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Votes and Proceedings

Procès-verbaux

Legislative Assembly
of Ontario

Assemblée législative
de l'Ontario

Monday
April 14, 2014

Lundi
14 avril 2014

2nd Session,
40th Parliament

2^e session
40^e législature

PRAYERS
10:30 A.M.

PRIÈRES
10 H 30

The Speaker delivered the following ruling:-

Le Président a rendu la décision suivante :-

On Monday, April 7, 2014 the Member for Nipissing (Mr. Fedeli) raised a point of privilege with respect to the upcoming Provincial Budget, and specifically with regard to a document the Member says is a blueprint for the government's plan to systematically pre-announce, over the next several weeks, the contents of the Budget.

The Third Party House Leader (Mr. Bisson), the Government House Leader (Mr. Milloy) and the Official Opposition House Leader (Mr. Wilson) also made submissions on this point.

The document referred to by the Member for Nipissing (the provenance of which is unknown; it has no reference to the person, office or authority responsible for creating it) is purportedly a four-and-a-half week schedule of announcements to be made in the lead-up to the Budget presentation, and the Member for Nipissing alleges that these announcements are of actual items that will eventually be included in the Budget. Since raising his point, the Member has provided me with two additional submissions that give details of government announcements whose timelines and topics show that the complained-of document predicted and accorded with actual events, thus supporting the validity of the document. The Member's case is that the announcements represent an improper disclosure of information that first ought to be given to the Legislature and, moreover, as disclosures of Budget contents via an intentional, systematic plan, are of a higher level of importance and represent a contempt of the Legislature.

The Third Party House Leader made the case that the foundational core function of this Assembly is to scrutinize and approve the government's plans to raise revenue and spend public funds. Because of this, proceedings related to financial procedure are of the highest importance among the business the House considers.

The Government House Leader, in both oral and later written submissions, contends that, in the first instance, there is significant authority for the case that the concept of budget secrecy is one of political convention, not parliamentary procedure or privilege. Secondly, the House Leader states that the Member for Nipissing is mistaken in relying for any support on the precedent of the so-called "Magna Budget" of 2003, since that instance represented a decision by the government of the day to present its Budget outside of the Legislative Assembly, and at a time when it was not sitting. In the present case, he points out, no such thing has taken place.

With respect to the issue of budget secrecy, it has been widely settled in the procedural authorities and in the major Westminster-style parliaments, including our own, numerous times, that a breach of budget secrecy does not equate to a matter of privilege.

For instance, the Member for Nipissing provides an excerpt from *House of Commons Procedure and Practice*, as follows:-

There is a long-standing tradition of keeping the contents of the budget secret until the Minister of Finance actually presents it in the House.

However, this citation immediately goes on to say the following:-

Respect for a budget's impact on financial markets has often been used as the basis of questions of privilege or points of order respecting the validity of budget proceedings where there has been a budget "leak". However, Speakers of the Canadian House have maintained that secrecy is a matter of parliamentary convention, rather than one of privilege. Speaker Sauvé noted that while a breach of budget secrecy

... might have a very negative impact on business or on the stock market [and] might cause some people to receive revenues which they would not otherwise have been able to obtain ... [it has] no impact on the privileges of a member. [It] might do harm - irrevocable in some cases - to persons or institutions, but this has nothing to do with privilege. It has to do with the conduct of a minister in the exercise of his administrative responsibility.

A very thorough and often-quoted ruling by this Assembly's Speaker, John Turner, on May 9, 1983, is well worth the time of members to read.

In part, the ruling says:-

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. My decision is supported by the decisions of a number of Speakers in several jurisdictions, including Speaker Sauvé on November 18, 1981, and most recently on April 19, 1983, and Speaker Smith of the Legislative Assembly of British Columbia on April 1, 1976.

I would also direct the attention of honourable members to the comments of Joseph Maingot in his text, *Parliamentary Privilege in Canada*, where he states: -

Parliamentary privilege is concerned with the special rights of members, not in their capacity as ministers or as party leaders, whips or parliamentary secretaries, but strictly in their capacity as members in their parliamentary work. Therefore, allegations of misjudgement, or mismanagement, or maladministration on the part of the minister in the performance of his ministerial duties do not come within the purview of parliamentary privilege. And neither does an allegation that a minister permitted a budget leak constitute a matter of privilege.

Beauchesne's Parliamentary Rules and Forms, 6th Edition, says at citation 31:-

Budget secrecy is a political convention, and if breached, the Minister may be attacked through a substantive motion, but not through a question of privilege.

In *Parliamentary Practice in New Zealand*, McGee states at page 475 that:-

Certainly, premature disclosure of the Budget has important political implications, though it is not a question of privilege.

In making his argument the Member for Nipissing seeks to draw a distinction between a breach of privilege (which as we see does not arise as a result of a budget leak) and contempt of the Legislature. The member cites various parliamentary authorities on the nature of contempt, and argues that the intentional advance disclosure of Budget contents outside the House lessens the role of the legislature, deprives it of its ability to discharge its proper functions, and diminishes the respect due to the House.

