



No. 79

N° 79

Votes and Proceedings

Procès-verbaux

Legislative Assembly
of Ontario

Assemblée législative
de l'Ontario

Thursday
September 13, 2012

Jeudi
13 septembre 2012

1st Session,
40th Parliament

1^{re} session
40^e législature

PRAYERS
9:00 A.M.

PRIÈRES
9 H

ORDERS OF THE DAY

Second Reading of Bill 82, An Act to strengthen consumer protection with respect to consumer agreements relating to wireless services accessed from a cellular phone, smart phone or any other similar mobile device.

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

ORDRE DU JOUR

Deuxième lecture du projet de loi 82, Loi visant à mieux protéger les consommateurs en ce qui concerne les conventions de consommation portant sur les services sans fil accessibles au moyen d'un téléphone cellulaire, d'un téléphone intelligent ou de tout autre appareil mobile semblable.

Le débat reprend et après quelque temps, à 10 h 10, 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 Monday August 27, 2012, the Member for Cambridge (Mr. Leone) rose on a question of privilege concerning the government's failure to produce certain documents requested by the Standing Committee on Estimates. The Government House Leader (Mr. Milloy), the Member for Timmins–James Bay (Mr. Bisson), the Member for Chatham–Kent–Essex (Mr. Nicholls), the Member for Renfrew–Nipissing–Pembroke (Mr. Yakabuski), the Member for Nipissing (Mr. Fedeli), the Member for Leeds–Grenville (Mr. Clark), and the Member for Beaches–East York (Mr. Prue) also spoke to the matter.

Having reviewed the notice provided by the Member for Cambridge, the subsequent written submissions of the Government House Leader and of the Member for Cambridge, the August 27 report of the Standing Committee on Estimates, relevant Hansards for that Committee, and various parliamentary authorities, I am now prepared to rule on the matter.

The details of what occurred in the Committee are contained in the above-mentioned documents, but the essential chronology is as follows:

- On May 16, the Standing Committee on Estimates formally adopted a motion requesting that the Minister of Energy, the Ministry of Energy and the Ontario Power Authority provide, within two weeks, all correspondence relating to decisions in 2010 and 2011 not to proceed with the construction of power plants in Oakville and Mississauga respectively.
- On May 30, the Minister responded to the request by indicating that it would not be appropriate to disclose the correspondence because the files were confidential and because many of them were either subject to solicitor-client or litigation privilege or else highly commercially sensitive; their disclosure would tend to prejudice ongoing negotiations and litigation. The Ontario Power Authority responded in a similar vein on the same day.
- On June 5, in the Standing Committee on Estimates, a motion was brought forward by Mr. Leone calling for a report from the Committee to the House with respect to the Minister's May 30 decision not to provide the requested documents. The Committee debated the motion and amendments to it on that day, and 3 subsequent meetings of the Committee - June 6, June 12 and July 11 - finally adopting the version of the motion contained in the Committee's August 27 Report to the House.

- On July 11, an agreement having just been reached to relocate the Mississauga plant, the Minister provided some of the requested documents. The Minister indicated that other documents would not be provided to the Committee because they were subject to various legal privileges.
- On August 27, shortly before the Member for Cambridge rose on his question of privilege, the Standing Committee on Estimates reported that, for reasons indicated in the report, the government had not produced certain correspondence that the Committee had ordered to be produced, and that this non-production may raise a matter of privilege. The report also recommended that the Minister of Energy be compelled to provide the documents requested by the Committee without delay, and that the Minister be held in contempt if he refuses to do so.

Given these developments, the nature of parliamentary powers respecting the production of documents requires some examination. With respect to committee powers, Standing Order 110(b) provides as follows: “Except when the House otherwise orders, each Committee shall have power to send for persons, papers and things.” This Standing Order effectively empowers committees, including the Standing Committee on Estimates, to order the production of documents.

Further to this point, in a March 9, 2011 ruling dealing with a non-production incident in the Canadian House of Commons, Speaker Milliken found that there was a *prima facie* question of privilege where there was non-compliance with a production Order made by a committee; the committee’s report on the non-compliance was not concurred in before a question of privilege was raised in the House.

Between the time of the raising of that question of privilege and the time that the Speaker ruled that there was a *prima facie* question of privilege, the House made an Order for production with respect to the same documents; nevertheless, the ruling clearly indicates that it was based on non-compliance with the production Order of the committee, not of the House.

