



## Mitzie Hunter, MPP

### Scarborough-Guildwood

October 31st, 2022

Hon. Ted Arnott  
The Speaker of the Legislature  
Legislative Assembly of Ontario  
111 Wellesley St. W  
Toronto, ON M7A 1A2

Dear Mr. Speaker,

I am reaching out to you today to provide written notice of a question of privilege regarding comments made by the Minister of Education, Mr. Stephen Lecce, in reference to Bill 28, *Keeping Students in Class Act, 2022*.

Presuming passage of legislation has long been established by this chamber to be a *prima facie* case of privilege and it is my belief that comments made by the Minister of Education over the last few hours qualify as a breach of parliamentary privilege.

As this bill was tabled on the afternoon of October 31st and the Minister's comments were made the same day, I am raising this point at the earliest opportunity, and I am asking you to find that a *prima facie* case of contempt has been established. With this letter I have included several examples and transcripts pertaining to this issue.

After Bill 28 was introduced on Monday, October 31st, the Minister of Education took part in a press conference at Queen's Park, during which, the Minister stated that "...it is certainly our intention that kids will be in school, we will pass a law". The transcripts and video recording from this press conference confirm this. (See Appendix A).

The Minister was also quoted in an article written by the Canadian Press, confirmed by video recording, saying "The government is going to pass the bill. We're going to move forward". (See Appendix B).

Speaker, I believe that not only has the Minister of Education presumed passage of Bill 28 on multiple occasions today, but that there is precedent from previous Speakers of this house to find a *prima facie* case of contempt.

In 1997, Speaker Stockwell made a ruling on a question of privilege on a ministry pamphlet claiming that "new city wards will be created". Speaker Stockwell stated, "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". (See Appendix C).

In that case, Speaker Stockwell laid out a very strict two-pronged test for whether the presumed passage of legislation before this house could be deemed a breach of privilege and establish 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 law-making 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," concludes Speaker Stockwell.

Additionally, Speaker Peters more recently provided examples of government language that respects the role of the legislature and should have been included as qualifiers in the Minister's public statements. To quote Speaker Peters: "I cannot find that the language used is dismissive of the legislative role of the House. On the contrary, the use of qualifying language such as: "we are proposing" can only leave the impression that further steps are required before implementation is possible. I can not find therefore that a *prima facie* case of contempt has been established."

As you are aware, Mr. Speaker, the most recent edition of Erskine May describes contempt as follows: "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 such House into odium, contempt or ridicule or by lowering its authority, may constitute contempts."

It is clear that the public statements made by the Minister regarding Bill 28 meet the test set out by Speaker Stockwell and do not include any of the qualifying language cited by Speaker Peters.

As such, I ask the Speaker to make a finding that a *prima facie* case of contempt has been established.

Additionally, as the Minister of Education has publicly stated his intent to fast track the Bill without thorough debate or meaningful public consultation, it is imperative that you rule on this matter as soon as possible.

Regards,



Mitzie Hunter  
MPP, Scarborough-Guildwood  
Deputy Leader, Ontario Liberal Party

CC

Mr. Todd Decker, Clerk of the Legislative Assembly of Ontario

## APPENDIX A

### Ontario education workers announce mass walkout amid back-to-work legislation

Link: <https://toronto.ctvnews.ca/video?clipId=2553905&binId=1.3378530&playlistPageNum=1>

(9 minutes & 38 seconds)

Chris Fox

Oct. 31, 2022

A union representing tens of thousands of school support workers is vowing to hold a province-wide day of protest on Friday, even as the government formally tables legislation intended to block them from striking.

Education Minister Stephen Lecce preventively tabled legislation on Monday afternoon which will “terminate any on-going strike” by the Canadian Union of Public Employees and instead impose a new four-year collective agreement on the approximately 55,000 members represented by the union.

But in a news conference held at Queen’s Park following the tabling of the “Keeping Students in Schools Act,” CUPE Ontario President Fred Hahn promised that school support staff still intend to walk off the job on Friday as part of a day of protest.

At this point it remains unclear whether the planned job action will continue on Monday. Asked about the possibility of a prolonged wildcat strike, the president of CUPE’s Ontario School Board Council of Unions Laura Walton would only say that “will be left up to what happens.”

