



JIM WILSON

Member of Provincial Parliament

Simcoe-Grey

Official Opposition House Leader



March 21st, 2017

Hon. Dave Levac, Speaker
Legislative Assembly of Ontario
Room 180, Main Legislative Building
Queen's Park
Toronto, ON M7A 1A2

Dear Mr. Speaker:

I am writing to you supplemental to my oral and written arguments pursuant to Standing Order 21 and the perceived *prima facie* case of contempt by the Minister of Energy with regard to government advertising or announcements on a matter yet to be decided by the House.

After reviewing the Government House Leader's response I wanted to address their concerns.

The Government House Leader first raises concerns about the timeliness of my notice. To that effect I would like to note what O'Brien and Bosc write about raising concerns at the first opportunity:

"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, I heard the radio advertisement for the first time late last week and from my understanding that is when the radio advertisements began. The Government House Leader's submission does not reference the radio advertisements and only quotes the dates for the Twitter tweets – a medium of which I am not a frequent user – and makes the assumption that I would have readily viewed these, something I did not. Furthermore as quoted above, O'Brien and Bosc states that a member must bring forward their point "as practicable after becoming aware of the situation" which I most certainly did when the Legislature resumed on Monday, March 20, 2017.

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Any suggestion otherwise by the Government House Leader is approaching a dangerous accusation that I am not being honest, and would not be sufficient grounds to dismiss the case under timeliness. As Maingot notes on Page 227 of the current edition:

"In the final analysis, in areas of doubt, the Speaker asks simply: Does the act complained of appear at first sight to be a breach of privilege...or to put it shortly, has the Member an arguable point? If the Speaker feels any doubt on the question, he should...leave it to the House. Thus the Members is entitled to receive the benefit of the doubt."

The government failed to address the means of communication in their submission regarding timeliness, and only addressed when said advertisements were made public, not when I was made aware of them, as is required by O'Brien and Bosc. The means of communication are therefore essential to the question of timeliness in this case because the original medium is intentionally exclusionary. The government's submission only spoke to when the material were first published, not when or how I could have been aware of them prior to when I have asserted in my original submission.

However, even were the timeliness standard met in the case of the secondary social media advertisements – and I duly submit that it has not been - I would direct you again to Speaker Stockwell's 1997 ruling. Speaker Stockwell's ruling set the precedent that when mediums of messaging are brought forward through the same point of privilege, they can be ruled upon medium by medium.

"Let me now turn to the application of these authorities to the impugned advertising. With respect to the television commercial and the ministry press release mentioned by the member for Algoma, I am of the view that they do not raise a prima facie case of contempt. On the contrary, the commercial does nothing more than explain in a simple and general way the government's philosophy and its broad reform agenda. As for the press release, it is worded in an innocuous way."

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."

While I believe I have sufficiently met the timeliness of submitting my point of privilege on all accounts of possible contempt, precedent has already been established in this House whereby, when government advertises across a number of mediums, those different mediums are handled by the House as different advertisements. And, therefore, as separate cases, timeliness would have to be contested for each individual advertisement.

In the government's submission, timeliness is not challenged with regard to the radio advertisement which commits the House to the same timeline and result as the social media advertisements. And therefore, meet Speaker Stockwell's previous tests – outlined in my original submission – as to whether a government advertisement rises to the standard of contempt.

Secondly, the Government House Leader contends that because the bill has not been introduced and therefore there is no contempt.

On this account, the government is relying on whether a proceeding in Parliament is taking place and the government has contended that it is not. In fact the Government House Leader wrote "there is no proceeding in this House connected to the Member's claim."

However, as Maingot says on page 81:

"(A proceeding in Parliament) covers both the asking of a question and the giving of written notice of such a question, and includes everything said or done by a member in the exercise of his functions as a member of a committee of either House, as well as everything said or done in either House with the transaction of Parliamentary business.

Therefore legislation is not the only relevant proceeding in parliament to take in to consideration when determining whether contempt has been committed.

