



JIM WILSON

Member of Provincial Parliament
Simcoe-Grey
Official Opposition House Leader



March 20th, 2017

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

Dear Mr. Speaker:

Pursuant to Standing Order 21(c), I write to you providing the appropriate notice to inform you of my intent to rise on a point of privilege before Question Period on Monday March 20, 2017, concerning a possible *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.

The advertising in question was brought to my attention during March Break and pertains to the government's planned legislation regarding electricity. The advertising in question explicitly envisions a timeline and outcome for legislation which has yet to be introduced in the legislature.

The most recent edition of Erskine-May 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."

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Finally, 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."

Indeed, Speaker Stockwell cited exactly those passages when ruling on the most relevant precedent faced by this legislature as it pertained to government advertising in the case of municipal reforms to the City of Toronto in 1997.

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.

policy, and was in fact 11 days away from its eventual passage and 14 days from royal assent."

Similarly, Speaker Edighoffer stated in his December 20th, 1989 ruling which you cited:

"He maintained that disrespect had been shown this chamber by public servants acting in a way that disregarded amendments made to a bill before it became law; that is to say, the public servants had prepared their action on the basis of the original bill and not on the basis of its amended form. Furthermore, the member objected to the fact that public servants were acting upon legislation before it had passed all the steps in the legislative process.

It is perfectly valid for the public service to proceed with plans based on a bill that is already in the system in order to be able to act swiftly once the bill becomes law. It goes without saying that if the bill is amended during the legislative process, then the public service must take note and act accordingly."

Respectfully, in both cases Speakers were dealing with bills which had at least been presented to the House and Members had been given the necessary opportunity to review the details of the legislation. The March 28th, 1994 ruling by Speaker Warner likewise deals with legislation that is already before the House. Here, no legislation has even been introduced and Members have not been presented with the requisite time to review it. Even though the government admits that legislation is necessary to enact the changes it desires.

You also stated in your May 7th, 2015 ruling as follows:-

"In comparing the current matter with that faced by Speaker Stockwell in 1997, the very important difference is that Speaker Stockwell had in his hands a publicly directed advertising piece, authored by the government of the day, which in his findings explicitly diminished the role of the Legislature and presumed that the outcome of its consideration of legislation was a foregone conclusion. In the present case, there is no similar concrete evidence of that nature. The material presented to me and relied upon by the member for Timmins-James Bay is not in that same vein. I simply have not been presented with any document or communication authored by the government that inarguably presents the arrangements complained about as a fait accompli."

In this case, Mr. Speaker, there exists three very public advertising pieces, authored by the current government which presume the outcome of legislation including specific outcomes and timelines, before the House has even been presented with corresponding legislation to consider.

The first piece is an online advertisement produced by the Ministry of Energy stating the outcome and timeline and retweeted by the Minister of Energy which was posted to Facebook on March 15th.

The second is a radio ad which we have confirmed aired in North Bay, Ottawa and Toronto over the course of the March Break. Transcripts and audio of that ad have been made available for the purposes of this motion.

The third is a series of online advertisements produced by Hydro One – in which the Minister is still responsible for overseeing and whereas the government still manages the majority of the shares for the Crown – and the Ministry of Energy, posted to Twitter, which commits to the same timeline.

I believe the test that you have set out in your May 7th, 2015 ruling has been met in this case.

The government will no doubt address the case brought forth by Speaker Fraser with regard to similar incidents and will, therefore, be addressed below.

In the ruling that Speaker Fraser handed down in October of 1989, the thrust of the ruling centred on whether the government intended to undermine the House or whether it simply acted cavalierly. And I quote:

"I can express my own opinion that the content was obviously drafted in a cavalier manner; there is an element of confidence, if not of boldness in the use of a phrase as definitive as 'save this ad'.

The Ministers of Justice and Finance have said to the House that the intent of the ad was to inform Canadians. Members are well aware of our convention of accepting the word of an hon. Member of the House. In accepting the Ministers' explanations the question of intent is answered and accordingly some of the Chair's doubts are also dispelled. The intent of the ad was not to diminish the dignity of the House. It is difficult to find prima facie contempt.

However, I want the House to understand very clearly that if the Speaker ever has to consider a situation like this again, the chair will not be as generous. This is a case which, in my opinion, should never recur."

Therefore, in the ruling Speaker Fraser outlines not only the grounds by which he dismissed the previous point of privilege but also grounds on which the same point may be brought successfully.

Those grounds are the boldness of the phrasing and the government having been previously warned that such conduct has the effect of undermining the House.

In this case, both elements are present. As was previously argued, the government advertising not only commits the House to an outcome but, as well, it commits the House to a definite timeline by which that outcome will be achieved. Similar, to “save this ad” in the 1989 case ruled on by Speaker Fraser, “this summer” commits the House to passing a bill in the nine sitting weeks which remain this spring. Less than nine, when one allows for the fact that the legislation has yet to be introduced.

Further, you have twice ruled on similar issues raised as points of privilege and contested not only by the current government but the Honourable Government House Leader. In the most recent ruling – June 9, 2016 – you stated as follows:

“The incident raised by the member from Simcoe–Grey is different in that it deals with the media—not the government—announcing a government initiative, but the reality is that the media somehow acquired the information. In the case at hand, I have no personal knowledge that the government released details of the initiative to the media, but I would have more than misgivings if such releases were motivated by a patently obvious desire to undermine parliamentary processes.”

You have, therefore, satisfied Speaker Fraser’s test for determining intent. Having issued a previous warning to the government, and stating your own misgivings about these practices, the government persisted in them anyway.

