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LEGISLATIVE ASSEMBLY

STEVE CLARK, MPP
Leeds-Grenville

May 15, 2017

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Dear Mr. Speaker:

Pursuant to Standing Order 21(c), I wrote to you on May 11th to provide you with the appropriate notice to inform you of my intent to rise on a point of privilege before Question Period on Monday May 15, 2017 concerning a *prima facie* case of contempt by the Minister of Energy with regard to government advertising on a matter yet to be decided by the House. Please consider this letter my written argument.

Mr. Speaker, as you noted in your ruling from March 23, 2017 regarding the point of privilege from Monday, March 20, 2017 when I, the member from Simcoe-Grey contested a *prima facie* case of contempt "concerning recent government advertising or announcements on electricity pricing".

In that ruling, Mr. Speaker, you ruled:

"The statement of the Minister of Energy that he will be introducing legislation at some point, as noted by the member for Simcoe-Grey, does not alter this limitation on my authority or sphere of jurisdiction. It is not open to me to interpret or presume what might be in that possible legislation. Consequently, I cannot find that a *prima facie* case of contempt has been established."

Mr. Speaker, now that the Minister of Energy has tabled the legislation in question, I again contest that the Minister of Energy's actions were a clear *prima facie* case of contempt when the government ran advertisements presupposing the will of the Legislature by outlining a clear timeline and result of legislation. All of which is available in the attached advertisements and readily available audio.

I turn back to the letter written by the Member from Simcoe-Grey dated March 20, 2017 where I cited Speaker Stockwell's January 22, 1997 ruling.

The member started that letter by referencing the most recent edition of Erskine-May where it describes Contempt as follows on Page 251:

"Generally speaking, any act of omission which obstructs or impedes either House of Parliament in the performance of its functions or which obstructs or impedes any Member or office of such House in the discharge of his duty or which has a tendency, directly or indirectly to produce such results, may be treated as a contempt..."

It continues on Page 258:

"Indignities offered to the House by words spoken or writings published reflecting on its character or proceedings have been punished by both the Commons and the Lords upon the principle that such acts of abuse tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them."

And additionally, on Page 260, it states that:

"Other acts, besides words spoken or writings published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency to produce this result indirectly by bringing the House into odium, contempt or ridicule or by lowering its authority, may constitute contempts."

In my first Letter I noted that Speaker Stockwell cited those exact passages from Erskine May when ruling on the most relevant precedent faced by this legislature as it pertained to government advertising.

In that case, Speaker Stockwell laid out a very strict two-pronged test for whether government advertising which presumed an act by the House could be deemed a breach of privilege and a *prima facie* case of contempt. To quote Speaker Stockwell:

"However, I am very concerned by the ministry pamphlet, which was worded more definitely than the commercial and the press release. To name but a few examples, the brochure claims that "new city wards will be created," that "work on building the new city will start in 1997," and that "the new city of Toronto will reduce the number of municipal politicians."

How is one to interpret such unqualified claims? In my opinion, they convey the impression that the passage of the requisite legislation was not necessary or was a foregone conclusion, or that the assembly and the Legislature had a pro forma, tangential, even inferior role in the legislative and lawmaking process, and in doing so, they appear to diminish the respect that is due to this House. I would not have come to this view had these claims or proposals -- and that is all they are -- been qualified by a statement that they would only become law if and when the Legislature gave its stamp of approval to them."

The two prongs laid out by Speaker Stockwell are whether the claims are definite and unqualified and whether they presume an act of the House before the House has had the ability to offer its approval to them, thus relegating the Legislature to a “pro forma” or “inferior” role in the legislative process.

On both tests, it appears the Ministry of Energy has committed a *prima facie* case of contempt. The advertisement at question not only definitely states a result of legislation “25% off your hydro bill” but also presents an unqualified timeline “starting this summer”. By both committing the House to a result, and a timeline, the Minister has satisfied the first test of making definite and unqualified claims.

With regard to Speaker Stockwell’s second test, regarding whether the statements relegate the legislature to a “pro forma” or “inferior” role in the legislative process, we know that Legislation was tabled Thursday and the Minister of Energy held a press conference and described the necessity of this legislation to facilitate the 25% rate reduction.

Further, as you will find in Hansard the Minister of Energy confirmed this Legislation is required to reduce rates.

On April 11, 2017, the Minister said:

Come this summer, once we get the legislation through this House, we could see up to 25% in reductions for families like that, for individuals like was mentioned.

On April 26, 2017, the Minister of Energy said:

The OEB would require to reduce rates again this summer when final legislation is passed to ensure Ontarians see the full benefit of our plan as soon as possible.

On May 8 2017, he said:

In anticipation of us bringing forward this legislation, brought forward on May 1 an additional 9% reduction, meaning we’re seeing a 17% reduction on our bills compared to last year right now.

And in fact on May 10, 2017 the Minister of Energy said this:

We are acting as quickly as we can to bring forward a comprehensive piece of legislation that will ensure a 25% reduction by summer—so much so that the OEB, in anticipation of our plan, have brought forward an additional 9%, bringing the reduction right now to 17%. By July 1 of this year, if passed through the legislation, we will see an additional 8%, bringing that total, on average, to 25%.