Further, on Page 92 of O'Brien and Bosc, 'proceedings in parliament' are defined as follows:

"The Parliament of Australia enacted the Parliamentary Privileges Act, 1987 which defines 'proceedings in parliament' as follows:

- a) The giving of evidence before a House or committee and evidence so given;*
- b) The presentation or submission of a document to the House or a committee*
- c) The preparation of a document for purposes of or incidental to the transacting of any such business; and*
- d) The formulation, making or publication of document, including a report"*

The Minister has committed, in the House, not only to the introduction of legislation – which is most obviously a proceeding in parliament - but also committee hearings, or "public hearings" as the Minister stated.

"I'm very pleased to rise and talk about when we're going to be bringing forward the legislation this spring to reduce everyone's bills by 25%, in time so they can have this relief before summer. I know there will be time for proper debate and public hearings" - Hon. Glenn Thibeault, March 20th, 2017

Further, Minister has deemed it necessary for a committee hearing to take place as part of the process. That hearing is undeniably a proceeding in parliament and the advertisements at question reflect on that proceeding. The government states that to determine whether a proceeding is necessary, the Speaker would have to determine whether legislation is necessary. That's simply not the case.

The Speaker is explicitly given the authority to determine whether words of Members reflect on a proceeding of the House as Erskine-May states on Page 258:

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

As the Speaker would know, Members are considered to be on their honour when making statements to the House something that Speaker Fraser highlighted in his October 10, 1989 ruling when accepting submissions about government advertising. Therefore, you are not required to interpret the legislation in order to determine whether legislation is necessary. It is incumbent on the Government House Leader to prove why you should not take the statement made by the Minister of Energy, on his Honour, in the House at its expressed value.

This statement was made moments after the initial point was raised, and was stated as an absolute fact. This statement is coupled with the fact that in a document provided and created by the Minister of Energy stating that legislation is coming forward. So, the Government House Leader's argument regarding whether or not legislation is forthcoming is predicated on the fact that a Minister may have misled the house and does not, therefore, provide a reasonable grounds for dismissal of contempt but could, in fact, give rise to a further issue.

In fact, the Government House Leader cites a very important section from Speaker Stockwell's ruling, in effect, making an argument for a case of contempt:

The test for a successful case of privilege must surely be: How does the event or activity aggrieved of prevent either the member, or Parliament itself, from performing its functions? Or, does this activity call the assembly and its honour and integrity into disrepute?"

In the case at hand, does the ad campaign complained about impede any of us, as MPPs, in our functions? Does the campaign call the role of the Legislature into question, or criticize it, or anticipate it?

The Government House Leader continues to quote the ruling, saying the members must have "uncontested ability to continue the debate on this issue".

When reading Speaker Stockwell's ruling, in my opinion I felt we could sufficiently answer those questions. The first question being: "How does the event or activity aggrieved of prevent either the member, or Parliament itself, from performing its functions? Or, does this activity call the assembly and its honour and integrity into disrepute?"

That is answered by reminding everyone that the Minister of Energy unequivocally stated, "We're going to be bringing forward the legislation this spring to reduce everyone's bills by 25%, in time so they can have this relief before summer," and continued therefore without doubt "I know there will be time for proper debate and public hearings". Despite the order not being present, the Government has made a foregone conclusion that the forthcoming legislation will pass with absolute certainty and is denigrating the honourable role that the Legislature plays. Here again, I reference Speaker Fraser, when he said "we are a parliamentary democracy, not a so-called executive democracy, nor a so-called administrative democracy."

The second question that Speaker Stockwell asked being, "does the ad campaign complained about impede any of us, as MPPs, in our functions?" Again, I believe you will find the answer to be yes, the Minister of Energy has said that legislation will be tabled - he stated that yesterday - to presume passage of a bill not even tabled may be even more egregious than the presumption of a Bill on the Order Paper.

The third question asked is, "does the campaign call the role of the Legislature into question, or criticize it, or anticipate it?" Again, I believe you will find the answer is yes; the campaign both calls in to question the role of the Legislature, and anticipates. By stating in the House, yesterday, that legislation to reduce the hydro bills by 25% is to be introduced, these advertisements imply the role of the legislature is simply a rubber stamp and anticipates its passing by this summer.

Finally, when quoting Speaker Stockwell's ruling the Government House Leader notes that the advertising must not derogate the "uncontested ability to continue the debate on this issue". When the Minister of Energy stated that legislation is forthcoming and "know there will be time for proper debate and public hearings" the advertisements not only impede on the members "uncontested ability to continue the debate on this issue," they have impeded the Members ability to properly begin debate when the legislation is introduced.

