur l'avis et avec le consentement du Conseil exécutif de l'Ontario, décrète ce qui suit :

Attendu que la première session de la 42<sup>e</sup> législature de la province de l'Ontario est actuellement ajournée jusqu'au lundi 17 septembre 2018 à 10 h 30;

Conformément à l'article 10. a) du Règlement de l'Assemblée législative de l'Ontario, le président soit avisé que l'intérêt public exige que l'Assemblée reprenne ses travaux pendant l'ajournement plus tôt que le 17 septembre 2018 à 10 h 30;

Et qu'il soit demandé au président de donner avis en conséquence pour reprendre les travaux de la première session de la 42<sup>e</sup> législature de la province de l'Ontario à 00 h 01 le lundi 17 septembre 2018.

Recommandé par :

Doug Ford  
Le premier ministre et président du Conseil

Appuyé par :

Christine Elliott  
La présidente du Conseil des ministres

Approuvé et décrété le : 15 septembre 2018

V. Elizabeth Dowdeswell  
La lieutenante-gouverneure

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**NOTICE**

In accordance with the provisions of Standing Order 10(a), having been advised by the Government that the public interest requires that the House should meet at an earlier time during the adjournment, I hereby give notice that the Legislative Assembly shall meet on Monday, September 17, 2018, at 12:01 a.m., to transact the business of the House.

Dated at the Parliament Building in the City of Toronto this 15<sup>th</sup> day of September, 2018.

Hon. Ted Arnott,  
Speaker.

**AVIS**

Conformément aux dispositions de l'article 10. a) du Règlement, ayant été avisé par le gouvernement que l'intérêt public exige que l'Assemblée siège plus tôt pendant l'ajournement, je donne avis par les présentes que l'Assemblée législative siégera le lundi 17 septembre 2018, à 00 h 01, pour ses travaux à la Chambre.

Daté à l'édifice de l'Assemblée législative, ce quinzième jour de septembre 2018.

Le président,  
L'hon. Ted Arnott.

The Speaker delivered the following ruling:-

Le Président a rendu la décision suivante :-

On September 15, 2018, the Member for Timmins (Mr. Bisson) rose on two points of order to challenge the orderliness of Bill 31, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001, the Municipal Elections Act, 1996 and the Education Act and to revoke two regulations.

The Member contends, first, that the fact of active litigation in the matter of the constitutionality of *An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996* (Bill 5), invokes the *sub judice* convention and Standing Order 23(g), and should prevent the Bill from being considered by the Legislature.

Secondly the member contends that Bill 31 is so similar to Bill 5, which was passed by the House in the current session on August 14, 2018, that Bill 31 contravenes Standing Order 52 and should therefore not be permitted to proceed.

Having heard the Member's submissions, those of the Government House Leader (Mr. Smith (Bay of Quinte)), and after consulting our precedents and procedural authorities, I am now prepared to rule on these matters.

I will deal with the issues in the order they were raised.

The *sub judice* convention is codified in this Assembly's Standing Orders as follows:

23. In debate, a member shall be called to order by the Speaker if he or she:

(g) Refers to any matter that is the subject of a proceeding,

(i) that is pending in a court or before a judge for judicial determination; or

(ii) that is before any quasi-judicial body constituted by the House or by or under the authority of an Act of the Legislature,

where it is shown to the satisfaction of the Speaker that further reference would create a real and substantial danger of prejudice to the proceeding.

The *sub judice* convention, and the rule as it is codified in our Standing Orders, apply to debate only; that is, they can operate to restrict the scope of permitted debate on legislation, but do not operate to limit the superior and preeminent right of the Legislature to legislate in the first instance.

This principle is well-explained in *House of Commons Procedure and Practice* at page 633 of the 3<sup>rd</sup> Edition:

“The convention does not apply to legislation or to the legislative process as the right of Parliament to legislate may not be limited. If the *sub judice* convention were to apply to bills, the whole legislative process could be stopped simply by the initiation of legal proceedings in any court in Canada.”

On the point of the applicability of the rule to a bill, a ruling made on June 4, 2002 by Speaker Carr cited a previous ruling made on January 29, 1937 by Speaker Hipel, as follows:

“Instances of the passing of Bills affecting particular actions or other proceedings before the courts are not uncommon in the history of this Legislature....

“In my opinion, it is clear that ... Erskine May ... goes no further than to state that during the course of a debate Members should not refer to matters awaiting the adjudication of a court of law, such matters being *sub judice*. It is not intended to interfere with the right of legislative bodies to alter existing laws, even though such alteration may affect a matter before the courts.

“I hold that it would be a stultification of the powers of this Assembly to rule that an Act may not be introduced to remedy a condition in an Act and to make clear the will of the Assembly even though the Act to be remedied is under consideration by a Court of Law.

“Accordingly, it is my ruling that an Act may be introduced and considered by the Assembly, notwithstanding that such Act may interfere with actions pending before the courts.”

Accordingly, I do not find that the *sub judice* convention and Standing Order 23(g) apply to prevent Bill 31 from coming before the House to be considered.

Turning now to the second issue raised by the Member for Timmins, I will cite the applicable Standing Order in question, which states:

52. No motion, or amendment, the subject-matter of which has been decided upon, can be again proposed during the same Session.

This Standing Order captures an ancient parliamentary principle, which is known as the “same question rule.” *House of Commons Procedure and Practice* explains this rule as follows at page 590 of the 3<sup>rd</sup> Edition:

“A decision once made cannot be questioned again but must stand as the judgment of the House. Thus, for example, if a bill or motion is rejected, it cannot be revived in the same session, although there is no bar to a motion similar in intent to one already negated but with sufficient variance to constitute a new question. This is to prevent the time of the House being used in the discussion of motions of the same nature with the possibility of contradictory decisions being arrived at in the course of the same session.”