Additionally, the Minister of Energy wrote to members in a letter dated May 11, 2017 and said:

If the legislation passes, starting this summer Ontario's Fair Hydro Plan will reduce electricity bills by 25 per cent for a typical residential customer.

The Minister of Energy tabled the necessary legislation in order to enact the changes which it had already begun to advertise as though they were already scheduled to be enacted. By presuming the legislation will have passed and thereby committing this Legislature not only to a result, but to a timeline and forcing it into the inferior position in the legislative process that Speaker Stockwell outlined in his ruling of January 22, 1997.

Further to your ruling on March 23, 2017 you stated:

Moreover, to combine these conclusions together would further require that the Speaker is also capable of conducting or has some sort of jurisdiction to conduct a legal analysis of the legislative framework that is necessary to produce the results alluded to in the ads and other items. Members know that it is well-established precedent that it is not the Speaker's role to undertake legal analysis, make legal findings or attempt to interpret the law.

However, we do not believe a ruling of a *prima facie* finding of contempt requires you to complete any legal analysis or interpret the law in anyway. The Minister of Energy, a Minister of the Crown, explicitly stated in and outside of the house that this specific piece of Legislation is required to enact the hydro savings – the 25% reduction the advertisements outlined. Therefore, because the Minister explicitly in the house stated the bills purpose, intention and actions you are not required to interpret the law in any way other than the Minister has guaranteed – for if the bill does not what the Minister stated he has clearly misled the house.

Finally, in regard to the timeliness of my appeal, As Maingot states on Page 260:

"It must be raised at the first opportunity. Matters relating to rights, immunities and privileges of Members of the House or matters of contempt are of such importance that the regular business of the House is put aside so that Members may immediately discuss the matter. Accordingly, the other condition precedent for raising a question of privilege is that must be raised at the first opportunity. Members are given the benefit of the doubt in this respect since the Speaker is reluctant to rule out privilege matters on technical grounds."

In past rulings, Mr. Speaker, you have affirmed this principle such as when you stated in your ruling of May 7th, 2015:

"I do not have concerns about the timeliness of the notice here because, whereas the April 21 situation dealt with a single pre-planned incident which was complained about only four days later, this one deals with a series of interrelated pieces of information in an evolving public policy matter. This is not to give permission to members to delay raising a matter of privilege when they first perceive the possibility that one exists, but rather to accept that there may be circumstances when it could validly take some time on an evolving matter before any implications for parliamentary privilege are sensed."

Finally, O'Brien and Bosc affirms this principle on Page 143:

"The matter of privilege to be raised in the House must have recently occurred and must call for the immediate action of the House. Therefore, the Member must satisfy the Speaker that he or she is bringing the matter to the attention of the House as soon as practicable after becoming aware of the situation."

Mr. Speaker, because of your ruling on March 23, 2017 when you ruled that a case could not be found without legislation, I therefore have submitted my notice the very afternoon the legislation was tabled.

I respectfully submit that the ruling precedents and the facts of the advertisements and the government's own admission that this introduced legislation is necessary to enact the governments rate reduction, are sufficient for you to find that a *prima facie* case of contempt and allow this House to investigate the matter further.

I thank you for looking into this and if you have any questions, please do not hesitate to contact me.

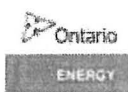
Regards,



Steve Clark, MPP
Leeds-Grenville
Deputy House Leader of Her Majesty's Loyal Opposition

cc: Hon. Yasir Naqvi
Gilles Bisson, MPP

Item 1



Ontario Ministry of Energy

Sponsored



Your household hydro bill won't increase beyond the rate of inflation for at least 4 years.

**25%
OFF**



25% Off Starting Summer

Ontario's Fair Hydro Plan

ontario.ca/FairHydroPlan

Learn More



m.facebook.com/home.php

Item 2

Glenn Thibeault Retweeted

Ontario's Energy @ONenergy Mar 2

25% off your hydro bill on average for Ontario households starting this summer. [ontario.ca/FairHydroPlan](#)



25% OFF

Glenn Thibeault Retweeted

Kathleen Wynne @Kathleen_Wynne Mar 2

Our plan will lower hydro bills by 25% on average for all residential customers in Ontario. Starting this summer. [Ontario.ca/FairHydroPlan](#)

Item 3

Ontario's Energy Retweeted

Hydro One @HydroOne Mar 2

Your hydro bill will be a lot smaller this summer. See how much you'll save [bit.ly/2VXPzG](#)



Item 4

A circular logo with 'FAIR HYDRO PLAN' at the top and bottom, and '25% OFF' in the center.

Coming this Summer: **The biggest hydro rate cut in Ontario's history.**

The Ontario Liberal plan will cut **everyone's hydro bill by an average of 25% and limit rate increases to inflation for at least 4 years.**

Add your name to support the Fair Hydro Plan.

ADD YOUR NAME

Yes, I support the Liberal plan to make hydro rates fair.

First Name

Last Name

Email

Postal Code

ADD YOUR NAME

The Fair Hydro Plan

Item 5

I would direct you to the audio available on the Toronto Star's online article:

Government ads promoting 25-per-cent hydro-rate cut partisan waste: PCs

By ROB FERGUSON Queen's Park Bureau

Fri., March 17, 2017