CUPE represents approximately 55,000 school support staff, including custodians, early childhood educators, education assistants, and administration staff

“On Friday, regardless of what this legislation says our members will be engaging in a province-wide protest. That means no CUPE education workers will be at work. Instead we will be taking a stand for public education for ourselves and for our future,” Hahn said. “Our union and others have been effective in challenging governments in the courts and we won but all too late for workers. Enough is enough. We may in fact challenge this in court but we are first going to challenge it in our communities. We are not going to allow our rights to be legislated away.”

The move to introduce back-to-work legislation comes one day after CUPE provided the required five days of notice to formally begin job action.

While CUPE has vowed to fight the legislation, the Ford government has indicated that it will invoke the notwithstanding clause to protect the bill from legal challenges.

Speaking with reporters, Hahn said that the government's intention to not only introduce back-to-work legislation but also impose a collective agreement is a "monstrous overreach" using the “heaviest hammer imaginable.”

"They didn't just prevent a strike, they didn't just say 'off to arbitration with you,' they are writing the collective agreement for workers," Hahn said. "You can't just do that and not face repercussions."

## WORKERS WHO WALK OFF JOB COULD BE FINED

If passed, the bill will allow for fines to be issued against any individual or bargaining agency that either participates in a strike or "authorizes or threaten to call or authorize a strike."

Those fines cap out at \$4,000 for individuals. However, steeper fines of up to \$500,000 could be levelled against the union itself under the legislation.

"There are consequences and we have shared those with our members but I think there is also consequences for not fighting," Walton said. "At what point as people in Ontario do we stand up and say enough is enough?"

The workers represented by CUPE have been without a collective agreement since Aug. 31 and despite several rounds of talks, a new one has yet to be negotiated.

Among other things, CUPE wants a yearly wage increase of \$3.25/hour (11.7 per cent), early childhood educators in every kindergarten class, five additional paid days before the start of the school year, 30 minutes of paid daily prep time, an increase in overtime pay, and a \$100 million investment in new job creation.

The province's latest offer, proposed at an emergency mediated session on Sunday afternoon, is a four-year deal that includes a 2.5 per cent annual raise for workers who make under \$43,000, and a 1.5 per cent yearly wage increase for those who make more. This is up from their initial offer of a two per cent annual increase for workers who make less than \$40,000 and a 1.25 per cent raise otherwise.

"We increased our offer, we provided something that I thought was quite fair and they (the union) have proceeded on a path to a strike," Lecce told reporters during a news conference on Monday afternoon. "If we did not introduce legislation now, this afternoon, there would have been a strike on Friday. Think of what these kids have gone through. Speak to the pediatric hospitals and the mental health wards. Is it not the obligation of government to stand up for them, to give them a voice, to ensure some continuity in their lives?"

Lecce said that the government would have preferred to get a "voluntary agreement" but felt that back-to-work legislation was the only way to ensure that students would remain in classrooms, following two years of pandemic disruption.

As for Friday's planned day of protest, the education minister said that he is hopeful that support workers will "do the right thing."

"I do hope that common sense will prevail, that the interest of kids will prevail and that those workers will be in school on Friday," he said.

## LEGISLATURE TO MEET BRIGHT AND EARLY ON TUESDAY

Government House Leader Paul Calandra has said that the legislature will begin meeting at 5 a.m. on Tuesday in order to speed up the passage of the bill.

Hahn said that if the bill is in fact enacted into law prior to Friday and it becomes it's illegal to strike, members will simply be participating in a "political protest."

Negotiations with the province's other education sector unions are continuing but the Elementary Teachers Federation cancelled a planned bargaining session on Monday following the tabling of the bill.

"On this of all days, ETFO could not, in good conscience, sit across the table from the government, and so we ended negotiations for the day," a statement from the union notes. "In creating legislation that imposes a contract on CUPE members, the Ford government has chosen the most draconian manner of legislating away two fundamental rights protected by the Canadian Charter of Rights and Freedoms: the right to bargain collectively, and the right to strike."

## APPENDIX B

### Ontario education workers will walk off the job Friday despite anti-strike legislation, CUPE says

Link: <https://www.cbc.ca/news/canada/toronto/ontario-education-minister-news-conference-1.6635275>

CBC News · Posted: Oct 31, 2022

The union representing some 55,000 Ontario education workers says its members will walk off the job Friday in a province-wide protest, regardless of Ontario's proposed anti-strike legislation. At a news conference Monday, the union said education workers will "withdraw their labour" to protest against the move by the province, which they called a "monstrous overreach."

