Legislative Assembly of Ontario

Assemblée législative de l'Ontario

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

REPORT ON THE DELAYED RELEASE OF MPPs FROM THE 2010 BUDGET LOCK-UP

2nd Session, 39th Parliament
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Legislative Assembly of Ontario

Assemblée législative de l'Ontario

The Honourable Steve Peters, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on the Legislative Assembly has the honour to present its Report and commends it to the House.

Bas Balkissoon, MPP
Chair

Queen's Park
November 2010

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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2nd Session, 39th Parliament

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

LIST OF CHANGES TO COMMITTEE MEMBERSHIP

BOB DELANEY was replaced by MARIA VAN BOMMEL on September 22, 2010.

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LIST OF RECOMMENDATIONS

The Committee recommends that in future:

1. **Non-government MPPs should be released from a government-sponsored lock-up before government MPPs are released from it, and the Ministry shall ensure that there is unencumbered escorted access to the Chamber.**

2. **The number of Ministry and security staff stationed at the doors of a government-sponsored lock-up, especially one that contains non-government MPPs, should be doubled in order to ensure that there is no breakdown in communications.**

3. **Technology should be used in a government-sponsored lock-up in order to communicate the lock-up protocol and changes to it to MPPs in the lock-up.**

REPORT ON THE DELAYED RELEASE OF MPPs FROM THE 2010 BUDGET LOCK-UP

A. INTRODUCTION

On May 4, 2010, directly after the Speaker had ruled that a *prima facie* case of privilege had been established concerning the delayed release of MPPs from the Budget lock-up, the House adopted the following motion: "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."

The Standing Committee on the Legislative Assembly met to consider this matter on May 12, May 19, June 2, September 15, October 6, October 20, and October 27.

Originally, the subcommittee, which has a representative from each party, met and agreed to hear from 2 witnesses -- Tim Shortill (Chief of Staff to the Minister of Finance) and the OPP officer involved in the release of the Members, i.e., Nicholaas Cliteur (OPP Sergeant, Queen's Park detachment). Subsequent to that, at the full committee, all parties agreed to hear from an additional four witnesses: Ted Arnott (MPP for Wellington-Halton Hills), John Yakabuski (MPP for Renfrew-Nipissing-Pembroke), Peter Tabuns (MPP for Toronto-Danforth), and Daryl Knox (OPP Acting Inspector, Queen's Park detachment). After hearing from all 6 witnesses, the majority of the committee felt that they had thoroughly heard enough information to continue with the report writing.

The Committee wishes to thank these individuals for their appearances before and presentations to the Committee, and for fielding questions from members of the Committee.

The Committee also wishes to thank the Clerk of the Committee (Tonia Grannum) and the Committees Branch for their procedural advice and administrative support services, and the Procedural Clerk (Research) (Peter

Sibenik) and the Journals and Procedural Research Branch for their procedural research and report writing services.

B. BACKGROUND

The Speaker's ruling that preceded the referral of this matter to the Committee summarized what happened on Budget day, in the following terms:

> **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.**

It is worth noting that no Member who wished to be present for the Budget Speech missed it. As soon as an absence of Members was noted to the Speaker, the Minister of Finance waited to begin his speech until all Members who wished to be present were in the Chamber before he began. Also, it is important to note that the Budget papers were not handed out until all Members were present in the House.

The Appendix contains the complete text of the Speaker's ruling, together with other relevant documents.

C. WITNESSES

This section of the report highlights what each of the 6 witnesses said to the Committee.

Ted Arnott (MPP for Wellington-Halton Hills)

Mr. Arnott[1] indicated that he and many of his caucus colleagues were at the door of the PC lock-up at approximately 3:45 p.m. on March 25, awaiting release so that they could proceed to the Chamber. Mr. Arnott repeatedly asked the uniformed OPP officer stationed at the door whether he could leave the room; the officer responded that he could not, as the officer had yet to receive clearance from the Minister's office to release the lock-up. The officer made repeated attempts on his two-way radio to secure the clearance. When the PC lock-up was finally released, many MPPs from that lock-up did not arrive in the Legislature for 4 p.m., despite sprinting from the lock-up. Mr. Arnott did not fault the OPP for what happened. In his view, someone in the Minister's office was responsible for the delay. He stated that the Committee must ensure that governments respect the Legislature and its members, that it plays a role in future lock-up protocols, and that it makes recommendations for accountability for when such protocols are not followed. In his 20 years as an MPP, he could not recall an MPP sprinting from the lock-up and still arriving late for the Budget presentation. He and John Yakabuski were the first MPPs from the PC lock-up to arrive in the Chamber.

John Yakabuski (MPP for Renfrew-Nipissing-Pembroke)

Mr. Yakabuski[2] indicated that he, Mr. Arnott and Elizabeth Witmer were the first PC MPPs to leave the PC lock-up in the Macdonald Block on Budget day. They had been waiting to leave since before 3:45 p.m., but the OPP officer did not release them until shortly after 3:55 p.m., resulting in their

[1] His remarks were not sworn or affirmed because MPPs, being "honourable", are not customarily required to swear to or affirm remarks that they make as witnesses before a committee of the House.

[2] His remarks were not sworn or affirmed because MPPs, being "honourable", are not customarily required to swear to or affirm remarks that they make as witnesses before a committee of the House.

arriving in the Chamber after 4 p.m., despite hurrying to get there. The officer, who used his communications device 2 or 3 times during this wait, informed them that he could not release them because he had yet to receive authorization from the Minister's office, and because government MPPs were still making their way from their own lock-up to the Chamber. Mr. Yakabuski decided not to leave the lock-up without authorization because he did not want to cause a scene. Police officers escorted PC MPPs for only a short distance outside the lock-up. This was the first lock-up that Mr. Yakabuski had ever attended. He stated that measures should be taken to prevent a repetition of the incident.

Peter Tabuns (MPP for Toronto-Danforth)

Mr. Tabuns[3] indicated that when he and Andrea Horwath tried to leave the NDP lock-up at 3:45 p.m., staff and OPP officers stated that they could not leave. They were released at 3:55 p.m. or shortly after, at about the same time as PC MPPs were released from their lock-up. The just released group of MPPs hurriedly made their way to the Chamber, under escort by the OPP. The Minister of Finance was already speaking when he entered the Chamber. This was his first lock-up.

Nicholaas Cliteur (OPP Sergeant, Queen's Park detachment)

Sgt. Cliteur testified under oath. He indicated that he was the designated officer in charge of the security team for the Budget -- from Ministry lockdown in late February to Budget day on March 25 -- and that he had the same responsibility in 4 of the past 5 Budget lock-ups. His security team was in place to protect Budget information and people. The Ministry had provided him with a written timetable of events for Budget day. The timetable was similar to the Budget day timetable for previous years; it provided for the lock-ups to be released sequentially -- the stakeholder lock-up first, then the Liberal lock-up, and finally the PC and NDP lock-ups. Each group in turn was to be escorted to the Legislature by members of his security team and by Ministry staff. Sgt. Cliteur was responsible for ordering

[3] His remarks were not sworn or affirmed because MPPs, being "honourable", are not customarily required to swear to or affirm remarks that they make as witnesses before a committee of the House.

the release of these lock-ups after Larry Till[4], his Ministry contact, gave him the clearance to do so, and after the immediately preceding group was well on its way to the Legislature.

At approximately 3:40 p.m. on Budget day, Sgt. Cliteur was outside the Liberal lock-up, ensuring that members of his security team were escorting MPPs from that just released lock-up to the Legislature. Sgt. Cliteur then stationed himself outside the PC and NDP lock-ups; he did not release those lock-ups until Mr. Till gave him the clearance to do so at 3:50 p.m. or 3:55 p.m., and the Premier and Minister of Finance were well on their way to the Legislature. In escorting MPPs from the various lock-ups to the Chamber, the security team wanted some separation between government MPPs vis-à-vis the PC and NDP MPPs. Sgt. Cliteur made several efforts to contact Mr. Till in the minutes preceding Mr. Till's radio communication to him to release the PC and NDP lock-ups. He indicated that only Mr. Till or the member of the Minister's staff in charge of the escort -- not another Ministry employee[5] who appeared outside the PC and NDP lock-ups at about the same time that Mr. Till was communicating the clearance to Sgt. Cliteur -- had the authority to give the clearance.

Daryl Knox (OPP Acting Inspector, Queen's Park detachment)

Insp. Knox testified under oath. He indicated that he was in charge of OPP security at the Queen's Park detachment on March 25. In the weeks leading up to Budget day, he had attended several meetings (with Mr. Till and other Ministry staff), where Budget-day logistics were discussed. He indicated that:

- the Ministry's timetable of events for Budget day called for the government lock-up to be released before the PC and NDP lock-ups
- the security team was protecting people and Budget information
- the Ministry wanted the lock-ups to be sequentially released

[4] Subsequently identified as the Assistant Director, Communications and Corporate Affairs Branch, Ministry of Finance.
[5] Known as "Dan"; subsequently identified as Daniel Malik (Senior Policy Advisor, Ministry of Finance).

- he would provide a copy of the timetable of events for that day
- Mr. Till was authorized to give Sgt. Cliteur the clearance to release the lock-up
- he did not believe that his staff had spoken to the Government House Leader concerning the OPP's decision not to act on a request by a Ministry employee to release the PC and NDP lock-ups.

Tim Shortill (Chief of Staff to the Minister of Finance)

Mr. Shortill testified under oath. He indicated that the delay was not intentional, but it was regrettable and he apologized to those MPPs who were delayed. By way of background, he explained that Budget day is a busy day; it involves many people and complex logistics. His staff are stationed at each of the lock-ups to assist with these logistics, including the release procedure. One poorly executed aspect of the day resulted in some MPPs getting to the Legislature late. He explained what happened in the following terms:

> **Those [Ministry staff] who are placed with the stakeholder lock-ups have a simple procedure to follow. When the Minister of Finance stands up and begins his speech, an event which is broadcasted, they have their cue to end the lock-up. Those [Ministry] staff who are assigned to the caucus lock-ups have a more complicated procedure since they are releasing the members of the Legislature before the lock-up is officially over. They are supposed to position themselves in front of the rooms and introduce themselves to the officers present.**
>
> **When they arrived at the opposition rooms, my staff should have introduced themselves to the OPP officers present and explained their purpose, which was to help in the escort of the members to the chamber. This is where the human error occurred—human error on the part of my staff. Regrettably, those introductions were not made, which led to the delay in the release of some members.**
>
> **As the committee has heard, the officers on duty were able to communicate with Larry Till to release the opposition members from their lock-ups. Mr. Till is the assistant director of the communications and corporate affairs branch of the Ministry of Finance. On budget day, one of his many duties was to continue as the liaison with the OPP. I say**

"continue," because he was the minister's office liaison with the OPP throughout the planning process.

Once those in the chamber were made aware of the hold-up of some members, the presentation of the budget was delayed until all members were able to arrive. It is worthy to note that members did not miss any part of the presentation of the budget.

Mr. Shortill indicated that:

- there was no identified time for his staff to inform the OPP that the lock-ups should be released
- the protocol specified that Mr. Till was the Ministry point of contact who would communicate the clearance to the OPP
- another Ministry employee, Daniel Malik, was supposed to identify himself to the OPP stationed at the PC and NDP lock-ups
- invited government guests, who were scheduled to hear the Budget presentation from the Public Galleries in the Chamber, may have been the first to be released from the lock-up
- the lock-up for government MPPs was implicitly released when the Premier and the Minister of Finance left that lock-up for the Chamber.

In his testimony, Mr. Shortill accepted responsibility for the miscommunication that caused the delayed release of MPPs from the PC and NDP lock-ups.

Mr. Shortill made some recommendations on how a repetition of this incident could be avoided in future years, and indicated that the Ministry would work to ensure that a new protocol is in place for next year's lock-up.

D. DISCUSSION AND RECOMMENDATIONS

Since the lock-up is not a proceeding in Parliament and it occurs outside the legislative precincts, the government and its security providers -- not the Speaker and the Sergeant-at-Arms -- plan for and oversee its logistics. These logistics are part of the broader Budget-day planning exercise that culminates in the presentation of the Budget in the House.