Therefore, non-compliance with a production Order made by either a committee or the House can, in a proper case, constitute a matter of privilege.

Turning to the issue of whether the matter before me is such a case, Members will know that as a matter of parliamentary privilege the House has the right to institute inquiries, to require the attendance of witnesses, and to order the production of documents. The House exercises this right when it gives mandates to committees and delegates powers to them; the committees in turn carry out the mandates and exercise the powers within the limits of their authority. Therefore, when the Standing Committee on Estimates considers the Estimates, it does so pursuant to Standing Orders 59 and 60, and the Order of the House referring the Estimates to that Committee; when it orders production of documents relevant to its mandate, it does so pursuant to Standing Order 110(b).

The right to order production of documents is fundamental to and necessary for the proper functioning of the Assembly. If the House and its committees do not enjoy this right, then the accountability, scrutiny and financial functions of Parliament - which go to the core of our system of responsible government - would be compromised.

At meetings of the Standing Committee on Estimates, the Minister of Energy did not assert that the Committee had no right to inquire into the matter before it, or that it had no power to send for the documents in question. Rather, the Minister indicated that legal and other considerations should militate against the production of all requested documents.

But as Speaker Milliken indicated in the following excerpt from the “Afghanistan” ruling (at page 2043 of the Hansard for April 27, 2010), parliamentary privilege - of which the right to order production of documents is but one category - trumps such considerations:

(P)rocedural authorities are categorical in repeatedly asserting the powers of the House in ordering the production of documents. No exceptions are made for any category of government documents, even those related to national security.

Furthermore, pages 978 and 979 of the 2nd edition of the *House of Commons Procedure and Practice* provide as follows:

The Standing Orders do not delimit the power to order the production of papers and records. The result is a broad, absolute power that on the surface appears to be without restriction. There is no limit on the types of papers likely to be requested; the only prerequisite is that the papers exist in hard copy or electronic format - and that they are located in Canada. They can be papers originating from or in the possession of governments, or papers the authors or owners of which are from the private sector or civil society (individuals, associations, organizations, *et cetera*).

In practice, standing committees may encounter situations where the authors of or officials responsible for papers refuse to provide them or are willing to provide them only after certain parts have been removed. Public servants and Ministers may sometimes invoke their obligations under certain legislation to justify their position. Companies may be reluctant to release papers which could jeopardize their industrial security or infringe upon their legal obligations, particularly with regard to the protection of personal information. Others have cited solicitor-client privilege in refusing to allow access to legal papers or notices.

These types of situations have absolutely no bearing on the power of committees to order the production of papers and records. No statute or practice diminishes the fullness of that power rooted in House privileges unless there is an explicit legal provision to that effect, or unless the House adopts a specific resolution limiting the power. The House has never set a limit on its power to order the production of papers and records. However, it may not be appropriate to insist on the production of papers and records in all cases.

In many parliamentary jurisdictions, the House and its committees often accommodate or respect security, legal and public policy considerations; they often accept reasonable excuses for non-production. However, these authorities also indicate that a decision to be selective with respect to production is a decision for the House or the committee.

In the case at hand, the Standing Committee on Estimates made a production Order despite the arguments made by the Minister. My response to the Government House Leader's claim that the Committee did not turn its mind to the reasons for non-production proffered by the Minister is,

- First, it was not obliged to do so.
- Second, the documents could have been offered to the committee under conditions that would both satisfy the needs of the committee and the minister: for instance, being received in a closed session without public disclosure, or in an acceptably redacted version. The Chair put forward this notion on one occasion, and it was passed by without comment from any other member.
- Third, the Government House Leader in his written submission repeatedly points to what a difference a clear motion would have made to the Minister of Energy's ability to fully respond to the Committee's request; that is, a motion that explicitly expressed the Committee's request even for documents that are highly commercially sensitive, for which solicitor-client privilege is claimed, and/or are subject to litigation privilege. It is claimed that the Minister could have and would have complied in that scenario. During the time in question, the Minister could have requested the Committee to pass just such a motion, making it explicit that it still demanded the requested documents, notwithstanding the Minister's wish to withhold disclosure for the reasons stated in his May 30 reply to the Committee's original request. The record does not show that the Minister proactively did so.