I would also like to address the following assertion made by the Government House Leader:

"The Government reserves the right to implement such a policy as it so chooses. The Government has signalled intent to introduce legislation to give effect to certain of its electricity proposals, but the intent to table legislation is not the same as the requirement to table legislation. Until that decision is made and a bill has been proposed, the announcement is simply a commitment of the Government to implement a policy."

This argument is presented as an unqualified and unmitigated right but precedents and the authorities have never treated it as such. In fact, they subject it to very strict limitations. Speaker Milliken highlighted this in his ruling of May 26th, 2003:

"We have parliamentary privilege to ensure that the other branches of government, the executive and the judicial, respect the independence of the legislative branch of government, which is this House and the other place. This independence cannot be sustained if either of the other branches is able to define or reduce those privileges."

Similarly, in the rulings which I cited in my initial submission, Speakers Edighoffer, Warner and Carr all found that the government only enjoyed this right in a circumstance where legislation had already been introduced. Even a ruling cited by the Government in supporting its argument, that of Speaker Stockwell on June 16, 1998, references a Bill which had already been presented to the House.

What the government must then argue, is that it enjoys this right absent the presence of legislation on the Order Paper when the Minister responsible for said legislation has admitted to the House that it is necessary for the information contained in the advertisements to come into effect.

Here, Speaker Carr's ruling from May 8, 2003 is instructive:

"I can well appreciate that parliamentary proceedings can be animated and often emotional, and they can be cumbersome. It may not be the most efficient of political systems, but it is a process that reflects the reality that members, like the people of Ontario, may not be of one mind on matters of public policy. A mature parliamentary democracy is not a docile, esoteric or one-way communications vehicle; it is a dynamic, interactive and representative institution that allows the government of the day to propose and defend its policies -- financial and otherwise. It also allows the opposition to scrutinize and hold the government to account for those policies. It is an open, working and relevant system of scrutiny and accountability. If any members of this House have a problem with the concept of parliamentary democracy, then they have some serious explaining to do."

Speaker Carr later added:

"Second, if left unchallenged, will this incident not embolden future governments to create parallel, extra-parliamentary processes for other kinds of events that traditionally occur in the House?"

Third, why is an extraordinary parliamentary process needed if there is already a process in the House? If the answer is that it enables direct communication with the public, to what extent does such an answer undermine the representative, scrutiny and accountability functions of parliament?"

Contrary to the government's submission, Speakers have routinely placed restrictions on the actions of government to pre-empt or usurp the role of the House. It is worth noting Speaker, that the government has been presented with six opportunities at which to introduce legislation, which the responsible Minister admits is necessary, and still it has not.

Respectfully, Speaker Carr's concern that future governments would evade the traditional processes of the House has direct bearing on this case. The government does not enjoy a unilateral right to "implement such a policy as it so chooses", when the Minister has admitted the traditional processes of the House are required but have not been adhered to. In past Speaker's rulings in this House, that right has never existed in absentia of legislation being produced.

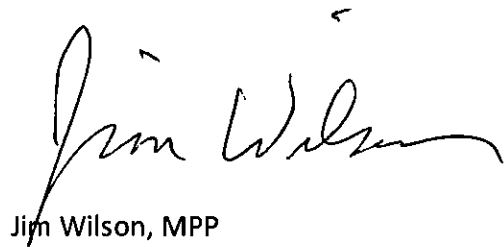
If it did, it would, to quote Speaker Stockwell:

"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."

Here, the Legislature has not had a chance to review or give even a preliminary stamp of approval to legislation. No legislation has been introduced, creating the exact concern Speaker Stockwell raised – that it is not necessary or is a foregone conclusion. This, in spite of the admission by the Minister – while on his Honour in the House – that Legislation and Committee Hearings are, in fact, required.

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

Regards,

A handwritten signature in black ink, appearing to read "Jim Wilson". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jim Wilson, MPP
House Leader of Her Majesty's Loyal Opposition

cc: Hon. Yasir Naqvi, Mr. Gilles Bisson