For many decades in Ontario, the government of the day has provided MPPs and stakeholders with an advance look at and briefing on the Budget documents in the hours leading up to the presentation of the Budget. These Budget lock-ups are not mandated by the Standing Orders, but they are helpful because they enable MPPs and stakeholders alike to expedite the communication of comprehensive information about the Budget shortly after the Budget is tabled in the House.

Traditionally, the Budget is delivered after 4 p.m. in an effort to ensure that the information from the Budget cannot be used to take advantage of the markets before its official release. Security is provided to ensure that Budget confidentiality is upheld. It is tradition to allow Members to leave the lock-up early to ensure that they can take their places in the Chamber before the presentation of the Budget. No Member who wished to be present missed the delivery of the Budget speech.

Having had an opportunity to hear from the witnesses and to reflect on what they said, and despite not receiving all requested documents[6], the Committee is satisfied that the delayed release of certain Opposition MPPs from the March 25 lock-up did not amount to a breach of privilege; the delays were the product of miscommunication as opposed to an intentional or deliberate plan to prevent those MPPs from getting to the House by 4 p.m.

It does not appear that there has been a previous occasion on which MPPs' delayed release from a Budget lock-up resulted in their not arriving in the Chamber on time for the commencement of proceedings relating to the

[6] The Ministry of Finance, which has acknowledged the Committee's request for certain cellphone records and for the timetable of Budget-day events mentioned in a Ministry email to Sgt. Cliteur, has yet to provide the requested documents.

presentation of the Budget.[7] Nevertheless, the Committee is of the view that measures need to be taken to ensure that MPPs have sufficient time to get to the House on Budget day, pursuant to the terms of the Budget day protocol. If it is not logistically feasible to release all MPPs from the lock-up at the same time, then it is essential that if the House is scheduled to resume at a certain time for the presentation of the Budget, MPPs should be released from the lock-ups so that they have sufficient time to be in their places in the House by that time.

Therefore, the Committee recommends that in future:

1. **Non-government MPPs should be released from a government-sponsored lock-up before government MPPs are released from it, and the Ministry shall ensure that there is unencumbered escorted access to the Chamber.**

2. **The number of Ministry and security staff stationed at the doors of a government-sponsored lock-up, especially one that contains non-government MPPs, should be doubled in order to ensure that there is no breakdown in communications.**

3. **Technology should be used in a government-sponsored lock-up in order to communicate the lock-up protocol and changes to it to MPPs in the lock-up.**

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[7] However, there was a similar occurrence in 1995 when the Conservative government had a lock-up for its Fall Economic Statement. It began presenting that economic update through a bill while Members were still in the lock-up, thereby preventing Members from being present for the process associated with the Economic Statement. As noted in the following quote from the *Canadian Parliamentary Review* (vol. 19, no. 1 - spring 1996, p. 38): "On November 29, the Minister of Finance, **Ernie Eves** was scheduled to make an economic statement. Many members of the legislature attended a lock up to review the content of the statement in advance of its delivery. The lock up was still in effect at the time the House opened and through Routine Proceedings. During Routine Proceedings, **Dave Johnson**, Chair of Management Board introduced Bill 26, *An Act to achieve Fiscal Savings and to promote Economic Prosperity through Public Sector Restructuring, Streamlining and Efficiency and to implement other aspects of the Government's Economic Agenda.*"

E. CONCLUSION

The Committee is of the view that the House has the first call on MPPs' services, and that MPPs should not be obstructed in the performance of their parliamentary responsibilities. In this instance, no Member that wanted to be present for the Budget speech missed the presentation. While the delayed release of MPPs from the March 25 Budget lock-up does not amount to a breach of privilege, the incident is not one that the Committee would care to see repeated. Therefore, the Committee has adopted a series of recommendations whose implementation would not only help to reduce the likelihood of another breakdown in communications between government staff and security personnel when it comes time to release MPPs from a government-sponsored lock-up, but also enable MPPs to carry out their parliamentary responsibilities and to better serve the people of Ontario.

APPENDIX A

SUPPLEMENTARY DOCUMENTATION

TAXATION

Mr. John O'Toole: I'm pleased to read the offsetting petition, which offsets pretty well everything the member from Ajax–Pickering said. This is the truth. It reads as follows:

"Whereas residents of Durham do not want Dalton McGuinty's new sales tax, which will raise the cost of goods and services they" buy and "use every day"—this is signed by thousands of people; "and

"Whereas the McGuinty Liberals' new ... tax of 13% will cause everyone to pay more for gasoline for their cars, heat, telephone, cable and Internet services for their homes, and will be applied to home sales over $400,000; and

"Whereas the McGuinty Liberals' new sales tax of 13% will cause everyone to pay more for meals under $4, haircuts, funeral services, gym memberships," sports memberships, fitness memberships, "newspapers, and lawyer and accountant fees," financial planner fees—the list goes on; "and

"Whereas the McGuinty Liberals' new sales tax grab will affect everyone in the province: seniors, students, families," farmers "and low-income" people—everyone who lives here;

"We, the undersigned, petition the Legislative Assembly of Ontario as follows:

"That" Dalton McGuinty "not increase taxes" on July 1, 2010, Canada Day. Don't affect Ontario families.

I'm pleased to sign and support this.

The Speaker (Hon. Steve Peters): The time for petitions has ended.

Pursuant to standing order 58(b), this House is recessed until 4 p.m.

The House recessed from 1332 to 1600.

ORDERS OF THE DAY

2010 ONTARIO BUDGET

BUDGET DE L'ONTARIO DE 2010

Hon. Dwight Duncan: I move, seconded by Mr. McGuinty, that this House approves in general the budgetary policy of the government.

The Speaker (Hon. Steve Peters): Mr. Duncan has moved, seconded by Mr. McGuinty, that this House approve in general the budgetary policy of the government.

I would beg the indulgence of all members to allow the pages to deliver the budget, and I'd just ask right now that you ensure that—

Mr. John Yakabuski: On a point of order, Mr. Speaker: The members of our caucus were not allowed out of the lock-up. With only two minutes to get here, we are still waiting for our members. I would beg the indulgence of the House to allow this proceeding to wait until such time as the rest of our members have arrived, including—

Mr. Ted Arnott: On the same point of order, Mr. Speaker: I think it's worthwhile to point out that it is a long-standing tradition *[inaudible]* Legislature are allowed to go into a lock-up in advance of the budget. But, as we tried to leave the lock-up at about five minutes to 4, we were told by the OPP that they were waiting for word from the Minister of Finance's office. They kept us back so that we literally had to race over here—

Interjections.

The Speaker (Hon. Steve Peters): Order. I would just say to the member from Wellington–Halton Hills, we do not need to rise on points of order to rag the puck. I will give members of Her Majesty's loyal opposition enough time to enter the chamber.

Once again, I would beg the indulgence of all members to allow the pages the opportunity to deliver the budget speech. I would ask that you keep your aisles clear because, as all members—and I'm sure many of our guests—are aware, the pages are endeavouring, as always, to break the record in delivering that speech. The record that they are attempting to break is 20.35 seconds.

Have all members received a copy of the budget?

Minister of Finance.

Hon. Dwight Duncan: Mr. Speaker, I rise to present Ontario's 2010 budget.

Monsieur le Président, je présente aujourd'hui le budget de l'Ontario de 2010.

For the better part of the last two years, the global economy has been mired in deep recession.

The Ontario economy, like most others, has felt the effects of both a global recession and the transformation of key sectors, especially manufacturing and forestry.

I'm pleased to report that some early signs of the recovery have arrived. However, the job losses that have affected Ontario families remain and this government will continue to take action.

Working together, we must continue to create jobs in the short term and continue to lay the foundation for growth and a new prosperity.

Ontario's speech from the throne established a five-year plan to open Ontario to new jobs and economic growth.

The Open Ontario plan will create an Ontario even more open to new ideas, new people, new investment and, most importantly, new jobs.

This budget begins to chart a course to a stronger economic future for the people of Ontario.

Speaker, when the recession hit, Ontarians, like Canadians elsewhere, had to cope with sudden, unexpected job losses that devastated individuals, families and communities.

We are responding with an aggressive job-creation plan.

We are investing $32 billion in job-creating stimulus. According to the Conference Board of Canada, our investment is supporting over 220,000 jobs this year. Our stimulus plan added nearly a full point to Ontario's gross

-Clerk

NORM MILLER

MEMBER OF PROVINCIAL PARLIAMENT
PARRY SOUND-MUSKOKA

COPY

Ontario

April 1, 2010

HAND-DELIVERED

OFFICE OF THE SPEAKER
RECEIVED
APR 06 2010
9:03 a.m.

Hon. Steve Peters
Speaker; Legislative Assembly of Ontario
Room 180, Legislative Building
Queen's Park
Toronto, ON M7A 1A2

Dear Speaker:

I am providing you with written notice of a point of privilege pursuant to Standing Order 21(c), so that I may raise the matter in the House. The question of privilege relates to interference with the free movement of members within the legislative precinct that occurred on the day the Budget was presented to the Assembly on Thursday. Points of Order were raised by the Opposition House Leader and the Member for Wellington-Halton Hills at the time.

I am raising this matter of privilege after further discussion and investigation with members of our Caucus into the events that took place on March 25th.

The facts on which this matter is raised are as follows. Last Thursday, March 24th, I along with 19 members of Her Majesty's Loyal Opposition attended a briefing on the Budget prior to the Minister of Finance's speech at 4:00 p.m. As is customary, the briefing was subject to a "lock-up" protocol, where members and staff wanting the briefing were not permitted to leave the briefing room until they were escorted into the legislative chamber. The protocol was detailed in a March 19, 2010 correspondence sent to members by Tim Shorthill, chief of staff to the Minister of Finance, a copy of which is attached.

According to Mr. Shorthill, "Shortly before 4:00 p.m., MPPs will proceed to the Legislature (escorted by a member of the Minister's Office and OPP officers) to be present when the Minister tables the Budget. What transpired on Budget day, however, was the Leader of the Opposition, along with members for Oxford, Sarnia-Lambton, Haldimand-Norfolk, Halton, Simcoe North, Whitby-Oshawa, Lanark-Frontenac-Lennox and Addington, Dufferin-Caledon, Nepean-Carleton, York-Simcoe, Bruce-Grey-Owen Sound, Durham, Leeds-Grenville, Thornhill, Simcoe-Grey, and Kitchener-Waterloo were not led to the Chamber in time for Minister Duncan's tabling of the Budget. Concerns of members grew as 4:00 p.m. approached, but the OPP officers stated that they were awaiting the Finance Minister's orders before members could leave the briefing room.

❑ Queen's Park Office:
Room 348
Legislative Building
Queen's Park
Toronto, ON M7A 1A8
Tel. (416) 325-1012
Fax (416) 325-1153

❑ Bracebridge Constituency:
165 Manitoba Street
Bracebridge, ON P1L 1S3
Tel. (705) 645-8538
Fax (705) 645-8148
1-888-267-4826

❑ Parry Sound Constituency:
17 James Street
Parry Sound, ON P2A 1T4
Tel. (705) 746-4266
Fax (705) [illegible]
1-888-701-1170

E-mail: norm.millerco@pc.ola.org

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APR 6 - 2010
CLERK OF THE HOUSE

Freedom of movement in the legislative precinct is a privilege of members that has been recognized by legislative authorities and established by parliamentary precedent. In *House of Commons Procedure and Practice*, Marleau and Montpetit state: "The House has the authority to invoke privilege where its ability has been obstructed in the execution of its functions or where Members have been obstructed in the performance of their duties" (emphasis added).

In *House of Commons Procedures and Practice*, O'Brien and Bosc explain both the privilege and the role of the Speaker in more detail. In Chapter 3, which deals with privileges and immunities of members, they state: "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."

Speaker Fraser ruled on this particular privilege in 1989. Following a protest at the House of Commons, the Member of Parliament for Windsor West was stopped by security at a road block and prevented from accessing Centre Block by car. On October 30, 1989, Speaker Fraser found that, even though an argument could be made that the Member was free to walk to Centre Block, a *prima facie* case for obstruction existed. The matter was referred to a Standing Committee.

In 1999, Speaker Parent considered a point of privilege that was raised by Members of Parliament who had difficulty accessing their offices. The Members stated that the impediment prevented them from performing their functions and meeting their obligations in a timely fashion. Speaker Parent ruled that a *prima facie* breach of privilege existed and referred the matter to the Standing Committee on Procedure and House Affairs.