The Standing Committee on Estimates was unquestionably entitled to request the documents sought from the Minister of Energy, and in the end the Minister had an obligation to comply with the Committee's call for those documents. The Committee did not accept the Minister's reasons for withholding the documents and persisted in its demand during an extended period of time.

I am therefore satisfied that a *prima facie* case of privilege has been established.

However, in the face of all of the submissions, the Committee transcripts and its report to the House, it seems possible to me that, but for a lack of frank communication, this matter might have been settled in the Estimates Committee some time ago. Further, given that in his submission the Government House Leader wrote, "(i)f the House chooses to issue the requested order or the committee chooses to pass a motion that clarifies its position with respect to the motion of May 16th, the government will abide by the will of the Legislature". I am hopeful that there is a possibility that the matter still can be settled.

I want to quote two passages from Speaker Milliken's April 27, 2010 Afghan Detainee ruling:

(I)t seems to me, that the issue before us is this: is it possible to put into place a mechanism by which these documents could be made available to the House without compromising the security and confidentiality of the information they contain? In other words, is it possible for the two sides, working together in the best interest of the Canadians they serve, to devise a means where both their concerns are met? Surely that is not too much to hope for.

.....

(T)he fact remains that the House and the Government have, essentially, an unbroken record of some 140 years of collaboration and accommodation in cases of this kind. It seems to me that it would be a signal failure for us to see that record shattered in the Third Session of the Fortieth Parliament because we lacked the will or the wit to find a solution to this impasse.

I too have immense faith in the abilities of the Honourable Members of this House and I know that a solution can be found to this impasse. Both sides need to exercise sobriety in this. Political fortune should not be the motive for eroding the supremacy of Parliament or ignoring the best interests of the citizens of this Province. Assiduous attention should be paid to dealing with matters such as this responsibly.

Therefore, inspired by the precedent of Speaker Milliken's innovative ruling in the Afghan Detainee case, I am going to presume leave of this House, and set this matter aside for the moment. I ask that the 3 House Leaders take it upon themselves to find a path that can satisfy the request of the Estimates Committee. If this cannot be accomplished by the end of the day on Monday, September 24, then I will return to the House with a statement on a motion by the Member for Cambridge that would then be appropriate in the circumstances.

I thank the Member for Cambridge, the Government House Leader, the Member for Timmins-James Bay, the Member for Chatham-Kent-Essex, the Member for Renfrew-Nipissing-Pembroke, the Member for Nipissing, the Member for Leeds-Grenville, and the Member for Beaches-East York for speaking to this matter, and I thank the Member for Cambridge and the Government House Leader for their written submissions.

ORAL QUESTIONS

QUESTIONS ORALES

The House recessed at 12:17 p.m.

À 12 h 17, l'Assemblée a suspendu la séance.

1:00 P.M.

13 H

INTRODUCTION OF BILLS

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

Bill 122, An Act to amend the Ombudsman Act with respect to investigating specified health care services. M^{me} Gélinas.

DÉPÔT DES PROJETS DE LOI

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

Projet de loi 122, Loi modifiant la Loi sur l'ombudsman en ce qui a trait aux enquêtes sur des services de soins de santé précisés. M^{me} Gélinas.

PETITIONS

Granting additional powers to the Ontario Ombudsman (Sessional Paper No. P-6) M^{me} Gélinas.

PET scans (Sessional Paper No. P-8) M^{me} Gélinas.

Contamination of the Greenbelt (Sessional Paper No. P-51) Mrs. Munro.

Administration of retirement homes (Sessional Paper No. P-92) Mr. McDonell.

Healing Arts Radiation Protection Act (Sessional Paper No. P-108) Mr. Flynn.

Interprovincial bridge (Sessional Paper No. P-164) Mr. McNeely.

New transformer station in Clarington (Sessional Paper No. P-169) Mr. O'Toole.

Supporting Bill 106, Prevention of Electoral Fraud Act, 2012 (Sessional Paper No. P-172) Ms. Jaczek.

Negotiations with the Ontario Medical Association and the Province's Doctors (Sessional Paper No. P-175) Mr. O'Toole.

Groomer Act and registering all animal pet groomers (Sessional Paper No. P-176) Mr. Chudleigh.

