

OBSTRUCTION IN THE ONTARIO LEGISLATURE:

The struggle for power between the government and the opposition

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In parliamentary governments around the world, there is constant friction between the governing party and the opposition as they struggle to balance a range of interests, priorities and objectives. The Ontario legislature is no exception. Over the past two decades, there have been numerous attempts by opposition parties of various political stripes to delay and obstruct government business. These delays have taken many forms, from a simple filibuster speech to manipulation of the Standing Orders. As a result, the Standing Orders, which regulate business in the legislature, were modified by the government of the day in order to prevent such obstruction by the opposition. These changes to the Standing Orders, particularly during the 1990s, effectively prevented any opposition delay tactics from being used against the government. This ensured that government business, in a majority government, could pass through the system in a timely fashion.

These changes, however, drew criticism from some who felt the opposition parties were being denied an essential opportunity to voice their concerns over legislation and policies the government brought forward. Former NDP House Leader Bud Wildman once called obstructionist tactics “important symbol[s] of defiance,” and “lessons for all majority governments.”¹ Others have argued that by implementing obstructionist methods, “the opposition hopes to score points at the government’s expense, points that will be cashed in at the time of the next election.”²

At issue is whether the opposition indeed has an inherent right to oppose the government using obstruction, particularly in a majority government situation, when the legislation can effectively pass with or without the support of opposition members. The central question is whether obstructionist tactics are at any time justified in the Ontario legislature. This essay will argue that, under the Westminster system of parliament, obstruction is not an inherent right of the opposition and therefore is not justified. The design of the system permits the opposition various opportunities to oppose the government within the boundaries of the Standing Orders and the traditions of Westminster. What follows is a definition of obstruction and an examination of four examples of use of this tactic in the Ontario legislature. Next, the main tenets of the Westminster system are explained, focusing particularly on the tools available to opposition parties to counter government business without resorting to obstruction tactics. Finally, conclusions will be drawn with respect to the use of these tactics in the Ontario legislature.

It is necessary to first define obstruction, prior to examining its use or relevance in the Ontario legislature. C.E.S. Franks writes that, “legitimate dissent becomes obstruction when it has no other purpose than to delay, when it is not exposing weakness or molding opinion, but simply preventing legislation from being passed.”³ In the past twenty years in the Ontario legislature, there have been several examples of large-scale, high profile obstruction by opposition parties. These delays took many forms and were instigated for various reasons, however the aim was always the same: to block government business by any means necessary.

In April 1988, David Peterson’s Liberal government was set to deliver its budget on Wednesday April 20 at 4:00 p.m. On April 14, the New Democratic Party (NDP) began to read petitions at approximately 3:15 p.m., during the regular time allotted for petitions. Specifically, the majority of these petitions dealt with the issue of stores being permitted to do business on Sundays in the province.⁴ However, Bob Rae, leader of the

NDP, hinted prior to reading his first petition that a delay was brewing.

Mr. Speaker, I want to inform you that I have a number of petitions that have been signed by literally thousands of Ontarians. Pursuant to the standing orders, I would like the opportunity to read the petitions as they have been signed. I know that a number of my colleagues from the New Democratic Party have also received a number of petitions. I just want to inform the public that this is a historic right of citizens in the province to petition the Legislature, that it is a right that is untrammeled -- it is not a by-and-large right, it is established in our own standing orders -- and that I would encourage citizens to continue to sign petitions dealing with this question of working on Sunday.⁵

It was clear that the constant reading of petitions was an effort to delay the reading of the budget by the Liberal government. NDP members continued to read petitions until the end of the session at 6:00 p.m. that day. The Progressive Conservative members followed the NDP's lead and also introduced dozens of petitions of their own in an effort to aid in the delay of business. Despite objections from Liberal members, the Speaker had no choice but to allow petitions to be read, pursuant to the Standing Orders. This delay continued for five sessional days in the legislature, with petitions being read from Thursday April 14 to Thursday April 21.