I respectfully submit there is no conclusion but that a *prima facie* breach of privilege has been established for the events that occurred on Thursday.

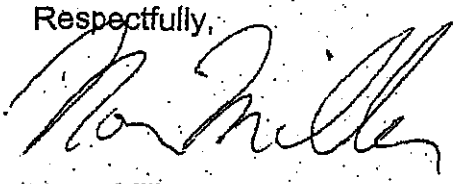
Members of the Official Opposition were physically obstructed, impeded and interfered with when they tried to make their way to the Chamber for the presentation of the Budget to the Assembly. Hansard records indicate that when Orders of the Day were called at 4:00 p.m., the Minister of Finance moved the Budget motion before the Leader of the Opposition and the members who were with him could reach the Chamber. But for interjections by the Opposition House Leader and Member for Wellington-Halton Hills, most of the Opposition Caucus was prevented from performing their functions and meeting their obligations for a cornerstone of the democratic process—the Budget process.

A *prima facie* breach of privilege exists in this instance. Unimpeded movement in the legislative precinct is an important privilege—particularly when it involves the Budget. While it is accepted that members who participate in a "lock-up"

voluntarily curtail their ability to move about the precinct to some extent; it is unreasonable for the privilege to be curtailed outside the scope of the general principles for "lock-up." In this instance, the breach is clearer, and more grievous, because of the "lock-up" protocol that was breached by the Finance Minister or his office. Members were not escorted to the Legislature shortly before 4:00 p.m, and they were not free to make their own way to the Legislature. They were detained against their will.

Upon your ruling that a *prima facie* breach of privilege exists, I am prepared to move the matter be referred to an appropriate committee of the Legislature for a hearing into the facts and circumstances that led to the breach. I would further move a study that reports recommendations on appropriate procedures for future Budgets and other legislative matters where there are "lock-up" briefings. It is my hope that such a hearing and study will help stem the erosion of respect for the Assembly and all legislators that has been demonstrated by the government.

Respectfully,



Norm Miller
Member for Parry Sound-Muskoka
Whip and Finance Critic of the Official Opposition

Copy: Hon. Monique Smith, MPP Nipissing, Government House Leader

COPY

Memorandum

To: Rosario Marchese, NDP Caucus Chair
Toby Barrett, PC Caucus Chair

From: Tim Shortill
Chief of Staff
Office of the Minister of Finance

Re: 2010 Ontario Budget – Lock-up, Thursday March 25, 2010

On Thursday March 25, 2010 at approximately 4:00 pm, the Minister of Finance, the Honourable Dwight Duncan, will present the 2010 Ontario Budget in the Ontario Legislature.

As in previous years, each Opposition caucus will be assigned a room in the MacDonald Block. Your room will contain the Budget documents and collateral materials. Each Opposition caucus may invite two outside experts to assist with the analysis of the Budget materials.

Registration for the Budget lock-up will begin at 9:00 am, see below for room locations:

Kenora/Nipigon – PC Lock up ***Nipissing – NDP Lock up***

To confirm your attendance along with the names of your outside experts, please contact **Mariya Genkova at 416-325-0388 or via email at mariya.genkova@ontario.ca** no later than 5:00pm on Monday March 22, 2010.

Please note:

- you will be required to sign the Undertaking of Confidentiality
- laptop computers are permitted, however, you must disable your computer's wireless capability before entering the Lock up, and you may not enable this capability during the lock-up
- laptop computers and other equipment can be set up on Wednesday March 24th between 9:00 am and 1:00 pm. Please note set up of laptop computers and other equipment will not be permitted on Budget day. No exceptions.
- the following transmitting devices are prohibited; cellular phones, BlackBerries or other personal digital assistants, pagers, radio transmitters or any other electronic transmitting devices. These devices will be securely stored with the registration desk while you are in the lock-up
- light refreshments and snacks will be provided throughout the day

- Copy sent to the Speaker's office - April 8. A Todd

- Shortly before 4:00pm MPPs will proceed to the Legislature (escorted by a member of the Minister's Office and OPP officers) to be present when the Minister tables the Budget.
- **MPPs will not be permitted to take a copy of the Budget to the Legislature.** Pages will distribute copies of the Budget to all MPPs in the House
- Staff must remain in the lock-up room until they receive the go-ahead from Registration staff that the Minister has begun his statement – at approximately 4:10pm.
- **Once you have entered lock-up, you are there for the duration.**

Thank you in advance for your cooperation. Should you have any further questions, please don't hesitate to contact me at 416-325-0400.

Tim

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Tim Shortill
Chief of Staff
Office of the Hon. Dwight Duncan, Minister of Finance
tim.shortill@ontario.ca

engaged in a gag order around this agreement to begin with?

Hon. Kathleen O. Wynne: What I have said to the member opposite is that I am willing to have a conversation with him to provide him with whatever details are available. Obviously, if there are details that a particular company has that I don't have, then I can't give him that information, but I am absolutely willing to have that conversation with him.

But I have to say that Host Kilmer was confirmed as the new service provider. An independent financial adviser looked at the process and said that it was open, that it was transparent and that everything that needed to be in place was in place. I'm happy to have the follow-up conversation with the member opposite, but I am absolutely confident that the process that was put in place was one that will withstand any scrutiny that the member opposite might want to bring to it.

GREENHOUSE GAS EMISSIONS

Mr. Peter Tabuns: A question to the Deputy Premier: As you know, your climate plan won't even meet its current targets. The cuts to Transit City will further weaken your efforts. How do you plan to make up the loss of Transit City cuts to greenhouse gas emissions? How will you make good on your plan with this reduction in investment?

Hon. Dwight Duncan: I reiterate what the Minister of Transportation said earlier in question period: There are no cuts. That's patently wrong.

But let's talk about green action plans and let's talk about carbon reduction and about the first government in North America that's closing its coal plants. That is more than any other jurisdiction anywhere in North America. While other governments are wrestling with how to price carbon, this government is wrestling with how to close coal. It has not been easy. It does involve renewable energy, and I congratulate my colleague for his outstanding announcement last week. It involves substantial investments in public transit, which we have made—billions of dollars—and I'll remind that member and his party that they were against buying streetcars in Thunder Bay to extend the subway system.

This government has done more on the climate change file to lower greenhouse gas emissions than any other in North America. We need no lecture—

The Speaker (Hon. Steve Peters): Thank you. The time for question period has ended.

CORRECTION OF RECORD

Hon. Kathleen O. Wynne: On a point of privilege, Mr. Speaker: I believe I misspoke in my answer to the member opposite. At one point, I said that an independent fairness adviser—that's what I intended to say. I think I said "independent financial adviser." It was an independent fairness adviser.

MEMBERS' PRIVILEGES

Mr. Norm Miller: Mr. Speaker, I rise on a point of privilege for which I gave notice to you and to House leaders on Thursday, April 1. The question of privilege relates to interference with the freedom of members of this assembly to move within the legislative precinct. I raise this matter at the earliest opportunity. Because the breach of privilege was committed against me and several members of the loyal opposition, it took time to investigate the facts and confirm the details that I will be referring to you in this submission.

In brief, I, along with the leader of the official opposition and the members for Oxford, Sarnia–Lambton, Haldimand–Norfolk, Halton, Simcoe North, Whitby–Oshawa, Lanark–Frontenac–Lennox and Addington, Dufferin–Caledon, Nepean–Carleton, York Simcoe, Bruce–Grey–Owen Sound, Durham, Leeds–Grenville, Thornhill, Simcoe–Grey and Kitchener–Waterloo, was obstructed by the government or its security staff after our briefing on budget day.

You may recall, and Hansard records from March 25 will show, that several members of the opposition were not in the House when the finance minister tabled the budget. We might not have been in the House for the minister's budget address were it not for the timely intervention of the opposition House leader and the member for Wellington–Halton Hills.

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It was not by choice that we were not present in the House for the beginning of the government's announcement that its planning had produced a record $21-billion deficit or the minister's explanation of what that will mean for our constituents. We were prevented from being in the House for the beginning of this important debate. Government security staff detained us at the briefing room, even though the budget briefing was over and the finance minister was tabling the budget.

The privilege of members to move freely within the legislative precinct is well established. The privilege is protected so that a member may act on his or her constituents' behalf, as the member sees fit. In our democracy, our constituents hold us accountable for the decisions we make on how to participate in debates.

In this regard, the government's interference with my ability to be in the legislative chamber at the time the budget was tabled also interfered with the fundamental relationship that exists between me and my constituents. While breaches of this privilege are rare, they are not without precedent. Speaker, I will refer relevant parliamentary authorities and precedents to you in a moment. These precedents show that Speakers found that a prima face breach of privilege was established in similar circumstances. But before I do, I should add that the obstruction of me and my colleagues comes despite the finance minister having turned his mind to what ought to have happened at the end of the budget briefing.

On March 19, Tim Shortill, chief of staff to Minister Duncan, sent an email correspondence that set out a

rollout plan for the budget briefing. The briefing, as is customary, was subject to lock-up. This means that members and staff who attend the briefing agree to remain in the briefing room and not to communicate the information provided to them until they are released.

What is significant in the correspondence of the Minister of Finance's office is that it communicated a plan for how we would be released and able to be in the legislative chamber in time for the budget being tabled. Mr. Shortill advised, "Shortly before 4 p.m., MPPs will proceed to the Legislature (escorted by a member of the minister's office and OPP officers) to be present when the minister tables the budget."

However, like so many other things with this government, there was a significant divide between the plan and its execution. What happened at the end of the briefing departed considerably from the plan Mr. Shortill shared with us. After the briefing had concluded, members remained at the briefing room and awaited our escort to the legislative chamber, but as 4 p.m. neared, we were not permitted to leave the room.

We asked security to escort us or release us so we could make our own way to the legislative chamber in time for the budget address. We were not released or escorted; rather, security stated that they were awaiting the finance minister's orders before we would be permitted to leave the briefing room.

Again, this was not in keeping with what Mr. Shortill said the plan was to be. This deviation from the plan is also not what I or my colleagues consented to or could be taken to have consented to by attending the briefing.

We were detained. The breach of privilege begins with the detention. The breach is aggravated by the fact that we were not permitted to be in the legislative chamber in time for the Minister of Finance to table the budget.

In House of Commons Procedure and Practice, Marleau and Montpetit state, "The House has the authority to invoke privilege where its ability has been obstructed in the execution of its functions or where members have been obstructed in the performance of their duties."

O'Brien and Bosc go on to explain both the privilege and the role of the Speaker in more detail. In chapter 3, which deals with privileges and immunities of members, O'Brien and Bosc state, "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 a prima facie breach of privilege has occurred."

What constitutes a breach of this privilege has been considered in rulings by several Speakers of the Canadian House of Commons. In 1989, Speaker Fraser, for one, was asked to rule on what transpired after a member was stopped by security at a roadblock and prevented from accessing Centre Block by car. On October 30, 1989, Speaker Fraser ruled that a prima facie case for obstruction existed and referred the matter to a standing committee. You may find it pertinent for your deliberations to note that in making his ruling, Speaker Fraser considered the fact that the member was free to walk to Centre Block, but he still ruled that a prima facie case of obstruction existed.

In 1999, Speaker Parent considered a point of privilege raised by members of Parliament who had difficulty accessing their offices. The members objected to the lack of access, saying it prevented them from performing their functions and meeting their obligations in a timely fashion. This was for routine work, not something as eventful as a budget presentation. But Speaker Parent ruled that a prima facie breach of privilege existed, and he referred the matter to the Standing Committee on Procedure and House Affairs.

Following the authorities and precedents, I respectfully submit there's no conclusion but that a prima facie breach of privilege exists for the interference my colleagues and I experienced on Thursday, March 25. We were physically obstructed, impeded and interfered with when we tried to make our way to the chamber for the presentation of the budget to the assembly. We were held back from the legislative chamber even though, according to the government's own plan, the lock-up period was over.

This is a serious matter. In a civil context, a court would have little difficulty finding that we were held against our will. But in this parliamentary setting, the detention is even more serious, because it interfered with the interests our constituents have in our full participation and attention on the budget.

Our mere absence from the legislative chamber at the beginning of the budget presentation is proof that the interference occurred.

The precedents I have cited show that this is enough to establish a prima facie case that our privilege was breached. Add to it my submission that we followed the plan sent to us by the Minister of Finance's staff, but the government did not.

