



No. 31

N° 31

Votes and Proceedings

Procès-verbaux

Legislative Assembly
of Ontario

Assemblée législative
de l'Ontario

Thursday
March 29, 2012

Jeudi
29 mars 2012

1st Session,
40th Parliament

1^{re} session
40^e législature

PRAYERS
9:00 A.M.

PRIÈRES
9 H

ORDERS OF THE DAY

Second Reading of Bill 13, An Act to amend the Education Act with respect to bullying and other matters.

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

ORDRE DU JOUR

Deuxième lecture du projet de loi 13, Loi modifiant la Loi sur l'éducation en ce qui a trait à l'intimidation et à d'autres questions.

Le débat reprend et après quelque temps, à 10 h 15, l'Assemblée a suspendu la séance.

10:30 A.M.

10 H 30

The Speaker delivered the following ruling:-

Le Président a rendu la décision suivante :-

On Monday, March 26, 2012, the Member for Cambridge (Mr. Leone) rose on a question of privilege concerning statements made by the Minister of Health and Long-Term Care in the course of her responses to oral questions in last Thursday's Question Period. The responses in question dealt with the Minister's ability to act during the election period on irregularities in the business practices and operations of the Ornge air ambulance service, and with the role of her Ministry on that file during the election period. The Member for Cambridge invited the Speaker to make a finding that the Minister's statements amounted to a *prima facie* case of contempt on the basis that the Minister deliberately misled the House. The Government House Leader (Mr. Milloy) and the Member for Simcoe-Grey (Mr. Wilson) also spoke to the matter.

Having had an opportunity to review last Thursday's Hansard, the notice submitted by the Member for Cambridge, the remarks of the Members who spoke to the question of privilege, Tuesday's attempt by the Minister to clarify her responses, and the parliamentary authorities, I am now prepared to rule on the matter.

As noted by the Member for Cambridge, McGee's *Parliamentary Practice in New Zealand* identifies what needs to be established for the Speaker to find a *prima facie* case of contempt based on a member deliberately misleading the House. Pages 653 and 654 of the 3rd edition of this text state as follows:

There are three elements to be established when it is alleged that a member is in contempt by reason of a statement that the member has made: the statement must, in fact, have been misleading; it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and, in making it, the member must have intended to mislead the House. The standard of proof demanded is the civil standard of proof on a balance of probabilities but, given the serious nature of the allegations, proof of a very high order. Recklessness in the use of words in debate, though reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House. The misleading of the House must not be concerned with a matter of such little or no consequence that is too trivial to warrant the House dealing with it. A misunderstanding of this nature should be cleared up on a point of order.

For a misleading of the House to be deliberate, there must be something in the nature of the incorrect statement that indicates an intention to mislead. Remarks made off the cuff in debate can rarely fall into this category, nor can matters about which the member can be aware only in an official capacity. But where the member can be assumed to have personal knowledge of the stated facts and made the statement in a situation of some formality (for example, by way of personal explanation), a presumption of an intention to mislead the House will more readily arise.

Satisfying the criteria for finding a *prima facie* case of contempt based on a deliberately misleading statement to the House is difficult to do and rarely achieved. As Speaker Carr indicated in a ruling (at page 102 of the *Journals* for June 17, 2002):

The threshold for finding a *prima facie* case of contempt against a Member of the Legislature, on the basis of deliberately misleading the House, is therefore set quite high and is very uncommon. It must involve a proved finding of an overt attempt to intentionally mislead the Legislature. In the absence of an admission from the Member accused of the conduct, or of tangible confirmation of the conduct, independently proved, a Speaker must assume that no honourable Members would engage in such behaviour or that, at most, inconsistent statements were the result of inadvertence or honest mistake.

In the case at hand, the Minister indicated that she was standing for election during the election period and had not been sworn in, and that the Ministry was operating in a caretaker role making it inappropriate for the Ministry to share the Auditor General's draft report on Ornge with the Minister during that period. She also indicated that "when a writ is dropped, the responsibility of the minister changes, and that the ministry is in charge of the operations." In a response to a subsequent question, she indicated that she took action shortly after she was sworn in as Minister in October 2011. Finally, the Minister indicated as follows:

... when the House is dissolved, when we are in that interim period between the writ dropping and the new cabinet being sworn in, there are limitations on the activities of ministers.... [W]hen I was sworn in as minister in October, after the election, I was made aware of the issues that were examined by the auditor and I became aware that the auditor was having trouble getting information from the people at Ornge, so I called the Auditor General and I asked him about that.

Let me now assess these remarks. First, I accept that during the election period the caretaker convention acts as a restraint on some governmental activities. That being said, it is not for the Speaker to decide or rule on the ambit and application of the convention because Speakers traditionally avoid delving into constitutional and legal matters better left to governments, courts and litigants. Even if I could look into such matters, the Minister's remarks about the existence and application of that convention in the case at hand stand uncontradicted and therefore do not satisfy the test set out in the McGee text.

This brings me to the Minister's remarks to the effect that she was not sworn in during the election period, and that she was sworn in after the election. Many Members, myself included, were surprised by these remarks. If the Minister was referring to her not being re-sworn in as a Minister until after the election, this does not detract from the fact that, based on her 2009 appointment as Minister of Health and Long-Term Care, she would still have been in charge of her Ministry during the election period; she would have been in charge because Ministers normally retain their ministerial status during the election period so that the province is never without a government.

The brevity or incompleteness of the Minister's remarks on the matter of whether and when she was sworn in were unfortunate; she sought to rectify the confusion on Tuesday when she indicated that she had not intended to suggest that she was not the Minister during the election period, or to suggest that she was not responsible for overseeing Ontario's health care system during that period.