However, the Liberals were scheduled to deliver their budget on April 20. As such, Robert Nixon, Minister of the Treasury, consulted the Clerk of the Legislature, Claude DesRosiers on his options in terms of presenting his budget. Since there is no specific rule stating that the government must read the budget aloud in the legislature (it is merely a convention), the Clerk advised Nixon to table his budget in the legislature and make copies available to all members. If he so chose, he could present his budget to the public and the media outside of the Chamber.⁶ On April 20, Nixon rose on a point of order and announced,

... I have no alternative but to use standing order 35(d) and hereby table the budget in the House. Copies are available to all members. Those members of the press, political observers and people from the business community who are examining the budget at the present time will be let out of their lockup, and we can proceed with the business of the House as you otherwise order, Mr. Speaker.⁷

The opposition parties had succeeded in delaying introduction of the budget for several days. However, if a motion for debate on the budget was not permitted, there would not be an opportunity for all parties to debate the budget in the House. As such, the opposition had no choice but to stop reading petitions and allow Nixon to move his budget motion and proceed with debate.

The Standing Orders of the day, dated April 1986, did not include any time limit on Petitions and, as such, the obstruction used by the opposition in April 1988 was in order. However, the Liberals amended the Standing Orders in 1989 to include a time limit on petitions. Standing Order 35(g) reads "The period for "Petitions" shall be limited to 15 minutes."⁸ This change, made directly in response to the petitions obstruction incident the year before, would only be the first of many changes made to the Standing Orders by a frustrated government wanting to prevent a similar delay in the future.

This was not the only lengthy obstruction that the Liberals endured at the hands of the NDP party. In April 1990, the Peterson government was prevented from bringing forward legislation dealing with no-fault automobile insurance due to one of the longest

filibuster speeches in the province's history. On April Tuesday 3, 1990 NDP member Peter Kormos rose to speak on a time allocation motion on Bill 68, *An Act to amend certain Acts respecting Insurance*. He began his speech at approximately 4:40 p.m. on the afternoon of April 3. He continued to speak every subsequent day during Orders of the Day, thereby successfully blocking any government business for weeks. Kormos refused to end his daily speeches and resorted to many unique tactics to continue his delay, including reading citizens' faxes and phone messages of support into the record.

On Thursday April 26, he began his concluding, marathon speech - his final address which brought the weeks of constant oration on this matter to an end. He rose to speak at 5:50 p.m. that afternoon and did not stop until Friday at 11:04 a.m., 17 hours later.⁹ Kormos had single-handedly tied up the government's motion for three weeks. "I wish I could have carried on for two more days, three more days, four more days, but there's a point where that becomes physically impossible," Kormos said after his 12-day obstruction ended.¹⁰

Since the Liberals were defeated by Bob Rae and the NDP in the September 1990 election, they did not have an opportunity to change the Standing Orders directly following the Kormos filibuster. However, when the Standing Orders were modified by the NDP at the next available opportunity, time limits were imposed on debates. The 1992 Standing Orders provides for time limits for most types of debate that were not present in the 1989 edition. Order 24(a) states, "Except where otherwise expressly provided by the Standing Orders, when the Speaker is in the chair, no member shall speak for more than 30 minutes."¹¹

This was not the only time limit Rae's government imposed that year. In fact, "the New Democratic Party brought in some of the most restrictive changes to the Standing Orders,"¹² particularly in terms of time restrictions. Unlike the previous governments, the NDP was facing "unprecedented opposition-mounted delays in passing even its routine bills"¹³ and as such, Rae "resorted to significantly more extensive use of procedures to limit house debate than previous governments had required."¹⁴ This marked difference is often attributed to the particularly strong ideological nature of the NDP government, relative to previous governments. The opposition parties, especially the Liberals who lost power to the NDP in the 1990 election, had a remarkable desire to block the government's business "by any means necessary."¹⁵

In early 1991, another well-known stalling tactic was employed to obstruct business in the legislature during Introduction of Bills. The NDP party was in power, Bob Rae was serving as Premier and the Progressive Conservatives were in opposition. On May 6, Mike Harris and the PC party used an obstruction tactic to delay a vote on the NDP's budget. At the time for introduction of bills, Harris rose and introduced Bill 95, which included the name of every lake, river and stream in the province of Ontario.¹⁶ The process of reading out his bill's title, and the Clerk repeating it aloud as required by the Standing Orders, took just over four hours to complete, including many interjections from government members.¹⁷ However, the Speaker had no choice but to allow Harris to proceed since the Standing Orders did not include a limit on Introduction of Bills.