In my submission, it is also compelling to consider that the opposition members did everything reasonably within their capacity to be in the chamber, but it was the failure of the government to ensure we were escorted.

Following the parliamentary authorities and precedents I've cited, a prima facie case of obstruction exists, and this matter should be referred to a committee to examine the deviation from the rollout plan, why it happened and how it can be avoided in the future.

Upon your ruling that a prima facie breach of privilege exists, I am prepared to move a motion calling for this matter to be referred to an appropriate committee of the Legislature to examine the breach and report back to the Legislature with recommendations.

Mr. Peter Kormos: Speaker, on behalf of New Democrats, I rise in support of this point of privilege and wish to speak briefly to it. First of all, it's a very, very serious matter. It's far from a trivial matter.

It's important, perhaps, that we remind ourselves again, by reference to Beauchesne, where Beauchesne quotes Erskine May—because here we have a breach that could be perceived as a breach of an individual member's privilege; or it could be a breach of the corporate pri-

vilege, a privilege of the House as a whole. In my submission, it's the right of the House to have full attendance of its members, unless those members are not present in the House for any number of valid reasons. Take a look at what Beauchesne cites of May—I'm referring to Beauchesne, 6th edition, page 11: "Parliamentary privilege is the sum of the peculiar 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."

It was interesting, I happened upon a reprint of John Hatsell's four-volume Precedents of Proceedings in the House of Commons, first published in 1818. I'm referring to the reprint published in 2010 by General Books. The first volume opens to page 4, and Hatsell prioritizes privilege as number one in the list of parliamentary issues that he discusses. This dates back to the period prior to Henry VIII in the British Parliament. I'll just read briefly from Hatsell's commentary on this. "As it is an essential part of the constitution of every court of judicature, and absolutely necessary for the due execution of its powers, that persons resorting to such courts, whether as judges or as parties, should be entitled to certain privileges to secure them from molestation during their attendance; it is more peculiarly essential to the court of Parliament, the first and highest court in this kingdom, that the members, who compose it, should not be prevented ... from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call...."

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Now, historically, as I understand it, and I'm sure others agree, this protection from molestation or interference with one's right to attend and obligation to attend at the High Court of Parliament was interfered with as a result of things like civil arrests for debt, amongst other things, and that's specifically what is considered in historical considerations of these individual/collective privileges.

Just very briefly, another interesting decision—this one predates Confederation here in Canada. It's from the Upper Canada Court of Queen's Bench in the case of Wadsworth. There was a case where a member of the Legislature—before Confederation; no Parliament—was arrested, and the court found that his civil arrest was a breach of his privilege. The court states at paragraphs 10 to 11 of the decision, "Now, if it is essential to the public interests that the several members should be at liberty, when called upon to attend to their legislative duties, and that these duties must be regarded as paramount to private or individual interests, as they are undoubtedly considered in England, it follows, as it appears to me, that a member cannot be restrained at the instance of any individual from attendance upon these duties."

What is shocking and egregious in the case put to you by the member for the Conservative Party is that, as we see it and as we know it now, the police were operating at the direction of the Minister of Finance. We're told that they, the police, were awaiting the finance minister's orders before members could leave the briefing room.

My final submission—and this is a decision by Speaker Milliken, which I submit to you is very, very much on point and very, very valuable to you, sir, in determining the outcome of this point made by Mr. Miller. I'm referring, of course, to the second edition of House of Commons Procedure and Practice, O'Brien and Bosc, page 111:

"In 2004, a question of privilege was raised regarding the free movement of members within the parliamentary precinct during a visit by the President of the United States, George W. Bush." We don't have a scenario here where, as in some of the other cases cited from the federal Parliament, we have a demonstration or we have a picket line; this is a visit by an American President. Back to the text: "A number of members complained that, in attempting to prevent protesters from gaining entrance to Parliament Hill, police had also denied certain members access to the parliamentary precinct and thus prevented them from carrying out their parliamentary functions. Speaker Milliken found a prima facie case of privilege and the matter was referred to the Standing Committee on Procedure and House Affairs."

What's most interesting about this is what the committee did. If you take a look at the footnote on page 111, it tells us, "The committee concluded that members' privileges had been breached and recommended that the Sergeant-at-Arms and the RCMP provide written reports to the House outlining how such a situation would be avoided in the future."

That seems to me not only to confirm the validity of this point of privilege, but also to confirm the scenario wherein Speaker Fraser—wherein the obstruction was technical but not particularly effective, and that is the case where cars were blocked from going onto Parliament Hill, but people could have walked. Speaker Fraser found that the mere blocking of cars, even though people could have circumvented the blockade by walking in, in and of itself was a prima facie breach.

Here we have police officers and security staff holding members of the Legislature who are protesting their detention, who are pointing out that the time is coming that it's 4 o'clock, who are declaring that they have been assured that they will be allowed back into the chamber, escorted, in time for 4 o'clock, and the response, as we hear it at this point, from security personnel and presumably the OPP, is, "Oh, no. Nobody's going anywhere until the Minister of Finance says so."

I don't want to be critical of the police officers in this instance, because I think that we have a case here where police officers are following directions. I think that we also have a case, the decision of Speaker Milliken, which not only confirms the breach that's occurred here, but also provides, in my respectful submission, the appropriate remedy should this matter go to debate after the Speaker finds a prima facie breach.

Thank you kindly, Speaker. Also, as you can well imagine, I'm grateful to the learned persons who referred

me in the first instance to Hatsell as a source of parliamentary precedent. I'll be referring to it again, I'm sure.

Hon. Monique M. Smith: Thank you to the member from Parry Sound–Muskoka and, of course, it's always lovely to have another opportunity to hear the member from Welland refer to his precedents and all the things that he loves to do.

I would argue that there is no breach of privilege in this particular circumstance. I would also note that under section 21(b), a question of privilege is to be taken up immediately. While the member has provided us with written submissions dated April 1, this alleged breach of privilege occurred Thursday, March 25. The House did sit for a full week afterwards, and it could have been raised at that time. I did not receive the submissions in my office until April 8. So I am just pointing out for the record that it was not done in an incredibly timely way, though section 21(b) does require that it be taken up immediately.

I would also argue that the member from Parry Sound–Muskoka misspoke in his submissions by saying they were obstructed by the government. They were, in fact, obstructed by security at the time. Procedures were set out and instructions given to all members of the Legislature with respect to the lock-up that occurred around the budget, which was delivered on March 25. Unlike other budgets, like that presented in 2003 at Magna, this one was presented here in the Legislature for the general public to have access through the parliamentary network, for the public to have access to hear, for those who were invited to attend that day, and for all members of the Legislature to attend.

I would note that in 2003, I was locked out of a ballroom at the North Bay Best Western, as I had not been a privileged invitee to see the in-camera presentation of the budget at Magna. So I was delighted to be here on March 25, and to be able to share with all viewers across the province the presentation of the budget. I would note that all three caucuses do go through the lock-up procedure.

On the day, March 25, all members were told that before 4 p.m. they would proceed to the Legislature, escorted by a member of the minister's office and the OPP. That was set out in the instructions. The Conservative caucus was advised that they could leave shortly before 4; that's what I'm told. I am told, as well, and I am seeking to confirm, that there was some confusion between the security and the staff at that time as to how they were to be escorted.

I would note that at 4 p.m. on the afternoon the budget was introduced, a couple of members of the PC caucus did manage to get here in time and raise their concerns that the rest of their caucus had not been able to leave the lock-up. We were also concerned. We agreed with your ruling at the time, Mr. Speaker, that we stand down the reading of the budget speech until all members of the caucus from the Conservative Party were allowed to reach the chamber. The absence of members of the Conservative caucus was brought to your immediate attention. We all agreed with your ruling that we should wait until they were allowed to arrive, and we all sat here patiently awaiting their arrival. The finance minister did not start his budget speech until he received an indication from you, Mr. Speaker.

I would note that the member from Parry Sound–Muskoka misspoke in his presentation by saying that his members were not able to be in the House when the minister was tabling his budget. That in fact is incorrect. The budget was not tabled until all members were in the House who wanted to be here. I would suggest to the member from Renfrew–Nipissing–Pembroke that you did not have to stop him. There was a request that we pause until all were here, and we acceded to the request. No privilege was breached. Everyone was here for the presentation of the budget. There's no prima facie case of privilege. All members who made their way to the chamber were in their seats when the finance minister rose and began his speech. The government intended to allow time for members of all three caucuses to make their way to the Legislature. Unfortunately, that was not the case, but remedial action was taken that allowed us to proceed.

I would note that all precedents presented by the member for Parry Sound–Muskoka are not on point. They do not involve the presentation of a budget. They involve protests, and we all know that we were very familiar with procedures around protests here during the 1999-2003 period. That was not the case in this particular circumstance. They were not dealing with the budget procedure. Twice the member from Parry Sound–Muskoka stated that they were not allowed to be in the House when the budget was presented, which in fact is false.

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I would also note that there was no lock-up the day of the throne speech. The leader of the official opposition managed to be late for that as well, despite the fact that there was no lock-up, so I question the—there's no accounting for punctuality.

The Minister of Finance will be working with the OPP and legislative security to ensure that this circumstance does not happen again, Mr. Speaker, and I will be providing you with written submissions in response to the letter we received on April 8.

Mr. Peter Kormos: I have no quarrel with people providing written submissions, but I do recall that when member Ouellette rose on a point of privilege, there was a response by way of written submissions from the government House leader, and that's fine. At the time, I queried whether it was in order for those not to become part of the record. I was shocked when I subsequently discovered that Mr. Ouellette hadn't received them either. I just assumed—it was so naive of me. It was so unusual. I just assumed that they would have been served upon Mr. Ouellette so that he could rebut, if he chose to, any portion of it.

I have no quarrel with written submissions. If there are written submissions, though, I submit to you, sir, that the

opposition parties have an opportunity to receive those submissions and to respond to them, should they wish, prior to the Speaker making a ruling.

The Speaker (Hon. Steve Peters): Yes, I thank the member for Welland for that point, and I'll speak to the point of privilege, but let me just come back to that.

As the honourable member will remember, and all members of the House will recall as well, I did speak to this and encouraged this discussion to take place amongst House leaders.

For the honourable members' information, when I received the notice of the point of privilege from the member from Parry Sound–Muskoka, I noted at the bottom of his point of privilege that it had been cc'd to the government House leader. That is why the honourable member from Welland, who is the House leader of the third party, received that same letter today, because I felt it was appropriate that he be aware of the information that I had from the member from Parry Sound–Muskoka that had also gone to the government House leader. I felt it was important for you to have that in responding to the point of privilege.

I would just, once again, reiterate, to encourage that discussion to take place, that I'm quite happy to have direction given to me from the House leaders in future instances, such as being given notice that the Speaker automatically copy that to the members. But again, I think this is an issue that we do need to discuss.

Mr. Peter Kormos: With respect, this isn't privileged correspondence when one serves notice upon the Clerk and/or the Speaker, for instance, about a point of privilege to be raised. It's not privileged communication. The Speaker is free to do whatever he or she wishes to.

I submit that the Speaker has, in fact, taken control of the matter by ensuring that all caucuses receive a copy of the notice. I think that's fair and appropriate, and I think the Speaker has every right to do that unilaterally. I don't know what Mr. Miller may say to it.

The Speaker (Hon. Steve Peters): Perhaps, and I'm certainly prepared to do this as Speaker, to assist me in making that decision, if any of the new information that has been put forward has not been copied to all three parties, or all members are not aware of it, then I will not use that in my deliberating.

The member from Whitby–Oshawa on the same point of privilege.

Mrs. Christine Elliott: If I could just concur with the points that have been made by the member from Welland in the case of the point of privilege that was brought previously by the member from Oshawa, it would appear that a decision was made on the basis of information that wasn't available to all parties. I'd submit that it's contrary to the rules of natural justice in the sense that you need to know the case that you have to meet. When you don't see those written submissions, it's impossible to respond.

I would encourage you, Mr. Speaker, to consider a requirement that in the future, all matters be copied to all members who are involved with these points.