There is no denying that the Act passed by the House on August 14, 2018, and Bill 31, are similar to each other. I have reviewed both and I note that parts of the earlier legislation are replicated, verbatim, in Bill 31. However, Bill 31 also introduces a number of new provisions that were not present in Bill 5, including Schedule 4.

But the most significant differences are that the provisions of Bill 31 apply despite the *Ontario Human Rights Code*, and; the invocation of subsection 33(1) of the *Canadian Charter of Rights and Freedoms* (the “notwithstanding clause”) in all four of Bill 31’s schedules.

The Member for Timmins contends that the two pieces of legislation are virtually identical because the ultimate product and result of both are the same. I therefore must decide whether the Legislature is being asked to decide the same question it has already decided when it passed Bill 5.

In my view it is not, because Bill 31 further presents a significantly higher-level – indeed, philosophical – inquiry for the Assembly to answer.

Since the First Reading of Bill 31, I think it would be hard for anyone to credibly sustain the argument that the debate has not substantially changed from the appropriate size of the City of Toronto Council, and is now focused on the legitimacy and advisability of the Government's willingness to invoke the Constitution's "notwithstanding clause" in response to the Court's ruling.

In Bill 31, the Executive Council has, in my opinion, put before this Assembly of 124 MPPs these questions:

“Shall the decision made by this Legislature, in passing Bill 5, be vindicated and stand?”; and

“Shall that decision prevail over any challenge against which this Legislature, within its sphere of jurisdiction, intends Bill 31 to protect itself?”

These were not matters for debate or decision when Bill 5 was before the House several weeks ago; they are now. For this reason, I am satisfied that Bill 31 is sufficiently different from Bill 5 to comply with the requirements of Standing Order 52. I find that Bill 31 is in order.

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### ORDERS OF THE DAY

Second Reading of Bill 31, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001, the Municipal Elections Act, 1996 and the Education Act and to revoke two regulations.

Debate arose and after some time,

At 1:07 a.m., as a result of disruptions, the Speaker ordered the Public Galleries to be cleared and suspended the proceedings for 10 minutes.

Debate resumed and after some time,

Mr. Tabuns moved adjournment of the debate.

Lost on the following division:-

AYES - 24    NAYS - 67

Debate resumed, during which the Acting Speaker (Ms. French) interrupted the proceedings and announced that there had been more than six and one-half hours of debate and that the debate was deemed adjourned.

The House recessed at 7:05 a.m.

**10:30 A.M.**

### ORAL QUESTIONS

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### ORDRE DU JOUR

Deuxième lecture du projet de loi 31, Loi modifiant la Loi de 2006 sur la cité de Toronto, la Loi de 2001 sur les municipalités, la Loi de 1996 sur les élections municipales et la Loi sur l'éducation et abrogeant deux règlements.

Il s'élève un débat et après quelque temps,

À 01 h 07, à cause des interruptions, le Président a donné des directives pour évacuer les tribunes réservées au public et a suspendu les délibérations pour 10 minutes.

Le débat a repris et après quelque temps,

M. Tabuns propose l'ajournement du débat.

Rejetée par le vote suivant :-

POUR - 24    CONTRE - 67

Le débat a repris. La présidente suppléante (M<sup>me</sup> French) a interrompu les travaux et a annoncé qu'il y avait eu plus de six heures et demie de débat et que le débat était réputé ajourné.

À 7 h 05, la Chambre a suspendu la séance.

**10 H 30**

### QUESTIONS ORALES

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The House recessed at 11:36 a.m.

À 11 h 36, la Chambre a suspendu la séance.

**1:00 P.M.**

**13 H**

**MOTIONS**

**MOTIONS**

Mr. Smith (Bay of Quinte) moved,

M. Smith (Baie de Quinte) propose,

That when the House adjourns today it shall stand adjourned until Wednesday, September 19, 2018 at 9:00 a.m.

Debate arose and after some time,

Il s'élève un débat et après quelque temps,

Carried.

Adoptée.

**PETITIONS**

**PÉTITIONS**

Implementing minimum wage (Sessional Paper No. P-4) Ms. Andrew and Ms. Stiles.

Toronto municipal elections (Sessional Paper No. P-18) Ms. Begum, Ms. Bell and Mr. Glover.

Basic Income Pilot Project (Sessional Paper No. P-22) Ms. Hunter.

Celiac disease (Sessional Paper No. P-26) Ms. Morrison.

Social assistance policies (Sessional Paper No. P-28) Ms. Monteith-Farrell and Miss Taylor.

Request to withdraw Bill 31 (Sessional Paper No. P-39) Mr. Schreiner.

**ORDERS OF THE DAY**

**ORDRE DU JOUR**

Mr. Smith (Bay of Quinte) moved that the House do now adjourn.

M. Smith (Baie de Quinte) propose que la Chambre ajourne ses travaux.

Carried on division.

Adoptée au vote.

The House adjourned at 1:33 p.m.

À 13 h 33, la Chambre a ajourné ses travaux.

le président

**TED ARNOTT**

Speaker

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

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

Removal of the Minor Injury Guideline of the Ontario Statutory Accidents Benefits Schedule (Sessional Paper No. P-40) (Tabled September 17, 2018) M<sup>me</sup> Gélinas.

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

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

Order in Council 1059/2018, dated September 15, 2018, reconvening the First Session of the 42<sup>nd</sup> Parliament on Monday, September 17, 2018, for a matter of public interest / Décret 1059/2018, daté le 15 septembre 2018, reconvoquant la première session de la 42<sup>e</sup> législature le lundi 17 septembre 2018 en raison de l'intérêt public (No. 38) (Tabled September 17, 2018).

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