During Question Period on May 7, 1991, Harris provided a partial explanation for his obstruction tactic.

I have heard those voices of the people. They are not happy ones. They are furious with this government's budget; not just the tax bills, by the way -- and he is already collecting the taxes -- but the overall budget, and they want to be heard... We are interested in hearings on the overall budget.¹⁸

In the media, Harris was equally defiant. "I'm going to fight this budget tooth and nail, I'm going to try and slow it down as best I can, I'm going to try and stop it if I can," he said.¹⁹ In order to prevent Harris from continuing his obstruction of Routine Proceedings, Shelley Martel, the government House Leader, passed motions in the days that followed May 7 to move directly from Oral Questions to Orders of the Day, therefore bypassing Introduction of Bills. It took nearly a month to negotiate an end to the obstruction.²⁰

Rae's government ensured that the opposition would never again draw out Introduction of Bills to delay government business. In 1992, the Standing Orders were revised to include a time limit on this part of the legislative day. Standing Order 38(f) states "The period for "Introduction of Bills" shall be limited to 30 minutes."²¹ Once again, the NDP chose to take a strong position against obstruction and alter the Standing Orders.

The final major example of obstruction to be examined here occurred in 1997. Mike Harris and the Progressive Conservative government were in power after winning the 1995 election. Interestingly enough, it was the NDP party, now in the opposition role, who sought to delay passage of a government bill by introducing thousands of amendments. In this case, the NDP attempted to block passage of Bill 103, City of Toronto Act, 1996, introduced in the legislature on December 17, 1996. After several months of heated discussion and debate both inside the legislature and in the media, Bill 103 was brought forward for amendments in the House on April 4, 1997. Both the NDP and the Conservatives stated from the outset that they had prepared thousands of amendments on this bill. The NDP and Liberals combined had approximately 13,000 amendments to various sections, which had to be read into the record and voted on individually.²² Everyone involved in this process knew it would take days, perhaps weeks, to deal with each amendment as required in the Standing Orders.²³

From Wednesday April 2 through to Friday April 11, 1997, the legislature sat around the clock without breaking to consider the thousands of amendments before the House.²⁴ The NDP used a creative maneuver to outwit the government. Party researchers created a computer program to electronically generate one amendment for the name of each street in Toronto, asking that the residents of each street "be informed of any impact arising out of the bill affecting them."²⁵

As the Toronto Star reported at the time, this bill, which sought to amalgamate smaller cities in the Toronto region into one large "Megacity," was particularly contentious both inside and outside the legislature.

The opposition believes that it has the people on its side in this fight...[this] legislation...was rejected by three out of every four Metro voters in last month's referendum. Liberal and New Democrat MPPs report that the phone calls, faxes and e-mails to their offices were overwhelmingly favorable in the first days of the filibuster.²⁶

Despite many objections from the government members, the delay tactic was ruled in order by the Speaker and, as such, was allowed to proceed for the full 10 days. In the end, none of the amendments were passed.²⁷

As a result of the obstruction by the NDP, the Harris government did not hesitate to change the Standing Orders, as their predecessors had done, to avoid a similar delay from occurring again. The Standing Orders were revised in August 1997 to include a specific direction for the Speaker, if amendments or motions tabled appear to be purely for the purposes of delaying government business. Standing Order 45(d) states that “The Speaker or Chair shall rule out of order any motion or amendment that he or she considers to be frivolous, vexatious, for purposes of delay or contrary to the Standing Orders or precedents.”²⁸

Harris was quick to restrict the rules for the opposition members when he was in power, despite his 1991 lakes, rivers and streams obstruction incident. In contrast, the NDP was willing to obstruct government business in a similar manner as Harris had obstructed them, despite their objections in 1991. The irony was not lost on then-Liberal House Leader Dwight Duncan. “The very methods that Mike Harris used to make his point in opposition are being denied to the opposition today.”²⁹

In order to properly assess the obstruction tactics discussed above, it is necessary to clearly understand the system under which the Ontario legislature operates. Ontario’s system is based on the Canadian Parliament in Ottawa, which is directly rooted in the British parliamentary system, known as Westminster.³⁰ “Canada has created an executive-centered form of parliamentary government,”³¹ which means that the Prime Minister and Cabinet enjoy a great deal of authority, especially in a majority government. Indeed, Cabinet is given “almost unlimited opportunity to pursue its agenda, with little formal interference”³² from any other branch of government or backbench members. Ontario’s parliamentary system is effectively the same as the Canadian federal model, in that the Premier and his Cabinet hold the overwhelming majority of power in a majority government situation. Simply put, the both the Canadian and Ontario systems are executive-dominated.³³