Hon. Monique M. Smith: I would remind the member from Whitby–Oshawa that this isn't a court of law. I do recognize what you're saying, but we weren't given submissions from the member for Oshawa when he made his submission. We had to respond orally to what was presented in writing to the Speaker when it was presented to us in the House. So we had no submissions with which to respond to—

The Speaker (Hon. Steve Peters): And again, I think this is a very worthy topic for the House leaders to discuss. I also, though, believe that, just as a courtesy amongst all members, if somebody is going to be writing to the Speaker with a point of privilege, the easiest thing to do to avoid any of the discussions that we're having right now is to cc it to the other two parties.

Mr. Peter Kormos: I don't want to belabour this. This isn't a court of law, but it is the court of Parliament, the highest court, if you will; a court which has the capacity to regulate itself. I don't want to quarrel on this particular issue, but in fact there are frequent references to either the high court of Parliament or the court of Parliament and its adjudicative role. I simply wanted to respond to the government House leader with that observation.

The Speaker (Hon. Steve Peters): Thank you.

First, in response to the member from Parry Sound–Muskoka: I think it's important to clarify, since reference was made to standing order 21(b), that 21(b) refers to a matter being taken up immediately once the Speaker finds that that a prima facie case of privilege exists. It does not refer to immediate raising of the point in the first place, to clarify that.

I thank the honourable member from Parry Sound–Muskoka, the member from Welland, the government House leader and the member from Whitby–Oshawa for their comments. I will welcome any additional information and would remind members that it should be copied to all members. I will defer my decision to a later date.

There being no further business, this House stands recessed until 1 p.m. this afternoon.

The House recessed from 1207 to 1300.

MEMBERS' STATEMENTS

BETH DONOVAN

Mr. Steve Clark: I rise today to pay tribute to Beth Donovan, who passed away suddenly on April 4 at the age of 67.

Beth's influence in community care is evident with the Beth Donovan Hospice in Kemptville bearing her name.

Donovan began her involvement with the hospice in 1994, two years after it was formed by Father Brian Hart and the parish council in Merrickville. Originally known as the Merrickville Community Hospice, the rectory at St. Ann Roman Catholic Church was used to provide respite hospice care services. A registered nurse, she joined the hospice to help coordinate volunteers and

Office of the Government House Leader

Legislative Building
Queen's Park
Toronto, Ontario
M7A 1A1

Bureau du leader parlementaire du gouvernement

Édifice de l'Assemblée législative
Queen's Park
Toronto (Ontario)
M7A 1A1

Ontario

April 14, 2010

The Honourable Steve Peters
Speaker of the Legislative Assembly of Ontario
Room 180, Main Legislative Building
Queen's Park
Toronto, ON M7A 1A2

Dear Mr. Speaker:

I am writing to you today regarding the matter of privilege raised by the Member for Parry Sound-Muskoka in a letter to you dated April 1, 2010 and in the House on April 12, 2010.

The Member for Parry Sound-Muskoka attended the 2010 budget lockup on Thursday, March 25, not March 24 as stated in his letter. He participated in the lock-up and briefing, which has been offered every year prior to the tabling of a provincial budget, on the understanding that, once inside the room, he would not be allowed to leave until just minutes before 4:00 pm at which time he would be escorted to the Legislative Chamber to be present for the delivery of the budget by the Finance Minister. A similar lock-up and briefing was provided for both of the other caucuses.

All Members were told that shortly before 4:00 pm, MPPs would proceed to the Legislature, escorted by a member of legislative security and/or OPP officers, to be present when the Minister of Finance tabled the budget. Two of the caucuses were able to leave their lock-up in time to arrive in the Chamber at 4:00 pm. I understand the Member for Parry Sound-Muskoka, along with sixteen of his colleagues, did not have sufficient time to make it into the Chamber for 4:00 pm. As stated in the House on April 12, 2010, the government regrets this. As in all previous years, the intention was for all Members to be escorted from the lock-ups to the Chamber with enough time for everyone to be seated when the Finance Minister rose to table the budget.

At 4:00 pm on March 25, 2010, while there were some members of the PC caucus in their seats, the fact that other members of the PC caucus were still making their way to the Chamber was drawn to the immediate attention of the Speaker. The Speaker, quite appropriately, stopped proceedings to allow all members to make their way to the Chamber. Contrary to what was noted by the Member for Parry Sound-Muskoka on April 12, in his submission, the Finance Minister did not start his budget speech until he received indication from the Speaker that all had arrived.

There is no prima facie case of a violation of privilege. All Members who made their way to the Chamber were in their seats when the Finance Minister began. Members were not precluded from hearing the delivery of the budget speech nor from fulfilling any of their duties as elected officials.

The government intended to allow time for members of all three caucuses to make their way from the Macdonald Block, which is outside the legislative precinct, to the Chamber in time for the presentation of the budget and all members were informed in writing that this would be the case. Members were told that they would be allowed to leave just prior to 4:00 pm allowing enough time to walk directly to the Chamber.

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I have been able to confirm that the OPP officer positioned at the door of the room being used for the PC lock-up was instructed at approximately 3:50 pm to let the members of the PC caucus leave for the Chamber. Unfortunately, the OPP officer did not acknowledge the authority of the staff person who gave the instruction and a more senior staff person had to be directed to the room to ask the OPP officer to let the members leave for the Chamber. The minutes lost finding a more senior staff person account for the delay in giving all members time to get to the Chamber. I would like to make it clear that at no time did the government prevent or obstruct any member from arriving in the Chamber for the presentation of the budget. I would also like to note that the government does not employ security staff for budget day lock-up. Only officers of the OPP are used.

The government regrets that any member was delayed in getting to the Chamber. To our knowledge, this has not been a problem in the past. The OPP is responsible for securing the space used for budget lock-up and they take their responsibilities seriously. I think you would agree that they do a good job. That being said, the government will look at the procedure used in budget lockups and will consult with the OPP to ensure that a delay such as this one, which occurred on March 25, 2010, does not happen in the future.

The Member for Parry Sound-Muskoka cited a number of precedents from the House of Commons. None of the precedents are applicable in this instance as they all relate in one way or another to protests taking place in the parliamentary precinct in Ottawa and not to security or proceedings involving the delivery of the budget. I find it interesting that the Member for Parry Sound-Muskoka did not cite a ruling by Speaker Carr made on May 8, 2003 when he was asked to rule on the presentation of the 2003 budget outside of the Legislature. Speaker Carr said, referencing a ruling made by Speaker Turner on May 9, 1983, "Budget secrecy is a political convention as is the practice that the Treasurer presents his budget in the House before discussing it in any other public forum. It has nothing to do with parliamentary privilege. As I stated in my ruling of February 1, 1983, although it is a courtesy to the Assembly for a minister to release information in the assembly before releasing it to the press or the public, it is not a breach of the privileges... of the assembly if this does not happen. In effect, Speaker Turner stated that the presentation of the budget was not a matter that fell under any collective or individual privilege."

The 2010 budget was presented in the Legislature for all to hear. Members, did in fact, have time to arrive in their seats before the Finance Minister began the presentation of his budget on March 25, 2010. There was no breach of any collective or individual privilege.

I would be happy to discuss this with you in more detail. I look forward to your ruling.

Yours sincerely,

Monique M. Smith
Government House Leader

c: Norm Miller, MPP, Parry Sound-Muskoka
John Yakabuski, Opposition House Leader
Peter Kormos, Third Party House Leader

Clerk

Ontario

NORM MILLER

MEMBER OF PROVINCIAL PARLIAMENT
PARRY SOUND-MUSKOKA

OFFICE OF THE SPEAKER
RECEIVED
APR 19 2010
10:08 a.m.

April 15, 2010

HAND-DELIVERED

The Honourable Steve Peters
Speaker, Legislative Assembly of Ontario
Room 180, Legislative Building
Queen's Park
Toronto, ON M7A 1A2

COPY

Dear Speaker:

I am writing further to the question of privilege I raised at the conclusion of Question Period on Monday, April 11th. I wish to draw your attention to information that may assist you in determining whether a *prima facie* case for obstruction has been established.

The first item is the Government House Leader's acknowledgment that Members of the Loyal Opposition were obstructed. As the extract from *Hansard* that I am enclosing shows, in referring to my colleagues and I being detained at the briefing room, Minister Smith states: "They were, in fact, obstructed by security at the time." In my respectful submission, you need look no further than this admission to find that a *prima facie* breach is established. Questions involving who was responsible for the breach, and whether the breach ought to be excused, are matters for a fuller study by the appropriate committee of the Legislature.

I am supported in this view by O'Brien and Bosc, and particularly the passage I referred to you during my initial submission. They state that a speaker is apt to find a *prima facie* breach of privilege has occurred by a mere *claim* the member was physically obstructed, impeded, interfered with or intimidated in the performance of their parliamentary functions. Here, the Government House Leader goes substantially beyond my claim. She confirms it.

I am not aware of any authority to support the Government House Leader's apparent contention that you should refuse to find a *prima facie* case of breach exists if you do not believe the Government had any responsibility for the obstruction. To the contrary, I am aware of Speaker Fraser's ruling of October 30, 1989. Members had complained of being obstructed following a protest of the Goods and Services Tax. In finding a *prima facie* breach, Speaker Fraser established that any obstruction is a breach of privilege whether or not the obstruction was aided by the government.

I am also not aware of any authority that allows the Government your oversight, and the oversight of the Legislative Assembly, by what she has referred to as steps the Minister of Finance is taking with OPP and legislative security to ensure that a breach like this does not happen again. The Members, if not the Speaker, ought to have oversight of the remedy of a breach. The steps the Minister of Finance is taking may be part of the solution, they may be the whole, but it cannot be up to persons implicated in the breach to determine what the remedy will be. The Legislature has not delegated that power to the executive branch.

Queen's Park Office:
Room 848
Legislative Building
Queen's Park
Toronto, ON M7A 1A8
Tel. (416) 325-1012
Fax (416) 325-1153

Bracebridge Constituency:
165 Manitoba Street
Bracebridge, ON P1L 1S8
Tel. (705) 645-8588
Fax (705) 645-8148
1-888-267-4826

Parry Sound Constituency:
17 James Street
Parry Sound, ON P2A 1T4
Tel. (705) 746-4266
Fax (705) 746-1578
1-888-701-1176

E-mail: norm.millerco@pc.ola.org

The second item I believe will assist you is an extract from the *Hansard* record for March 25th, which contradicts the Government House Leader's effort to minimize the breach of privilege. In her remarks, Minister Smith alleges:

> I would note that the member for Parry Sound – Muskoka misspoke in his presentation by saying that his members were not able to be in House when the minister was tabling the budget. That is in fact incorrect. The budget was not tabled until all of the members were in the House who wanted to be here.

The record from March 25th shows that immediately after Orders of the Day were called, Minister Duncan moved the budget motion, tabled the budget, following which the Speaker called for pages to deliver the budget to members. Minister Smith is factually wrong.

I also take exception to the Government House Leader's submission that the Government did not table the budget until all members who wanted to be in the House arrived. I wanted to be in the House. The Leader of the Opposition and colleagues I referred to in my initial submission wanted to be in the House. We were not, and could not be, as a result of the obstruction that occurred.

In my respectful submission, however, the fact of whether we were in our seats when the budget was tabled or not, and even if we wanted to be or not, is not pertinent to whether or not a *prima facie* case of obstruction has been established. The obstruction began with my colleagues and me being detained at the briefing room. When the breach of our privilege ended and what other aggravating factors occurred only matter to consideration of the seriousness of the breach and how it should be remedied. These are more properly the subject of a review of this matter by the appropriate committee of this Assembly.

Sincerely,

Norm Miller
Parry Sound - Muskoka
Whip and Finance Critic of the Official Opposition

Encl.

cc. Hon. Monique Smith, Government House Leader
Peter Kormos, NDP House Leader

me in the first instance to Hatsell as a source of parliamentary precedent. I'll be referring to it again, I'm sure.

Hon. Monique M. Smith: Thank you to the member from Parry Sound–Muskoka and, of course, it's always lovely to have another opportunity to hear the member from Welland refer to his precedents and all the things that he loves to do.

I would argue that there is no breach of privilege in this particular circumstance. I would also note that under section 21(b), a question of privilege is to be taken up immediately. While the member has provided us with written submissions dated April 1, this alleged breach of privilege occurred Thursday, March 25. The House did sit for a full week afterwards, and it could have been raised at that time. I did not receive the submissions in my office until April 8. So I am just pointing out for the record that it was not done in an incredibly timely way, though section 21(b) does require that it be taken up immediately.