The important point about last Thursday's remarks and Tuesday's clarification was that the Minister did not concede - and no one has established - that she both made and intended to make a misleading or incorrect statement, or that she both made and intended to make irreconcilable statements to the House. Moreover, it is not enough to say that, in the cut-and-thrust of Question Period, a Minister's elaboration on or clarification of something the Minister said earlier in Question Period points to a strategy of misleading the House. What we are left with, then, is a disagreement as to the correct interpretation to be placed on the Minister's words, and as to the nature and application of the caretaker convention.

For the reasons I have indicated, the onerous threshold established by the parliamentary authorities on the subject of misleading statements has not been reached in the case at hand.

A *prima facie* case of contempt not having been established, I thank the Member for Cambridge for the thoughtful submissions in his notice. I also thank him, the Government House Leader, and the Member for Simcoe-Grey for speaking to this matter.

ORAL QUESTIONS

The House recessed at 11:47 a.m.

1:00 P.M.

The Speaker informed the House of the following changes in the Order of Precedence for Private Members' Public Business:-

Mr. Ouellette assumes ballot item number 31 and
Mr. Wilson assumes ballot item number 55.

INTRODUCTION OF BILLS

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

Bill 57, An Act to proclaim Constitution Day.
Mr. Hillier.

Bill 58, An Act to amend various Acts with respect to organ or tissue donation on death.
Mr. Milligan.

PETITIONS

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

Long term care beds in Tavistock (Sessional Paper No. P-44) Mr. Hardeman.

Closing St. John the Evangelist school (Sessional Paper No. P-54) Mrs. Albanese.

New school in Avalon (Sessional Paper No. P-55) Mr. McNeely.

Live baitfish (Sessional Paper No. P-57) Ms. Scott.

Debt retirement charge (Sessional Paper No. P-60) Mr. Mantha.

Private Member's motion on wind turbine development (Sessional Paper No. P-62) Mr. O'Toole.

Horse racing industry (Sessional Paper No. P-71) Mr. Miller (Hamilton East-Stoney Creek) and Mr. Wilson.

Fund the Employment Resource Centre in Beaverton (Sessional Paper No. P-75) Ms. Scott.

Amend the Greenbelt Plan Area (Sessional Paper No. P-82) Mr. Chudleigh and Mr. O'Toole.

QUESTIONS ORALES

À 11 h 47, l'Assemblée a suspendu la séance.

13 H

Le président a informé la Chambre des changements suivants dans l'ordre de priorité pour les affaires émanant des députés :-

DÉPÔT DES PROJETS DE LOI

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

Projet de loi 57, Loi proclamant le Jour de la Constitution. M. Hillier.

Projet de loi 58, Loi modifiant diverses lois en ce qui a trait au don d'organes ou de tissu au moment du décès. M. Milligan.

PÉTITIONS

Amend the OSPCA Act (Sessional Paper No. P-90) Mr. Clark.

**PRIVATE MEMBERS' PUBLIC
BUSINESS**

Mr. MacLaren moved,

Second Reading of Bill 47, An Act to amend the Ontario Society for the Prevention of Cruelty to Animals Act.

Debate arose.

Lost.

**AFFAIRES D'INTÉRÊT PUBLIC
ÉMANANT DES DÉPUTÉS**

M. MacLaren propose,

Deuxième lecture du projet de loi 47, Loi modifiant la Loi sur la Société de protection des animaux de l'Ontario.

Il s'élève un débat.

Rejetée.

Mrs. Witmer moved,

Second Reading of Bill 14, An Act to designate Bullying Awareness and Prevention Week in Schools and to provide for bullying prevention curricula, policies and administrative accountability in schools.

Debate arose.

Carried.

Referred to the Standing Committee on Social Policy.

M^{me} Witmer propose,

Deuxième lecture du projet de loi 14, Loi désignant la Semaine de la sensibilisation à l'intimidation et de la prévention dans les écoles et prévoyant des programmes-cadres, des politiques et une responsabilité administrative à l'égard de la prévention de l'intimidation dans les écoles.

Il s'élève un débat.

Adoptée.

Renvoyé au Comité permanent de la politique sociale.

Ms. Jaczek moved,

Private Members' Notice of Motion No. 14:-

That, in the opinion of this House, the Ministry of Health and Long-Term Care should as soon as possible establish an advisory committee made up of affected stakeholders to investigate all possible options for encouraging and improving organ and tissue donation in Ontario. This committee should also investigate ways of improving the quality of care provided to those individuals waiting for an organ or tissue donation. Upon receiving the committee's recommendations, the Ministry of Health and Long-Term Care should then move forward with appropriate policy and legislative changes.

Debate arose.

Carried.

M^{me} Jaczek propose,

Avis de motion émanant des députés n° 14 :-

Il s'élève un débat.

Adoptée.

On motion by Mr. Bradley, it was Ordered that the House adjourn.

The House adjourned at 4:15 p.m.

Sur la motion de M. Bradley, il est ordonné que la chambre ajourne ses travaux.

À 16 h 15, la chambre a ajourné ses travaux.

le président
DAVE LEVAC
Speaker

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

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

Ontario Parole Board / Commission ontarienne des libérations conditionnelles, 2010-2011 Annual Report
(No. 63) (Tabled March 29, 2012).

RESPONSES TO WRITTEN QUESTIONS

RÉPONSES AUX QUESTIONS ÉCRITES

Final Answers to Question Numbers: 13 and 14.

RESPONSES TO PETITIONS

RÉPONSES AUX PÉTITIONS

Exempting electricity from the HST (Sessional Paper No. P-22):
(Tabled November 30; December 8, 2011) M^{me} Gélinas.

Children's Law Reform Act (Sessional Paper No. P-23):
(Tabled November 30, 2011) Mr. Naqvi.