The Member for Nipissing argues that the lack of deference to the House in this case regarding information contained in a Budget raises this instance to parity with the so-called 2003 "Magna Budget", referenced earlier in this ruling.

In that instance, as noted by Speaker Carr in his May 8, 2003 ruling, the decision to present the Budget at the Magna facility was motivated by the government's own stated desire to have "a direct conversation with the people of Ontario", and this is how Speaker Carr addressed that:-

When the government or a member claims that a Budget presentation is needed outside the House well before it happens inside the House in order to communicate directly to the people or because of a perceived flaw in the parliamentary institution, there is a danger that the representative role of each and every member of this House is undermined, that respect for the institution is diminished, and that Parliament is rendered irrelevant. Parliamentary democracy is not vindicated by the government conducting a generally one-sided public relations event on the Budget well in advance of members having an opportunity to hold the government to account for the Budget in this Chamber.

As is well known, Speaker Carr then went on to find that a *prima facie* case of contempt had been established.

In the present case, I cannot find that there is any intention on the part of the government to similarly bypass or pre-empt normal procedures of the Legislative Assembly with respect to the 2014 Budget. Rather, I have expressly heard the Minister of Finance say on numerous occasions in this House that he intends to present his next Budget in this Chamber when he is ready to do so. As the Third Party House Leader so correctly pointed out, a core function of this Assembly is to consider and scrutinize the finances of the Province, and I see every reason to fully expect that to occur with respect to this year's Budget. I therefore can find no real parallel in the present case with that of 2003.

This matter in the end is far more akin to those numerous instances in which members have complained about the government of the day making important policy announcements outside the House. Whether it be the government's financial plan, or any other measure or announcement, Speakers have repeatedly looked unfavourably upon it when the House has not been the first to receive such information.

There are rulings almost too numerous to compile, in which Speakers have admonished governments for doing this, and defending the Legislature's claim to be the first recipient of major announcements. However, no Speaker has ever found that the snubbing of the Legislature in this manner has amounted even to a valid point of order - there being no Standing Order or practice to require it - let alone to a breach of privilege or contempt of the Legislature. While Speakers have observed that it is at minimum a courtesy, if not an expectation, for the House to be deferred to, in the face of an unwillingness to do so in these types of instances, Speakers have consistently stated they have no authority to compel these types of announcements to be made in the House first.

We are left with the assertion that *bona fide* elements of an upcoming Budget have been released outside of the Legislature. Until a Budget is eventually presented, this won't be known but aside from this demonstrating a willingness on the part of the government to continue to make announcements outside the House and releasing information before it is given to MPPs, it also likely represents a diminishment of the considerations that previously made budget secrecy such an imperative political practice; modern governments seem to feel considerably less constrained about the Budget-related discussions they are willing to publicly have before a Budget is actually released. It is not for the Speaker to speculate on the reasons why this might be so.

For the reasons given, I do not find that a *prima facie* case has been made out.

Finally, though it did not function as an overriding precedent in this matter, I want to make an observation about how the 2003 "Magna Budget" privilege issue was resolved. In that instance, the motion that was moved as a result of the Speaker's ruling was:-

That this House declares that it is the undoubted right of the Legislative Assembly, in Parliament assembled, to be the first recipient of the Budget of Ontario.

After significant debate the House, in its wisdom, defeated this motion. That decision endures, and so it is therefore the standing posture of this Legislature that it is not entitled to be the first recipient of the Budget. As Speaker it is difficult to know what to make of that, and many of you may wonder the same thing. Nevertheless, time and circumstance have not changed the fact that the House made such a pronouncement.

I thank the Member for Nipissing for raising this matter, and the Government, Official Opposition and Third Party House Leaders for their submissions in response.

ORAL QUESTIONS

QUESTIONS ORALES

The House recessed at 11:54 a.m.

À 11 h 54, l'Assemblée a suspendu la séance.

1:00 P.M.

13 H

PETITIONS

PÉTITIONS

Acute and Chronic Lyme Disease diagnosis (Sessional Paper No. P-4) Mr. Ouellette.

Repealing the Green Energy Act 2009 (Sessional Paper No. P-156) Mr. Walker.

Digital technologies (Sessional Paper No. P-215) Mr. Qaadri.

Closure of Kemptville and Alfred campuses (Sessional Paper No. P-237) Mr. Clark and Mr. McDonell.

The Toronto Ranked Ballot Elections Act, 2014 (Sessional Paper No. P-239) Ms. Hunter.

Lowering the cost of electricity (Sessional Paper No. P-241) Mr. Smith.

A comprehensive strategy on Alzheimer's disease and related dementia (Sessional Paper No. P-256) Mr. Hatfield.

Price increase for natural gas (Sessional Paper No. P-260) Mr. O'Toole.

The Bowmanville Truck Inspection station (Sessional Paper No. P-262) Mr. O'Toole.