I would also argue that the member from Parry Sound–Muskoka misspoke in his submissions by saying they were obstructed by the government. They were, in fact, obstructed by security at the time. Procedures were set out and instructions given to all members of the Legislature with respect to the lock-up that occurred around the budget, which was delivered on March 25. Unlike other budgets, like that presented in 2003 at Magna, this one was presented here in the Legislature for the general public to have access through the parliamentary network, for the public to have access to hear, for those who were invited to attend that day, and for all members of the Legislature to attend.

I would note that in 2003, I was locked out of a ballroom at the North Bay Best Western, as I had not been a privileged invitee to see the in-camera presentation of the budget at Magna. So I was delighted to be here on March 25, and to be able to share with all viewers across the province the presentation of the budget. I would note that all three caucuses do go through the lock-up procedure.

On the day, March 25, all members were told that before 4 p.m. they would proceed to the Legislature, escorted by a member of the minister's office and the OPP. That was set out in the instructions. The Conservative caucus was advised that they could leave shortly before 4; that's what I'm told. I am told, as well, and I am seeking to confirm, that there was some confusion between the security and the staff at that time as to how they were to be escorted.

I would note that at 4 p.m. on the afternoon the budget was introduced, a couple of members of the PC caucus did manage to get here in time and raise their concerns that the rest of their caucus had not been able to leave the lock-up. We were also concerned. We agreed with your ruling at the time, Mr. Speaker, that we stand down the reading of the budget speech until all members of the caucus from the Conservative Party were allowed to reach the chamber. The absence of members of the Conservative caucus was brought to your immediate attention. We all agreed with your ruling that we should wait until they were allowed to arrive, and we all sat here patiently awaiting their arrival. The finance minister did not start his budget speech until he received an indication from you, Mr. Speaker.

I would note that the member from Parry Sound–Muskoka misspoke in his presentation by saying that his members were not able to be in the House when the minister was tabling his budget. That in fact is incorrect. The budget was not tabled until all members were in the House who wanted to be here. I would suggest to the member from Renfrew–Nipissing–Pembroke that you did not have to stop him. There was a request that we pause until all were here, and we acceded to the request. No privilege was breached. Everyone was here for the presentation of the budget. There's no prima facie case of privilege. All members who made their way to the chamber were in their seats when the finance minister rose and began his speech. The government intended to allow time for members of all three caucuses to make their way to the Legislature. Unfortunately, that was not the case, but remedial action was taken that allowed us to proceed.

I would note that all precedents presented by the member for Parry Sound–Muskoka are not on point. They do not involve the presentation of a budget. They involve protests, and we all know that we were very familiar with procedures around protests here during the 1999-2003 period. That was not the case in this particular circumstance. They were not dealing with the budget procedure. Twice the member from Parry Sound–Muskoka stated that they were not allowed to be in the House when the budget was presented, which in fact is false.

1200

I would also note that there was no lock-up the day of the throne speech. The leader of the official opposition managed to be late for that as well, despite the fact that there was no lock-up, so I question the—there's no accounting for punctuality.

The Minister of Finance will be working with the OPP and legislative security to ensure that this circumstance does not happen again, Mr. Speaker, and I will be providing you with written submissions in response to the letter we received on April 8.

Mr. Peter Kormos: I have no quarrel with people providing written submissions, but I do recall that when member Ouellette rose on a point of privilege, there was a response by way of written submissions from the government House leader, and that's fine. At the time, I queried whether it was in order for those not to become part of the record. I was shocked when I subsequently discovered that Mr. Ouellette hadn't received them either. I just assumed—it was so naive of me. It was so unusual. I just assumed that they would have been served upon Mr. Ouellette so that he could rebut, if he chose to, any portion of it.

I have no quarrel with written submissions. If there are written submissions, though, I submit to you, sir, that the

TAXATION

Mr. John O'Toole: I'm pleased to read the offsetting petition, which offsets pretty well everything the member from Ajax–Pickering said. This is the truth. It reads as follows:

"Whereas residents of Durham do not want Dalton McGuinty's new sales tax, which will raise the cost of goods and services they" buy and "use every day"—this is signed by thousands of people; "and

"Whereas the McGuinty Liberals' new ... tax of 13% will cause everyone to pay more for gasoline for their cars, heat, telephone, cable and Internet services for their homes, and will be applied to home sales over $400,000; and

"Whereas the McGuinty Liberals' new sales tax of 13% will cause everyone to pay more for meals under $4, haircuts, funeral services, gym memberships," sports memberships, fitness memberships, "newspapers, and lawyer and accountant fees," financial planner fees—the list goes on; "and

"Whereas the McGuinty Liberals' new sales tax grab will affect everyone in the province: seniors, students, families," farmers "and low-income" people—everyone who lives here;

"We, the undersigned, petition the Legislative Assembly of Ontario as follows:

"That" Dalton McGuinty "not increase taxes" on July 1, 2010, Canada Day. Don't affect Ontario families.

I'm pleased to sign and support this.

The Speaker (Hon. Steve Peters): The time for petitions has ended.

Pursuant to standing order 58(b), this House is recessed until 4 p.m.

The House recessed from 1332 to 1600.

ORDERS OF THE DAY

2010 ONTARIO BUDGET

BUDGET DE L'ONTARIO DE 2010

Hon. Dwight Duncan: I move, seconded by Mr. McGuinty, that this House approves in general the budgetary policy of the government.

The Speaker (Hon. Steve Peters): Mr. Duncan has moved, seconded by Mr. McGuinty, that this House approve in general the budgetary policy of the government.

I would beg the indulgence of all members to allow the pages to deliver the budget, and I'd just ask right now that you ensure that—

Mr. John Yakabuski: On a point of order, Mr. Speaker: The members of our caucus were not allowed out of the lock-up. With only two minutes to get here, we are still waiting for our members. I would beg the indulgence of the House to allow this proceeding to wait until such time as the rest of our members have arrived, including—

Mr. Ted Arnott: On the same point of order, Mr. Speaker: I think it's worthwhile to point out that it is a long-standing tradition *[inaudible]* Legislature are allowed to go into a lock-up in advance of the budget. But, as we tried to leave the lock-up at about five minutes to 4, we were told by the OPP that they were waiting for word from the Minister of Finance's office. They kept us back so that we literally had to race over here—

Interjections.

The Speaker (Hon. Steve Peters): Order. I would just say to the member from Wellington–Halton Hills, we do not need to rise on points of order to rag the puck. I will give members of Her Majesty's loyal opposition enough time to enter the chamber.

Once again, I would beg the indulgence of all members to allow the pages the opportunity to deliver the budget speech. I would ask that you keep your aisles clear because, as all members—and I'm sure many of our guests—are aware, the pages are endeavouring, as always, to break the record in delivering that speech. The record that they are attempting to break is 20.35 seconds.

Have all members received a copy of the budget?

Minister of Finance.

Hon. Dwight Duncan: Mr. Speaker, I rise to present Ontario's 2010 budget.

Monsieur le Président, je présente aujourd'hui le budget de l'Ontario de 2010.

For the better part of the last two years, the global economy has been mired in deep recession.

The Ontario economy, like most others, has felt the effects of both a global recession and the transformation of key sectors, especially manufacturing and forestry.

I'm pleased to report that some early signs of the recovery have arrived. However, the job losses that have affected Ontario families remain and this government will continue to take action.

Working together, we must continue to create jobs in the short term and continue to lay the foundation for growth and a new prosperity.

Ontario's speech from the throne established a five-year plan to open Ontario to new jobs and economic growth.

The Open Ontario plan will create an Ontario even more open to new ideas, new people, new investment and, most importantly, new jobs.

This budget begins to chart a course to a stronger economic future for the people of Ontario.

Speaker, when the recession hit, Ontarians, like Canadians elsewhere, had to cope with sudden, unexpected job losses that devastated individuals, families and communities.

We are responding with an aggressive job-creation plan.

We are investing $32 billion in job-creating stimulus. According to the Conference Board of Canada, our investment is supporting over 220,000 jobs this year. Our stimulus plan added nearly a full point to Ontario's gross

Legislative Assembly of Ontario

Assemblée législative de l'Ontario

Ontario

Peter Kormos M.P.P.
Niagara Centre

May 3. 2010

The Honourable Steve Peters
Speaker of the Legislative Assembly
Room 180, Legislative Building
Queen's Park
Toronto ON M7A 1A2

Dear Speaker:

Re: Miller Point of Privilege - Budget Lock-up

Further to the submissions by Mr. Miller and Ms. Smith, I am advised by Ms. Horwath, leader of the ONDP, that she and other New Democrats attended the budget lock-up. Ms. Horwath advises that she felt concern about not being permitted to leave the lock-up in sufficient time to attend the budget speech. She recalls that at one point she said words to the effect of "why don't we just leave". She was finally permitted to leave and went promptly and at a fast pace to the legislature where she was able to be present for the beginning of the budget speech. Ms. Horwath notes that different groups from the lock-ups traveled to the legislature by different routes; some by the tunnel and some by the outdoor pedestrian route.

Sincerely yours,

P. Kormos

Peter Kormos

Copies: The Hon. M. Smith; N. Miller, MPP

Room 115, Legislative Building, Queen's Park, Toronto, Ontario M7A 1A5
Tel (416) 325-7106 • Fax (416) 325-7067

No. 26

N° 26

Votes and Proceedings

Legislative Assembly
of Ontario

Procès-verbaux

Assemblée législative
de l'Ontario

Tuesday
May 4, 2010

Mardi
4 mai 2010

2nd Session,
39th Parliament

2e session
39e législature

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 2nd 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.

Mr. Miller (Parry Sound–Muskoka) moved,

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.

M. Miller (Parry Sound–Muskoka) propose,

ORAL QUESTIONS

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).

REPORTS BY COMMITTEES

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).

INTRODUCTION OF BILLS

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

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

DÉPÔT DES PROJETS DE LOI

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

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

PETITIONS

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. OToole.

2010 ONTARIO BUDGET
MINISTER'S OFFICE - STAFF MINUTE BY MINUTE

OPP - [redacted]

NB. On October 6, 2010, the Standing Committee on the Legislative Assembly ordered that certain information in this box be redacted.

IMPORTANT REMINDER

PLEASE TURN OFF CELL PHONES AND DISABLE THE WIRELESS FEATURE ON YOUR BLACKBERRY BEFORE ENTERING THE LOCK-UP ROOMS

If you need to check your messages you must leave the lock up area

Time	Activity	Minister's Office Staff	Location *(all lock-up rooms are located in the MacDonald Block on the 2nd Floor)*
CHARRISSA WILL DISTRIBUTE BADGES WEDNESDAY EVENING			
8:00 am	Media Lock-up opens	Darcy/ Alicia/ Stefanie	Ontario North/South
8:00-8:30 am	Chief of Staff meeting	Tim/Alex	Rm 263 MLB
8:00-9:15 am	Treasury Board/ Management Board Meeting	Manley/ ADM Minister Phillips to Chair	Trillium
8:30 am	Minister's Office staff register & pick up security badges then proceed to the Liberal Staff Lock-up	All remaining staff Manley will register after the TB-MB meeting	**Registration**:Staff (St. Clair/ Thames/ Erie) **MO and PO Comm's staff have their badges **Liberal Lock-up**: (St. Clair/ Thames/ Erie)
8:30 am	Sort and label copies of the budget	Frances/Heuton/ Sarah/Nat	Rm 247, Main Legislative Building
9:00 am	MPP/Staff Lock-up opens	Sophia/ Cathy /Nat Regional Desks Andrew / Jonny Andrew/Jonny	Liberal Lock-up: St. Clair/ Thames/ Erie PC Lock-up: Kenora/Nipigon NDP Lock-up: Nipissing
10:00 am	Ray picks up Minister	Ray	