The main tenets of the Westminster system continue to hold true in the Ontario legislature and form the basis of the current system. The central feature of the Westminster model is that it is “designed to permit government to govern.”³⁴ Unlike the American system of government, which is “designed to inhibit government action by preventing the concentration of power in the hands of the executive,”³⁵ the British parliamentary system is “designed to facilitate government action by concentration power in the hands of the executive.”³⁶ Essentially, the Westminster model is designed for legislative efficiency. The government, led by the Cabinet and the Premier, set the priorities of the legislature, decide how much money to spend and where to spend it, determine which bills will come to the House for debate and which bills will be considered in Committees. “From the narrowest of details to the broadest of constitutional responsibilities, the government is in charge.”³⁷

Although the Westminster model is executive-based, this does not mean that the opposition does not play a key role. Indeed, the role of the opposition is far more complex than simply opposing the government. It is the ultimate aim of the opposition to persuade the electorate to throw out the government.³⁸ Despite the enormous amount of power held by the executive, the Westminster model provides for checks and balances to that power, which can, and should, be exercised by the opposition members.

The primary check on the government is the convention of responsible government. Considered a “central pillar”³⁹ of the Ontario state, responsible government

requires that the Cabinet and the Premier are accountable to the legislature for their “actions and the actions of government departments.”⁴⁰ The government must retain the confidence of the legislature in order to govern. If the government is defeated on a matter of great importance, for instance the budget, it must resign and call an election.⁴¹ These questions of major importance are usually referred to as matters of confidence and the government must always maintain the confidence of the legislature. It is essential that the opposition parties actively hold the government responsible to the legislature and ensure that the principle of responsible government is “more than a formality.”⁴²

The second balance on the power of the executive is ministerial responsibility. This principle holds that “the executive can be held to account, within the assembly, for their actions.”⁴³ Essentially, this means that the opposition members are watching the Cabinet ministers and holding them responsible for the dealings within their ministries. “This principle was once thought to entail a minister’s resignation over public servants’ errors, even though the minister knew nothing about.”⁴⁴ However this principle has evolved as the size of government has increased and, while they may still criticized for problems and failings in their ministries, “they rarely resign except for monumental personal mistakes and conflicts of interest.”⁴⁵ The practical implications of this principle today apply mostly to the requirement that ministers must explain and defend their ministries in the legislature, especially during Question Period.⁴⁶

The third major check on the power of the executive is the notion of institutionalized opposition. This means that other parties must ensure electoral responsibility on a daily basis in the legislature, as well as provide realistic governing alternatives.⁴⁷ The opposition must “bring to the public’s attention aspects of the government’s policies which would not otherwise be brought before [the legislature].”⁴⁸ As well, the opposition must present its alternative policies to the public and demonstrate what it would do differently if it were in power. “It is this public testing of governance, with the government and the opposition as institutionalized adversaries, that is the hallmark of contemporary responsible government”⁴⁹ in the Westminster system.

Even given the defined roles of opposition to ensure responsible government, ministerial responsibility and institutionalized opposition, there are various opportunities within the legislative process for the opposition to put up roadblocks for the government. These tools include casting doubt on the government during Question Period, proposing amendments to bills and voting on bills and motions.⁵⁰ As well, participating in special debates, for example the debate on the Speech from the Throne or the budget, provides the opposition with the opportunity to raise doubt and question the government’s direction, while at the same time providing an alternative to the electorate. There are also Opposition Days in the legislature, where the opposition can guide the debate on a subject it chooses.⁵¹

It is clear that the Westminster model provides the opposition members with many occasions to speak out against government legislation and seek to represent the contrary position on a particular issue. Since obstruction tactics fall outside the parameters of the Westminster parliamentary system, they are not justifiable methods for the opposition parties to use, despite the attention they might attract from the media and the public. There are several factors which account for the sharp increase in obstructionist tactics in the Ontario legislature, which merit consideration.