The question of intent, upon which Speaker Fraser hung his decision not to find a *prima facie* case of contempt is, therefore, met by the definition laid down on October 10th, 1989. Therefore, protestations by the government that such releases which were staggered over a number of days, were not done with the intent of placing the Legislature in an inferior position cannot be substantiated.

Finally, in regard to the timeliness of my appeal, the first advertisement that was brought to my attention was a paid social media advertisement on Facebook from March 15th. Subsequently, I was made aware of the radio advertisements, airing in multiple radio markets, which committed the House to the same result and timeline as the Facebook advertisement at question.

After that, a further search on social media for government advertisements on this topic revealed that the Minister, the Ministry and Hydro One – in which the Minister is still

responsible for overseeing and whereas the government still manages the majority of the shares for the Crown – had all used substantively identical advertisements.

I submit the fact that the advertisements in question were posted by the Minister and the Ministry on social media accounts which I do not follow and could not have come to my attention other than the manner in which they did. Once they were brought to my attention, they were raised at the first opportunity in the House.

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."

That nature of the mediums used to convey the Twitter advertisements is such that audiences are selected or opted into by users. Because I have chosen not to follow either the Ministry or Minister on the medium, I could not have been aware of the advertisements until they were brought to my attention over the break, and then only after intentionally seeking them out

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, in the technical briefing provided to certain Members of both the Official Opposition and the Third Party, a document from the Ministry was provided which stated, and I quote:

"The government intends to introduce legislation that would, if passed, enable IESO and OPG to work together to refinance the GA over a longer period of time. The legislation would also outline the role for the OEB, as it relates to the financing proposal."

The government, under direction from the Minister of Energy, therefore admits that legislation is necessary in order to enact the changes which it has already begun to advertise as though they were already scheduled to be enacted. As of today, no such legislation has been introduced in this House and the government has not reached out to Members to even indicate when such legislation may be forthcoming. Thus, the government has admitted that legislation is necessary to bring changes into effect, but has assumed that such legislation has already passed in its advertising 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.

In addition, Speaker, you have previously ruled on the propriety of government advertising with regard to the privileges of Members. In your ruling on May 7, 2015 you stated:

"However, in a June 16, 1998, ruling, Speaker Stockwell approvingly cited a seminal 1989 ruling by Speaker Edighoffer indicating that "it is perfectly valid for the public service to proceed with plans based on a bill that is already in the system in order to be able to act swiftly, once that bill becomes law." In a September 25, 2000, ruling, Speaker Carr reiterated this view and also indicated that it is "a legitimate and necessary activity" for a government to plan for changes."

This quote would seem to add an additional test to determine whether government advertising can be considered a breach of privilege or *prima facie* case of contempt. However, even on this additional test, the government, through the Minister of Energy, still committed contempt of the House.

Previous to the quotation you highlighted in your ruling, Speaker Carr stated:

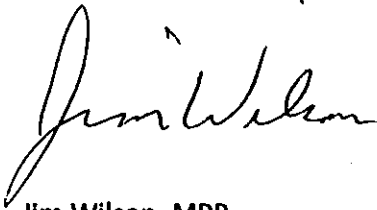
"The member for Parkdale-High Park asserted that the terminology used by the assistant deputy minister in the memorandum was definitive in its description of the changes being made in the education system and did not qualify that those changes still required the passage of Bill 74, the bill that was in the standing committee on justice and social

because of the Facebook and radio advertisements which ran after the House had risen for the break. In concordance with the precedent established in O'Brien and Bosc, I am now bringing the matter to the House as soon as practicable after I was made aware of the situation.

I respectfully submit that the ruling precedents and the facts of the advertisements and the government's own admission that legislation is necessary, but has not been forthcoming, 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,

A handwritten signature in black ink, appearing to read 'Jim Wilson', with a stylized, flowing script.

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

cc: Hon. Yasir Naqvi, Mr. Gilles Bisson

Item 1



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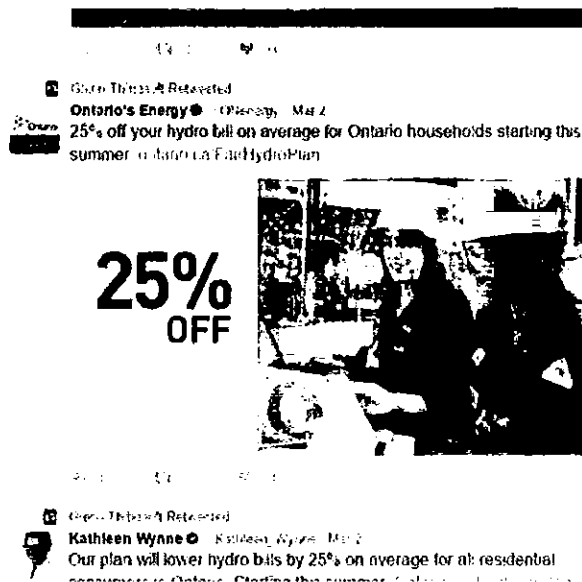
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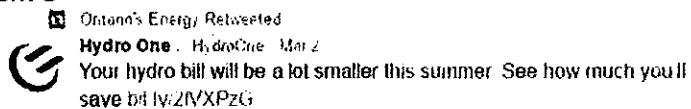
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Item 2



Item 3



Item 4



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The Fair Hydro Plan

Implementation

- The following entities would implement the proposed Global Adjustment (GA) refinancing mechanism
 - The government intends to introduce legislation that would, if passed, enable IESO and OPG to work together to refinance the GA over a longer period of time. The legislation would also outline the role for the OEB, as it relates to the financing proposal.