Time	Activity	Minister's Office Staff	Location *(all lock-up rooms are located in the MacDonald Block on the 2nd Floor)*
10:05 am	Minister arrives at the office	Michelle	Minister's Office - Frost Building South
10:00-10:30 am	NDP lock-up/ Q & A's ***Briefing Team: list provided***	Andrew/ Sean/Jonny / Steve	Nipissing
10:10-10:50 am	Speech/ Q&A Prep *(if required)*	Minister/ Darcy	Minister's Office - Frost Building South
10:30 am	Liberal Staff Briefing **(Tim /*Mazer to present)***	All Policy Staff	St. Clair/ Thames/ Erie
10:30-11:00 am	PC lock-up/ Q & A's ***Briefing Team: list provided***	Andrew/Sean / Jonny / Steve	Kenora/ Nipigon
11:00-11:30 am	**Technical briefing for Media** Executive Team: ***list provided***	Tim/ Darcy/ Andrew/ Alicia/ Stefanie	Ontario North/South
11:55 am	Minister departs his office for MacDonald Block, OPP boardroom	Jason	Frost to Room M2-77, 2nd floor - MacDonald Block, across from Superior
12:00-12:30 pm	Minister's Briefing ***The purpose of this briefing is to discuss issues raised from the technical media & opposition briefings***	Minister/ Tim/ Darcy/ Andrew /Alicia/ Mullin/ Wayne/ MOF Executive Team	OPP Boardroom, Room M2-77 (located across from Superior Room)
12:00 noon	(make-up artist) arrives, Kent Williams will meet her at Frost North and bring her over to - MacDonald Block	Scott	OPP Boardroom, Room M2-77 (located across from Superior Room)
12:00 noon	Lunch served	Minister/ Tim/ Darcy/ Mullin/ Peter Wallace/ Wayne/ MOF Executive Team	OPP Boardroom, Room M2-77 (located across from Superior Room) *** Lunch for all remaining staff will be served in the MOF Staff Room, Queenston***
12:00 noon	Stakeholder Lock-up opens	All Policy staff	MacDonald Block, 2ND floor (see layout for room allocations)

Time	Activity	Minister's Office Staff	Location *(all lock-up rooms are located in the MacDonald Block on the 2nd Floor)*
	Health (Karolina to introduce Dan to FIN Official)	Karolina/Dan	Humber
	TCU and Education. (Daniel to introduce Pierina to FIN Officials)	Daniel/Karolina/ Pierina	Trent
	Social Services/Communities/Poverty (Charrissa/Karolina to introduce Pierina and Joanna to FIN Officials)	Charrissa/Karolina/Pierina/ Joanna	Frontenac
	Consultants/Government	Mazer / Other policy staff	Rideau/Ottawa
	Business/Finance	Mazer/ Mullin	Kawartha/Algonquin
	Energy/Tourism/Environment/Transportation/ Municipal/ Labour/ Culture (MO staff to introduce PO staff to FIN Officials)	Sarah R/ Al/ Manley/Alec/ Daniel/ Freeman/McClung	Temagami/Severn
12:30 pm	Move MO Staff from Liberal Lock up to stakeholder lock up	Cathy/ OPP	List of MO Staff attending lockup
12:30-12:58 pm	Minister's pre-news conference prep/ downtime	Tim/ Darcy/ Alicia/ Stefanie	OPP Boardroom, Room M2-77
12:45 pm	Application of make-up for the Minister	Alicia	OPP Boardroom, Room M2-77
12:58 pm	Minister departs OPP Boardroom for the News Conference.	Darcy	Ontario Room North/South
1:00-1:30 pm	Minister's News Conference	Tim/ Darcy/ Alicia/ Stefanie/	Ontario Room North/South
1:30 pm	Gallery Guest Registration set-up in the lobby of the Main Legislature	Alex to set up and instruct volunteers Alex/Sarah E/ Frances/ Michelle / Nat/ OYL	Main Entrance, Main Legislative Building
1:30 pm	Minister's News Conference concludes, depart to OPP boardroom for debrief	Tim/ Darcy/ Alicia/	

Time	Activity	Minister's Office Staff	Location *(all lock-up rooms are located in the MacDonald Block on the 2nd Floor)*
1:32 pm	Post News Conference Debrief	Minister/ Tim/ Darcy/ Alicia/ Alex/ Mullin/ Peter Wallace/ MOF Executive Team	OPP Boardroom, Room M2-77
1:40 pm	Minister departs OPP Boardroom for Minister's Office ***(this is at the Minister's discretion)***	Jason	
1:40 pm	Meet OPP in front of PC Lock-up to escort Tim Hudak to News Conference. ** **Enter through Ontario North doors**	Andrew/Jonny /OPP	Kenora/Nipigon
1:45-2:15 pm	PC News Conference	Andrew/Jonny/ Darcy/ Alicia/ Stefanie	Ontario Room North/ South
1:50-2:20 pm	Minister's downtime ***(if required)***	Darcy / Jason	Minister's Office, Frost South
2:00 – 2:30 pm	Optional briefing for Milloy/Broten/Melleur/Gravelle	Tim/Mazer/Charrissa/Karolina/ Roberts/ Daniel	Niagara
2:45-3:15 pm	Caucus Briefing ***(Tim to present)***	Tim /Mazer/Mullin	Niagara
2:00 pm	Satellite Tour set-up	Stefanie	Minister's Boardroom
2:30 pm	Gallery Guest Registration begins	Heuton /Sarah E/ Frances/Nat /OYL	Main Entrance, Legislative Building
2:25 pm	Meet OPP in front of NDP Lock-up to escort Andrea Horwath to News Conference. ** **Enter through Ontario North doors**	Andrew/ Jonny	Nipissing
2:30-3:00 pm	NDP News Conference	Andrew/Jonny/ Darcy/ Alicia/ Stefanie	Ontario Room North/ South
2:50 pm	Minister departs Minister's Office for OPP Boardroom in MacDonald Block ***(if required)***	Jason	From Frost to OPP Boardroom, Room M2-77

Time	Activity	Minister's Office Staff	Location *(all lock-up rooms are located in the MacDonald Block on the 2nd Floor)*
3:00- 3:15 pm	Minister's Issues/ Post-Opposition News Conference Briefing	Tim/ Alex/ Andrew/Darcy/ Alicia/ Peter Wallace	OPP Boardroom, Room M2-77
3:00- 4:00 pm	**FYI:** Technical Briefing for Deputy Ministers	Wallace	Treasury Board Office, 1st floor – Frost South
3:15 pm	Gather and escort (with OPP) pre-identified stakeholders who will be seated in the gallery for the speech. ***(Cathy will provide list and have gallery tickets)***	Al /Cathy/ OPP	Meet OPP escort outside of Niagara room and proceed to Main Building via tunnel
3:25 pm	Premier greets the Minister	Jason/Darcy/	OPP Boardroom, Room M2-77
3:28 pm	Premier and Minister depart for Niagara room to address Caucus	Jason and Michelle Wong to escort	Niagara
3:20 pm	Premier and Minister arrive at Caucus Briefing to deliver brief remarks (1-2 minutes)	Jason/Darcy/Alex/Tim/ Andrew	Niagara
3:30 pm	Premier and Minister depart Niagara room for Premier's office in Main Legislature, Room 281 Caucus follow and proceed to the Legislature	Jason and Michelle Wong to escort	
3:35 pm	Meet OPP in front of Liberal Lock-up Meet OPP in front of PC Lock-up Meet OPP in front of NDP Lock-up	Manley Daniel Turnbull	Niagara Kenora/ Nipigon Nipissing
3:35 pm	OPP to escort all MPPs to the Legislative Building, East Lobby, MO staff to accompany OPP and MPPs	Manley/ Daniel/ Turnbull	Legislative Building, East Lobby
3:45 pm	Premier and Minister arrive in Premier's Office	Jason	Room 281, Main Building

Time	Activity	Minister's Office Staff	Location *(all lock-up rooms are located in the MacDonald Block on the 2nd Floor)*
3:55 pm (approx)	Premier and Minister depart Premier's Office, walk down the hall and through front doors of Chamber.	Jason/Michelle Wong	
4:00 pm	Ensure that pages have all documents.	Andrew	Legislature
4:10 pm (approx.)	Minister begins budget speech in Legislature		Legislature
	Lock-ups are released		Macdonald Block
	Liberal Caucus & staff e-mailed electronic copies of the budget briefing binder materials	Sophia (leave lock-up and go to LCSB with memory stick)	LCSB
4:15 pm	Documents delivered to reception rooms (committee rooms 228/230)	Jason/Jonny/ Sarah E	Pick up from Room 251, Main Legislative Building
4:45 pm (approx.)	Minister concludes speech, departs Chamber via front doors, meet Ray at East Doors with car.	Darcy/Ray	
5:00 – 7:00 pm	**Minister's Satellite Media Tour** **Staff Must Remain Quiet on MO side (Trillium is available if staff wish to use it)**	**All Staff**	
5:00 pm	Application of make-up for the Minister	Alicia	Minister's Office
5:00 pm	Minister's Reception, hosted by Wayne Arthurs	Bill/ Sarah E/ Frances/Jonny/Alex	Committee Rooms 228/ 230, Main Legislative Building
5:00 pm	Media Monitoring	Staff to be identified and given their outlet (Alicia to provide list)	Minister's Office, Frost South
5:15-7:05 pm	Minister's Satellite Media Tour	Darcy/ Alicia/ Stefanie	Minister's Boardroom

Time	Activity	Minister's Office Staff	Location *(all lock-up rooms are located in the MacDonald Block on the 2nd Floor)*
5:20 pm	Budget Reception for Gallery guests Wayne Arthurs will speak	Bill/Heuton/Jonny/Nat/	Committee Rooms 228/ 230, Main Legislative Building
6:30 pm	Dinner arrives for MO staff	Amtul / Sarah / Frances	Minister's Office, Trillium Boardroom
7:10 pm	Time for Minister to eat		Minister's Office, Trillium Boardroom
7:35 pm	Minister departs for Agenda Taping at the Monk Centre	Ray/ Darcy/ Alicia	Monk Centre, UofT Alicia to provide more details
7:45 pm	Agenda Taping	Darcy/ Alicia	Monk Centre, UofT
7:50 pm	Staff depart for Andy Pool Hall	All available staff	***Andy's Pool Hall***
8:30 pm	Depart UofT for the Liberal Budget Reception	MTO/ Darcy/ Alicia	***5th Element, 1033 Bay Street (just north of Wellesly)***
8:35 pm	Minister arrives at Liberal Budget Reception	MTO/ Darcy/ Alicia	***5th Element***
9:10 pm	Minister departs 5th Element for MOF Budget Party	MTO/ Darcy/ Alicia	***Andy's Pool Hall***
9:20 pm	Minister arrives at MOF Budget Party	All staff	***Andy's Pool Hall(private party until 10pm***
9:40 pm	Depart for Pearson Airport	MTO	

Legislative Assembly of Ontario

Assemblée législative de l'Ontario

May 26, 2010

Peter Wallace
Deputy Minister and Secretary of Treasury Board \
Ministry of Finance
Frost Building South, 7th Floor
7 Queen's Park Crescent
Toronto ON M7A 1Y7

Dear Mr. Wallace,

I am writing on behalf of the Standing Committee on the Legislative Assembly. Pursuant to the Order of the House dated May 4, 2010, the Standing Committee is now undertaking a review of the matter of the delayed release of certain members of the House from the March 25, 2010 Budget lock-up.

As an important part of its review the Committee is currently questioning witnesses and attempting to gather additional information.

As such, Committee Members would like to question a person identified to the Committee only as "Dan", mentioned at the Wednesday, May 19, 2010 Committee meeting by Sergeant Nicolaas Cliteur. Sergeant Cliteur named "Dan" as the individual who appeared in person to assist in escorting Members of Parliament from the Budget lock-up to the Legislative Building.

We would appreciate your assistance in confirming the identity of the person mentioned by Sergeant Cliteur in his testimony. In your estimation, is the person identified below either likely or certain to be the "Daniel" that the Committee seeks to contact?

Daniel Malik, Senior Policy Advisor to the Minister of Finance, Chair of Treasury Board and Chair of the Management Board of Cabinet.

Is there in your view a likelihood that any other person in the employ of your Ministry could be the person named as "Dan" by Sergeant Cliteur in his testimony? If so, could you please confirm the identity and contact information for such other person?

The Committee has also instructed me to obtain the following documentation:

- a copy of the "written timetable or calendar of times" regarding the Budget lock-up, received in an email, sent to Sergeant Cliteur from "Mr. Till or somebody within the Minister's or Deputy Minister's Office";

- copies of the detailed cell phone bills of the cell phones used during the Opposition, Liberal and Stakeholder lock-ups, supplied to Sergeant Cliteur by the Budget Secretariat. The detailed cell phone bills should include exact dates, time of day and phone numbers called.