The Ontario government introduced the *Keeping Students in Class Act* on Monday, which invokes the notwithstanding clause to impose a contract on education workers and avert a strike. The clause — or Section 33 of the Charter of Rights and Freedoms — gives provincial legislatures or Parliament the ability, through the passage of a law, to override certain portions of the charter for a five-year term.

Education workers could face fines of up to \$4,000 per day should they strike, the legislation states.

The union held the news conference hours after the provincial government announced it plans to bring in legislation to block the potential job action.

CUPE has said they will explore every avenue to fight the bill, but the government said it intends to use the notwithstanding clause to keep the eventual law in force despite any constitutional challenges.

Speaking to reporters Monday afternoon, Ontario Education Minister Stephen Lecce called the union's decision to proceed with striking "unacceptable."

"The government has been left with no choice but to take immediate action today," Lecce said, indicating the union rejected its latest offer, adding he believes the legislation is in fact constitutional.

The government had been offering raises of two per cent a year for workers making less than \$40,000 and 1.25 per cent for all others. Lecce said the new, four-year deal would give 2.5 per cent annual raises to workers making less than \$43,000 and 1.5 per cent raises for all others. CUPE has said its workers, which make on average \$39,000 a year, are generally the lowest paid in schools and the union has been seeking annual salary increases of 11.7 per cent.

"The government is going to pass the bill. We're going to move forward," said Lecce.

The education minister said its move was not a blanket approach, saying it will continue to negotiate with other education unions.

As for whether the job action will run longer than one day, union officials said that remains to be seen.

The union also said it will come up with financial support for any consequences that workers might face for protesting in the face of the legislation.

On Sunday, education workers represented by the Canadian Union of Public Employees (CUPE) gave the required five days' notice for job action, positioning its members — including educational assistants, custodians and early childhood educators, but not teachers — to go on full strike as early as Friday.

Several Ontario school boards have said they will shut down schools if support staff withdraw their services.

The government and education workers returned to the bargaining table Sunday afternoon but there doesn't appear to have been any progress since.

Union officials said the province's offer put forward Sunday would have provided only a nickel more for each worker, giving the union an ultimatum. Instead of the government holding a negotiation, officials said they learned the government intended to legislate against a strike if the union didn't acquiesce.

"If Stephen Lecce cared about kids, he wouldn't have handed [\\$200 to parents](#)," said CUPE member Laura Walton, dressed in a Rosie the Riveter Halloween costume, an American character representing women who worked in factories and shipyards during the First World War — a choice she said was intended to send a message.

Still, she said, "negotiations aren't done."

Meanwhile, in a news release Monday, the Elementary Teachers' Federation of Ontario said it "unequivocally" condemned the Ford government's move.

The union representing some 83,000 Ontario elementary teachers said it ended its own negotiations with the government for Monday because it could not "in good conscience, sit across the table from the government," ETFO President Karen Brown said.

"ETFO stands with CUPE members and their right to strike for better pay and working conditions, and not with a regressive government that is cloaking anti-labour legislation as being pro-education," said Brown.

The Ontario Secondary Schools Teachers' Federation (OSSTF) also issued a statement, calling the proposed legislation "heavy-handed," "effectively undermining and disrupting their rights to free and fair collective bargaining."

The union, which represents more than 60,000 members across Ontario says it "stands in solidarity" with CUPE's members, but that its focus remains on its own negotiations with the province.

"We continue to call on the Ford government to work within a fair process that respects and upholds all workers' Charter rights, and to invest in public education and negotiate a fair deal," OSSTF President Karen Littlewood said.

## APPENDIX C

Link: <http://hansardindex.ontla.on.ca/hansardeissue/36-1/1149.htm>

The Speaker (Hon Chris Stockwell): On Tuesday, January 14 and Wednesday, January 15, 1997, the member for Algoma (Mr Wildman) and the member for Oakwood (Mr Colle) rose on separate questions of privilege to express concerns about government's recent use of electronic and print media to communicate its agenda and about its use of public funds to do so. In addition, I received submissions from the government House leader.

Specifically the member for Algoma expressed concerns about television commercials in which the Premier spoke to the government's forthcoming reform agenda. The member for Oakwood was concerned about a pamphlet issued by the Minister of Municipal Affairs and Housing. The pamphlet dealt with the government's program for reforming municipal governance in Metropolitan Toronto. Both members indicated that the advertising occurred in advance of consideration by the House of legislative measures that would be necessary to implement the reform agenda and in advance of public hearings on these measures. They asked the Speaker to determine whether this advertising affected members' privileges and whether it was contempt.