Ontario political science scholar Graham White has suggested that Ontario has undergone a discernible transformation since the 1980s, since the end of the Davis government and the start of the Peterson Liberal reign. “The middle-of-the-road politics of moderation that marked the Davis and Peterson governments have been replaced by strongly ideological politics emphasizing the gulf between government and opposition.”⁵² White notes that once the Liberals and NDP parties “tasted power”⁵³ in 1985 and 1990 respectively, after so many years of Conservative control, both parties realized that they could pose real threats as potential governments. “Conceivably any issue before the House [may have had] the potential to shift the political balance sufficiently to produce a change in government. Accordingly, parties [were] more aggressive and intransigent in the House.”⁵⁴ As noted earlier, the arrivals of the NDP government under Rae and the Conservative government under Harris brought with them distinct ideological underpinnings, which created unprecedented tension both inside and outside the legislature. Both Rae and Harris introduced legislation and policies which were highly controversial and ideologically-based, thereby inflaming members’ “political passions.”⁵⁵ As a result, obstructionist tactics are much more common-place today than they were decades ago.

The Clerk of the Legislature, Claude DesRosiers, concurs with White’s assessment. He refers to the NDP victory in 1990 as watching “the impossible happen,”⁵⁶ and notes that the mindset of members has shifted over the past two decades. Opposition members are regularly “talking simply because they can”⁵⁷ during debate in the House, and not because they are genuinely contributing to the discussion. Since the 1980’s, the element of obstruction has been added to the Ontario legislature, which was never intended to be part of the parliamentary system.⁵⁸ As such, some observers argue that members have lost sight of the system in which they work. In 2001, then-Premier Mike Harris made a similar observation. “It’s become not constructive, but obstructionist. The goal seems to be, ‘How can we obstruct the passage of everything -- even those things we agree on -- to try [to] tie the government up,’ ” he told the National Post.⁵⁹

The Westminster model of government, which serves as the basis for the Ontario legislature, is designed to allow governments to govern. As such, opposition parties at Queen’s Park are not entitled to use obstructionist schemes to block government business. As demonstrated by the four cases of obstruction outlined in this paper, these tactics have become increasingly common in the Ontario legislature in the last twenty years. Meaningful debate between parties and constructive criticism have been replaced by delays and filibusters, which seek only to impede government business. In response, governments continue to manipulate the Standing Orders to remove any possible opportunities for the opposition members to delay their business. To avoid further deterioration of debate in the Ontario legislature, members need to examine the traditions of parliamentary system upon which Ontario’s legislature is based. Concerted efforts are needed by all members from all political stripes to move away from the goal of obstructing their opponent and towards the goal of governing their province.

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- ³ C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987) 131.
- ⁴ Bob Rae, "Petitions," Ontario Legislative Assembly, *Ontario Legislature Debates (Hansard)*, 14 April 1988, <<http://hansardindex.ontla.on.ca/hansardeissue/34-1/1046.htm>>, accessed 13 May 2006.
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- ⁶ Claude DesRosiers, Clerk of the Legislative Assembly of Ontario, *Personal Interview*, (Toronto: April 26, 2006).
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- ⁹ Derek Ferguson, "MPP protests no-fault plan in record 17-hour filibuster," *Toronto Star*, 28 April 1990, SA2 ed.: A.8.
- ¹⁰ "All-night talk ends filibuster," *The Vancouver Sun*, 27 April 1990, 4th ed.: A.2.
- ¹¹ Standing Orders, Ontario Legislative Assembly, 1992, 18.
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- ¹³ Graham White, "The Legislature: Central Symbol of Ontario Democracy," *The Government and Politics of Ontario*, 5th Edition, ed. Graham White (Toronto: University of Toronto Press, 1997) 81.
- ¹⁴ *Ibid.* 81.
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- ³² *Ibid.* 5.
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- ³⁵ Rand Dyck, *Canadian Politics: Critical Approaches, 3rd Edition* (Toronto: Nelson Thomson Learning, 2000) 30.
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- ⁴⁴ Rand Dyck, *Canadian Politics: Concise Edition* (Toronto: International Thomson Publishing, 1998) 248.
- ⁴⁵ *Ibid.* 248.
- ⁴⁶ *Ibid.* 266.
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