Your assistance is greatly appreciated in providing the Committee with the requested documentation as well as information on our prospective witness. The Committee looks forward to your response.

Yours truly,

Tonia Grannum,
Clerk of the Committee

Cc: Bas Balkissoon, MPP, Chair of the Committee

Encl.

Ministry of Finance
Office of the Minister

Ministère des Finances
Bureau du ministre

Ontario

7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A.1Y7
Telephone: 416 325-0400
Facsimile: 416 325-0374

7e étage, Édifice Frost sud
7, Queen's Park Crescent
Toronto ON M7A 1Y7
Téléphone : 416 325-0400
Télécopieur : 416 325-0374

SEP 16 2010

Tonia Grannum
Clerk of Committees
& Clerk of the Standing Committee on the Legislative Assembly
Legislative Assembly of Ontario

Dear Tonia:

I'm writing in response to your letter, dated May 26, 2010 to the Deputy Minister of Finance, Peter Wallace, with respect to the Standing Committee on the Legislative Assembly undertaking a review of the matter of the delayed release of certain members of the House from the March 25, 2010 Budget lock-up.

I appeared before the committee on June 2, 2010 and laid out the ministry's account of events that occurred at and during the lock-up. I sincerely apologize for the delay in replying to your correspondence.

As the responsibility for the delivery of the Ontario Budget rests with the Minister of Finance and the Minister's Office, please ensure that all questions related to the matter be directed to my office for consideration.

Sincerely,

Tim Shortill
Chief-of-Staff to the Minister of Finance

Ministry of Finance
Office of the Deputy Minister

Frost Building South
7 Queen's Park Cr
Toronto, ON M7A 1Y7
Tel (416) 325-1590
Fax (416) 325-1595

Ministère des Finances
Bureau du sous-ministre

Édifice Frost sud
7 Queen's Park Cr
Toronto, ON M7A 1Y7
Tél (416) 325-1590
Télé (416) 325-1595

Ontario

September 17, 2010

Tonia Grannum
Clerk of Committees
& Clerk of the Standing Committee on the Legislative Assembly
Legislative Assembly of Ontario

Dear Ms. Grannum,

Thank you for your letter regarding the Standing Committee on the Legislative Assembly and their review of the matter of the delayed release of certain members of the House from the March 25, 2010 Budget lock-up.

It is my understanding that the Minister's Office has replied to your letter and requested that all questions related to the matter noted above be directed to their office for consideration.

I would like to express my apologies for the delay in my reply to your letter.

Sincerely,

Peter Wallace

Peter Wallace
Deputy Minister

APPENDIX B

DISSENTING OPINION OF THE PROGRESSIVE CONSERVATIVE MEMBERS OF THE COMMITTEE

A veteran OPP officer contradicts the Government House Leader. The Chief of Staff to the Minister of Finance tells another story that contradicts the Government House Leader and the OPP. Government Caucus shuts down the committee before two key witnesses were permitted to give their deputations on what happened the day the Opposition was obstructed from being in their seats at the beginning of the Budget Speech.

These are the reasons for the dissenting report of Members who are still looking to be given explanations and apologies for the Budget Day obstruction.

It is exceptionally rare for a *prima facie* finding of a breach of privilege. Only sixteen times since Confederation has a speaker in Ontario made such a finding. Where a *prima facie* case that member's privileges have been breached, it is a serious matter that deserves serious attention. Unfortunately, the Government Caucus is determined not to give it serious attention and has used its majority to stop the hearings or get answers they would most certainly seek if it had been they who were obstructed.

The committee did not address the concerns of Members who were denied their privilege as members to move freely in the legislative precinct. It did not even attempt to address what appeared to be a concerted effort to ridicule Opposition members in front of invited guests who were seated in the Assembly chamber. The committee shut down the hearings without being able to explain why the Liberal House Leader blamed Ontario Provincial Police officers for the obstruction, even after a senior Liberal political staff member took responsibility.

The McGuinty Liberals' refusal to accept responsibility and hold anyone to account for their actions on Budget Day leaves the Opposition with the concern that it may happen again.

In response to the point of privilege raised about the obstruction, the Hon. Monique Smith, Government House Leader, placed the blame squarely on the OPP. In her letter to the Speaker on April 14th, 2010, she wrote:

> I have been able to confirm that the OPP officer positioned at the door of the room being used for the PC lock-up was instructed at approximately 3:50 p.m. to let the members of the PC caucus leave for the Chamber.

Later she adds, "Unfortunately, the OPP officer did not acknowledge the authority of the staff person who gave the instruction," and "at no time did the government prevent or obstruct any member from arriving in the Chamber for the presentation of the Budget."

The Government House Leader's remarks have proven to be entirely inaccurate. Evidence at committee contradicts her remarks. Indeed, it appears she never spoke with the police, raising unanswered questions about whom it

was she spoke with to confirm her assertions. On June 2nd, 2010, Daryl Knox, OPP Acting Inspector Queen's Park Detachment, was asked if he or the OPP had ever taken responsibility for the obstruction on Budget Day, he said under oath, "No, I did not, sir." Knox was also asked if any OPP member in his office spoke to the Government House Leader. He said, "I don't believe any of my officers spoke to any House Leader."

The committee was given a document from the Minister of Finance's office that set out a schedule for all of the events of Budget Day. It included the timetable for each caucus to be released from their lockup rooms. Curiously, only the Government Caucus was released on time, according to the schedule. Stranger still is the fact that the Opposition and Third Party Caucuses were released significantly later than the government's own schedule set out.

The committee was told that no one released the members at the proper time, because the only person authorized to release them never showed up. On May 19th, 2010, OPP Sgt. Nicolaas Cliteur said the person authorized to release Members from the lock-up was Larry Till, Assistant Director, Communications and Corporate Affairs Branch, Ontario Ministries of Finance and Revenue. "I'm waiting for an escort from either the minister's office or from Larry Till, who was in charge of the budget lock-up. Cliteur said under oath, "according to all things, he is the only person authorized to release people from the lock-up." He also said, "I don't recall anybody coming to me and telling me that they are released."

Cliteur said a political staff member of the Finance Minister's Office, later identified as Daniel Malik, Senior Policy Advisor, arrived at the same time as the release came. "In this particular case, a member of the minister's staff – I only know him as Dan – appeared at the same time that I got the okay to release the members."

These contradictions, and the Government Caucus' refusal to reconcile them, raise two issues. The first is: why are the McGuinty Liberals so desperate to deflect blame that they placed it on the OPP? The second is: why were political staff given control over when to release the Opposition Caucus?

Regrettably, neither one of these issues will ever be addressed. The Government Caucus passed a motion to block Malik and Till from being called to give deputations.

The reason given for suspending due process and blocking testimony was that someone already took responsibility for the obstruction. Tim Shortill, Chief of Staff to Finance Minister Dwight Duncan said on June 2nd, "while the delay was not intentional, it was regrettable, and please allow me to apologize to those members of the Legislature who were delayed." When asked why members were delayed and obstructed, Shortill said under oath, "what failed to happen

was an appointed time for them to be at that door to identify themselves. That is a failing on my part."

While Shortill took responsibility, the McGuinty Liberals have not shown how he was held accountable. Moreover, if it was indeed Mr. Shortill's fault, why did the Liberal House Leader blame the OPP? There is a serious gulf between what the McGuinty Liberals said at the outset, what they said in testimony before the committee, and what the Government Caucus is saying in its report.

The actions of the Government Caucus are consistent with a government that believes issues management is simply about public relations schemes and has nothing to do with dealing with significant problems. This is the same type of issues mismanagement that gave Ontario families e-Health and e-Health 2.0. The McGuinty Liberals' failure to take responsibility and fix the problems they create means they are destined to repeat them, and we are destined to pay for it.

APPENDIX C

DISSENTING OPINION OF THE NEW DEMOCRATIC PARTY MEMBER OF THE COMMITTEE

Delayed Release of MPPs from the 2010 Budget Lock-up
Standing Committee on the Legislative Assembly

NDP Dissenting Report

November 3, 2010

Introduction

On March 25, 2010, the 2010 Budget was tabled by the Ontario government.

However, opposition members of the legislature were not in the House to witness the moving of the budget motion.

Instead, they were prevented from exiting the pre-budget lock-up rooms in time to get to the Legislature for the start of budget proceedings.

The right of elected members to freely exercise their legislative duties has been long established, and is crucial to democratic governance.

Members of both opposition parties raised concern to the speaker about the delay in their release from the budget lock-up.

On May 4, 2010, the Speaker of the Legislature determined that a *prima facie* case of privilege and the House agreed that the Standing Committee on the Legislative Assembly should consider the matter of how Members came to be detained in order to ensure that in future Members are not hindered from exiting the budget lock-up in time to attend the full budget proceedings in the Legislature.

As a member of this Legislative Committee, the NDP has sought to fulfill its duty to fully understand the events of March 25, 2010 which led to the delay in release of opposition members and to recommend actions to ensure that this does not happen again.

However, due the refusal of government committee members to call witnesses with key information, and government members' further refusal to provide important documentation, the NDP believes that the Committee's investigation on this issue has been severely compromised and fails to fully explain the events of March 25, 2010. Likewise, the NDP is concerned that the Committee's recommendations may not prevent the detention of opposition members in the future.

Likewise, the NDP cannot agree to the report submitted by the government members of the committee and is instead submitting this dissenting report.

The importance of this issue should be underlined.

The prompt release of opposition members key from budget lock-ups is crucial to ensuring full and informed participation in budget proceedings, which is key to the democratic process. While Members agree to temporarily forgo their freedom of movement during the budget lock-ups, they by no means consent to be barred from legislative proceedings.

It is crucial that the events that led to this breach of privilege be fully understood and prevented from happening again.

Committee Investigation

The Committee heard from six witnesses – three MPPs, two OPP staff and one Ministry of Finance staff member.

The testimonies helped provide some important information:

- Government and stakeholder lock-ups were released prior to opposition members
- Ministry staff on site did not identify themselves to OPP officials, and did not ensure the timely release of opposition members from their respective lock ups
- Ministry staff who were to authorize the release of opposition members via phone contact with OPP officers did not provide this permission in a timely manner.

However, these witnesses were unable to answer a number of questions:

- What time were oppositions members finally allowed to leave the lock-up?
- Why did the appropriate on-site Ministry staff member not identify himself (or herself) to OPP officers?
- Why did the designated Ministry official not provide phone permission to the OPP for release of opposition members?

A Ministry of Finance official indicated at the hearing that the delayed release was the result of human error. However it is crucial to hear directly from key Ministry staff in order to verify this, and understand clearly the conditions leading to this breakdown in communication and coordination.

Hence, both opposition parties argued that there was a need to call two further witnesses:

- the Ministry official responsible for providing over the phone permission to the OPP to allow opposition members to leave the lock up (Larry Till).
- the Ministry official responsible for liaising with OPP in person (believed to be Daniel Malik)

However, despite initial agreement to hear from Mr. Till, Government members passed a motion preventing him from speaking to the committee, and preventing Mr. Malik from being called to testify.

Furthermore, to better understand the timing of permissions for release, communication chain and possible source of communication breakdown, opposition members requested copies of cell phone communication records.

However, the opposition members' request that Mr Malik and Mr Till appear before the committee was blocked by Liberal committee members.

And, despite repeated requests for the cell phone log from the committee clerk, the Ministry of Finance did not provide these.

Conclusion

In sum, Liberal committee members and the Ministry of Finance have blocked the full investigation into what took place on March 25, 2010.

In doing so they have prevented the committee from fully understanding how opposition MPPs came to be detained. They have made it impossible to confirm that delay of release of opposition members was unintentional and simply a result of human error.

Hence the government members' final report is incomplete and does not come to any clear conclusions. As a result, its recommendations are invalid.

Liberal members have refused to act in good faith to address this issue. In doing so, they have acted against the democratic tradition and processes of the House that are key to ensuring the accountability of government.

The NDP calls on the House to allow the Standing Committee on the Legislative Assembly to call further witnesses and seek further information in order to fully understand the circumstances which led to the late release of opposition members from the budget lock-up, and the proposal of evidence-based recommendations to prevent this from happening in the future.