Further, on Monday, January 20, 1997, the member for Algoma brought to my attention a separate but related concern. According to the member, the Minister of Municipal Affairs and Housing had issued a press release on the previous Monday announcing the government's intention to realign the responsibilities of provincial and municipal governments. The member submitted that the wording of the press release had the effect of relating the television advertisements to the legislation that the minister was introducing.

Let me begin my response to these concerns by referring to the relevant parliamentary authorities on privilege. Standing order 21(a) provides that "Privileges are the rights enjoyed by the House collectively and by the members of the House individually conferred by the Legislative Assembly Act and other statutes, or by practice, precedent, usage and custom." Examples of individual privilege are freedom of speech, freedom from arrest in civil actions, exemption from jury duty, exemption from attendance as a witness and freedom from molestation.

Although it is not clear from the submissions made by the member for Algoma and the member for Oakwood which specific head of privilege they felt was being breached, I indicated last week that I would look into the matter. In my researches I found an October 29, 1980, ruling by Speaker Sauvé of the Canadian House of Commons, a ruling that dealt with concerns about the propriety of an advertising campaign initiated by the government of Canada. In ruling that there was no prima facie case of privilege, Speaker Sauvé stated the following at pages 4213 and 4214 of the House of Commons Hansard:

"There must...be some connection between the material alleged to contain the interference and the parliamentary proceeding. In this regard, there is little, if any, evidence before me relating either the documents or the advertising campaign to a parliamentary proceeding."

In light of Speaker Sauvé's ruling, and after examining all the circumstances, I find that a prima facie case of privilege has not been made out with respect to the concerns raised by the member for Algoma and the member for Oakwood. The television commercials, the ministry pamphlet and the ministry press release do not attempt by improper means to influence



members in their parliamentary conduct and do not impede freedom of speech in this place, nor do they relate to a parliamentary proceeding.

The member for Algoma and the member for Oakwood also asked the Speaker to determine whether the same circumstances amounted to contempt. Erskine May explains the concept of contempt in the following terms (at pages 115, 121, 124 and 125):

"Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer 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 contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary....

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

"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 or by bringing such House into odium, contempt or ridicule or by lowering its authorities may constitute contempts."

That is what Erskine May said on contempt.

I want to say to members that I have also reviewed two important rulings mentioned by the member for Algoma last week. The first ruling was by Speaker Fraser in the Canadian House of Commons on October 10, 1989.

The situation that Speaker Fraser was faced with was as follows: The Department of Finance had caused to be published an advertisement that stated that "on January 1, 1991, Canada's federal sales tax system will change" and that a goods and services tax "will replace the existing federal sales tax." The advertisement then outlined specific proposed changes.

After assessing the situation from the perspective of privilege, Speaker Fraser proceeded to assess it from the perspective of contempt. In the course of ruling that there was no prima facie case for breach of privilege or for contempt, he identified the differences between the two in the following terms:

"All breaches of privilege are contempts of the House, but not all contempts are necessarily breaches of privilege. A contempt may be an act or an omission; it does not have to actually obstruct or impede the House or a member; it merely has to have the tendency to produce such results. Matters ranging from minor breaches of decorum to grave attacks against the authority of Parliament may be considered as contempts."

In ruling that there was no case for contempt, Speaker Fraser appears to have accepted the submissions of government ministers that the government had never intended the advertisements in question to be anything more than "informational" and that it had never been "the government's intention to suggest that legislation would not be submitted to Parliament for

debate." Members will find this important ruling at pages 4457 to 4461 of the House of Commons Hansard for October 10, 1989.

The member for Algoma also referred to a March 28, 1994, ruling of Speaker Warner in our own House. In that case, the government had caused an open letter to be published in newspapers in the Ottawa-Carleton area. The letter, which appeared under the signature of the Minister of Municipal Affairs, could be interpreted as suggesting that a bill that had only received first reading would become law by a specified time. After reviewing Speaker Fraser's ruling and two precedents from our own House, Speaker Warner indicated that a prima facie case had not been established.

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."

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.

In the two rulings I have referred to, Speaker Fraser in Ottawa and Speaker Warner in our own House had some strong words for ministers or the government of the day on the subject of government advertising.

Speaker Fraser stated he would not be as generous in future in a similar situation and that, "we are a parliamentary democracy, not a so-called executive democracy, nor a so-called administrative democracy." Speaker Warner stated "that this action has come very close to contempt, and in the future the minister should exercise more caution and exhibit greater respect for the proprieties of this House."