With unanimous consent, the House reverted to "Motions".

Avec le consentement unanime, l'Assemblée revient à l'appel des « Motions ».

With unanimous consent,

Avec le consentement unanime,

On motion by Mr. Milloy,

Sur la motion de M. Milloy,

Ordered, That, following "Oral Questions" or "Deferred Votes" as the case may be on Wednesday, April 16, 2014, the Speaker shall adjourn the House without motion and the House shall stand adjourned until Thursday, April 17, 2014; and

That no committees shall meet following "Oral Questions" or "Deferred Votes" as the case may be on Wednesday, April 16, 2014.

With unanimous consent,
On motion by Mr. Milloy,

Avec le consentement unanime,
Sur la motion de M. Milloy,

Ordered, That, notwithstanding Standing Order 98, at the commencement of Orders of the Day on Thursday, April 17, 2014, consideration of Private Members' Public Business shall resume, at the same stage of consideration of ballot items 4, 5 and 6 as when proceedings were suspended on Thursday, April 10, 2014.

With unanimous consent,
On motion by Mr. Milloy,

Avec le consentement unanime,
Sur la motion de M. Milloy,

Ordered, That the following changes be made in the Order of Precedence for Private Members' Public Business:-

Il est ordonné que les changements suivants soient effectués dans l'ordre de priorité des affaires d'intérêt public émanant des députés:-

Mr. MacLaren assumes ballot item number 10

Mr. Miller (Parry Sound–Muskoka) assumes ballot item number 5.

With unanimous consent,
On motion by Mr. Milloy,

Avec le consentement unanime,
Sur la motion de M. Milloy,

Ordered, That the Standing Committee on Finance and Economic Affairs meet during its regularly scheduled meeting time on Thursday, April 17, 2014 in order to continue its public hearings on Bill 20, An Act respecting the City of Toronto and the Ontario Municipal Board, that was adjourned on Thursday, April 10, 2014;

That the Clerk of the Committee make every attempt to re-schedule the selected witnesses who were unable to present on Thursday, April 10, 2014;

That clause-by-clause consideration of Bill 20 be scheduled for May 1, 2014;

That the deadline for written submissions on Bill 20 be 5:00 p.m. on Thursday, April 17, 2014;

That a summary of the testimonies be provided by the Research Officer to the Committee by Tuesday, April 22, 2014; and

That amendments to Bill 20 be filed with the Clerk of the Committee by 12 noon on Monday, April 28, 2014.

ORDERS OF THE DAY

Second Reading of Bill 178, An Act to ensure that blood and blood constituents are donated freely.

Carried.

Referred to the Standing Committee on Social Policy.

ORDRE DU JOUR

Deuxième lecture du projet de loi 178, Loi visant à assurer la gratuité du don de sang et de composants sanguins.

Adoptée.

Renvoyé au Comité permanent de la politique sociale.

Second Reading of Bill 171, An Act respecting insurance system reforms and repair and storage liens.

Debate resumed and after some time,

Carried.

Referred to the Standing Committee on General Government.

Deuxième lecture du projet de loi 171, Loi concernant les réformes du système d'assurance et le privilège des réparateurs et des entrepreneurs.

Le débat reprend et après quelque temps,

Adoptée.

Renvoyé au Comité permanent des affaires gouvernementales.

Second Reading of Bill 177, An Act to amend the Legislative Assembly Act.

Carried.

Referred to the Standing Committee on Regulations and Private Bills.

Deuxième lecture du projet de loi 177, Loi modifiant la Loi sur l'Assemblée législative.

Adoptée.

Renvoyé au Comité permanent des règlements et des projets de loi d'intérêt privé.

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

The House adjourned at 3:51 p.m.

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

À 15 h 51, 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**

Certificate pursuant to Standing Order 108(f)(1) re intended appointments dated April 11, 2014 (No. 341) (Tabled April 11, 2014).

Hydro One, 2012 Annual Report (No. 336) (Tabled April 11, 2014).

Information and Privacy Commissioner of Ontario, Special Investigation Report entitled "Crossing the Line: The Indiscriminate Disclosure of Attempted Suicide Information to the U.S. Border Officials via CPIC" (Sessional Paper No. 342) (Tabled April 14, 2014).

Ontario Energy Board, 2011-2012 Annual Report (No. 337) (Tabled April 11, 2014).

Ontario Energy Board, 2012-2013 Annual Report (No. 338) (Tabled April 11, 2014).

Ontario Power Authority, 2012 Annual Report (No. 339) (Tabled April 11, 2014).

Ontario Power Generation, 2012 Annual Report (No. 340) (Tabled April 11, 2014).

RESPONSES TO PETITIONS

RÉPONSES AUX PÉTITIONS

The Township of James property values (Sessional Paper No. P-225):
(Tabled February 24, 2014) Mr. Vanthof.

Waste disposal facility in Carlsbad Springs (Sessional Paper No. P-228):
(Tabled February 26, 2014) Mr. Crack.