Prévention du cancer de la peau (Sessional Paper No. P-177) M^{me} Gélinas.

Surveillance de l'Ombudsman (Sessional Paper No. P-178) M^{me} Gélinas.

PÉTITIONS**PRIVATE MEMBERS' PUBLIC BUSINESS**

Mr. Harris moved,

Second Reading of Bill 109, An Act respecting government bills.

Debate arose.

Carried.

Referred to the Standing Committee on Finance and Economic Affairs.

AFFAIRES D'INTÉRÊT PUBLIC ÉMANANT DES DÉPUTÉS

M. Harris propose,

Deuxième lecture du projet de loi 109, Loi concernant les projets de loi émanant du gouvernement.

Il s'élève un débat.

Adoptée.

Renvoyé au Comité permanent des finances et des affaires économiques.

Mr. McDonell moved,

Private Members' Notice of Motion No. 26:-

That, in the opinion of this House, the Government should act to prevent a recurrence of the spending of \$35.6 million paid to 8,700 of 8,900, or 98% of eligible managers and executives in Ontario's Public Service as a bonus on top of their salaries during a period of fiscal restraint to avoid worsening Ontario's fiscal crises, through the implementation of an immediate, fair and reasonable across-the-board broader public sector wage freeze, including a freeze on all bonuses paid to all public service employees, including managers and executives for a period of no less than two years, and that any employee in the broader public service who receives a bonus within the wage and bonus freeze period, as a result of contractual agreements or other reasons shall have an amount equal to said bonus reimbursed to the employer of record from their salary for the entire duration of the wage and bonus freeze.

Debate arose.

Lost on the following division:-

M. McDonell propose,

Avis de motion émanant des députés n° 26 :-

Il s'élève un débat.

Rejetée par le vote suivant :-

AYES / POUR - 30

Arnott	Harris	McKenna	Scott
Bailey	Hudak	McNaughton	Smith
Barrett	Jackson	Miller (Parry Sound-Muskoka)	Thompson
Chudleigh	Jones	Munro	Walker
Clark	Klees	Nicholls	Wilson
Elliott	Leone	O'Toole	Yakabuski
Fedeli	MacLeod	Pettapiece	Yurek
Hardeman	McDonell		

NAYS / CONTRE - 35

Best	Delaney	MacCharles	Qaadri
Bisson	Dhillon	Mangat	Schein
Bradley	Dickson	Mantha	Sergio
Brotten	DiNovo	Marchese	Singh
Campbell	Duguid	McNeely	Sousa
Cansfield	Flynn	Miller (Hamilton East-Stoney Creek)	Takhar
Chan	Hoskins	Naqvi	Taylor
Coteau	Jaczek	Natyshak	Wong
Damerla	Kwinter	Piruzza	

Mrs. Piruzza moved,

Second Reading of Bill 90, An Act to proclaim Children and Youth in Care Day.

Debate arose.

Carried.

Referred to the Standing Committee on Social Policy.

M^{me} Piruzza propose,

Deuxième lecture du projet de loi 90, Loi proclamant le Jour des enfants et des jeunes pris en charge.

Il s'élève un débat.

Adoptée.

Renvoyé au Comité permanent de la politique sociale.

On motion by Ms. Broten, it was Ordered that the House adjourn.

The House adjourned at 4:20 p.m.

Sur la motion de M^{me} Broten, il est ordonné que la chambre ajourne ses travaux.

À 16 h 40, 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**

Negotiations with the Ontario Medical Association and the Province's Doctors (Sessional Paper No. P-175) (Tabled September 13, 2012) Mr. Dickson.

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

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

Deposit Insurance Corporation of Ontario / Société ontarienne d'assurance-dépôts, Annual Report 2010 (No. 186) (Tabled September 13, 2012).

Ontario Financing Authority, Annual Report 2011 (No. 187) (Tabled September 13, 2012).

Ontario Financing Authority, Annual Report 2012 (No. 188) (Tabled September 13, 2012).

Public Accounts of Ontario / Comptes publics de l'Ontario, 2011-2012 Annual Report (No. 185) (Tabled September 13, 2012).

RESPONSES TO WRITTEN QUESTIONS

RÉPONSES AUX QUESTIONS ÉCRITES

Final Answers to Question Number: 347.