Considering the fact that Speaker Warner issued this very stern warning to the very ministry that I am dealing with today, I would consider this ministry to have been given fair warning.

It is not enough for yet another Speaker to issue yet another warning or caution in circumstances where the wording and circulation of the pamphlet appear on their face to cross the line. I say in all candour that a reader of that document could be left with an incorrect impression about how parliamentary democracy works in Ontario, an impression that undermines respect for our parliamentary institutions.

For these reasons then, I find that a prima facie case of contempt has been established. At the end of this ruling, I will entertain a motion with respect to the matter of the ministry pamphlet raised by the member for Oakwood.

On a separate but related matter, the member for St Catharines (Mr Bradley) expressed concerns on Tuesday of last week about the unequal access to advertising resources as between the government and the opposition. He asked whether the Speaker had any jurisdiction to restrict the government from disseminating allegedly self-serving, partisan advertising.

At this point in my ruling, I want to express some personal concerns about the propriety of public funds being used to advocate, through advertising, a particular position on a matter that is before the House. Let me be clear: I am not speaking here about politically paid for advertising, but rather about funds that are contributed to by every Ontarian, regardless of his or her political view. Personally, I would find it offensive if taxpayer dollars were being used to convey a political or partisan message. There is nothing wrong with members debating an issue and influencing public opinion; in fact, it is part of our parliamentary tradition to do so. But I feel that it's wrong for a government to attempt to influence public opinion through advertising that is paid for with public funds.

## APPENDIX D

Link: <http://hansardindex.ontla.on.ca/hansardeissue/39-2/1080.htm>

The Speaker (Hon. Steve Peters): On December 2, 2010, the member for Simcoe-Grey, Mr. Wilson, rose on a question of privilege concerning the distribution of what he argued were election-style pamphlets on the morning of Tuesday, November 30, 2010.

The member purports that the distribution of such documents amounts to a matter of contempt because the material promotes a proposed government program as if it already has the approval of the assembly.

I've had the opportunity to review the written material supplied by the member for Simcoe-Grey, the comments made by the government House leader, Ms. Smith, and precedents on similar matters.

Let me begin by correcting the assertion made by the member for Simcoe-Grey in his letter where he states that Speaker Curling "found a contempt of the assembly" on February 22, 2005. The following more complete text of Speaker Curling's ruling reveals in fact that it was the opposite:

"The wording and the tone of the documents are not dismissive of the legislative role of the House. On the contrary, they indicate that the government had plans and proposals that require not only negotiation, but also the introduction and passage of legislation. In particular, the board letter and press release contain conditional phrases such as 'intends to introduce legislation,' 'we are proposing,' and 'legislation that, if passed.'

"With respect to the word 'guaranteed' in the documents, I note that it is not used in the sense that passage of enabling legislation was a foregone conclusion, but rather in reference to proposed payments to transfer partners and a proposed provision in future collective bargaining agreements.

"For these reasons, I find that a prima facie case of contempt has not been established."

Notwithstanding that the member for Simcoe-Grey erred in his assessment of the conclusion of that ruling, the ruling is apt since its subject was quite similar to the one that we are dealing with today. A review of the pamphlet in question confirms the use of phrases such as "The McGuinty government wants to" and "We're proposing," wording that is almost identical to the conditional phrases used in the letter and press release that Speaker Curling ruled on.

The member for Simcoe-Grey also referred to a ruling by Speaker Stockwell on this same subject. In that case, Speaker Stockwell found a prima facie case of privilege did in fact exist. However, a review of the pamphlet that he had before him reveals quite different wording. It contained phrases such as "new city wards will be created," among others, that Speaker Stockwell found to be dismissive of the House and which could reasonably have left one with the impression that the passage of the requisite legislation was a foregone conclusion.

In my opinion, the pamphlet that the member for Simcoe-Grey has brought to my attention is more characteristic of the documentation that Speaker Curling dealt with. I cannot find that the language used is dismissive of the legislative role of the House. On the contrary, the use of qualifying language such as "we are proposing" can only leave the impression that further steps

are required before implementation is possible. I cannot find, therefore, that a prima facie case of contempt has been established.

I want to thank the member for Simcoe-Grey and the government House leader for their submissions on this matter.

There being no further business, this House stands recessed until 3 p.m. this afternoon.