



LEGISLATIVE ASSEMBLY OF MANITOBA

VOTES AND PROCEEDINGS No. 23

FIRST SESSION, FORTIETH LEGISLATURE

PRAYER

1:30 O'CLOCK P.M.

Immediately following the Prayer, Mrs. TAILLIEU rose on a Matter of Privilege regarding the allocation of Question Period gallery passes and the use of Legislature committee rooms and moved:

THAT that this matter be referred to the Standing Committee on Legislative Affairs for consideration and reported back House.

And Hon. Ms. HOWARD and Hon. Mr. GERRARD having spoken.

WHEREUPON Mr. Speaker informed the House he would take the matter under advisement.

The following Bills were severally read a First Time and had their purposes outlined:

(No. 12) – The Consumer Protection Amendment Act (Motor Vehicle Work and Repairs)/Loi modifiant la Loi sur la protection du consommateur (travaux et réparations concernant les véhicules automobiles)

(Hon. Mr. RONDEAU)

(No. 14) – The Protection for Persons in Care Amendment Act/Loi modifiant la Loi sur la protection des personnes recevant des soins

(Hon. Ms. OSWALD)

(No. 202) – The Universal Newborn Hearing Screening Act/Loi sur le dépistage systématique des déficiences auditives chez les nouveau-nés

(Mrs. ROWAT)

The following petitions were presented and read:

Mr. PEDERSEN – Legislative Assembly of Manitoba to urge the Provincial Government to build the Bipole III transmission line on the shorter, more reliable east side of Lake Winnipeg route, in order to save Manitobans from a “BILLION DOLLAR BOONDOOGLE”. (J. Bereza, B. Budz, D. Burch and others)

Mrs. ROWAT – Legislative Assembly of Manitoba to urge the Minister of Healthy Living, Youth and Seniors to consider implementing a universal hearing screening program accessible to parents of all newborns in Manitoba. (R. Pankratz, N. Waldner, J. Wollman and others)

Mr. GRAYDON – Legislative Assembly of Manitoba to urge the appropriate Provincial Government departments to consider working with all stakeholders to develop a strategy to swiftly address the serious challenges posed by limited cellular phone service in southeastern Manitoba in order to ensure that people and property can be better protected in the future. (A. Jansen, P. Fuchs, Y. Chubaty and others)

Mr. BRIESE – Legislative Assembly of Manitoba to request the Minister of Infrastructure and Transportation to consider making the installation of traffic lights at the intersection of PTH 16 and PTH 5 North a priority project in order to help protect the safety of the motorists and pedestrians who use it. (J. Harding, K. Gillies, C. Hentin and others)

Mr. WISHART – Legislative Assembly of Manitoba to urge the Minister of Infrastructure and Transportation to recognize the safety concerns and the negative socioeconomic impact caused by the loss of the bridge and to consider establishing a low level crossing for farm machinery to cross the Portage Diversion a half mile north of Provincial Road 227. (T. Peters, A. Peters, M. Peters and others)

Hon. Ms. SELBY presented:

Annual Reports of the Manitoba Adult Literacy Strategy and the Adult Learning Centres for the year ending June 30, 2011.

(Sessional Paper No. 24)

Hon. Mr. STRUTHERS presented:

Supplementary Information for Legislative Review 2012-2013 – Departmental Expenditure Estimates – Civil Service Commission.

(Sessional Paper No. 25)

Supplementary Information for Legislative Review 2012-2013 – Departmental Expenditure Estimates – Enabling and Other Appropriations.

(Sessional Paper No. 26)

Supplementary Information for Legislative Review 2012-2013 – Departmental Expenditure Estimates – Employee Pensions and Other Costs.

(Sessional Paper No. 27)

Supplementary Information for Legislative Review 2012-2013 – Departmental Expenditure Estimates – Finance.

(Sessional Paper No. 28)

Hon. Mr. MACKINTOSH presented:

Supplementary Information for Legislative Review 2012-2013 – Departmental Expenditure Estimates – Conservation and Water Stewardship.

(Sessional Paper No. 29)

Hon. Mr. KOSTYSHYN presented:

Supplementary Information for Legislative Review 2012-2013 – Departmental Expenditure Estimates – Agriculture, Food and Rural Initiatives.

(Sessional Paper No. 30)

Following Oral Questions, Mr. Speaker made the following ruling:

During oral questions on Thursday, April 19, 2012, the Official Opposition House Leader (Mrs. Taillieu) raised a matter of privilege regarding the action of a government assistant deputy minister issuing invitations to civil servants and their clientele to attend specific debate to take place in the Legislature. The Official Opposition House Leader contended this was politicization and of—and potential intimidation of staff. She expressed a view that these actions impeded the ability of members to do their jobs because they cannot rely on the impartiality of the civil service. At the conclusion of her remarks, she moved, in quotations, that this House find the government in contempt for its—this blatant use of government staff. End of quotations. The honourable Government House Leader (Ms. Howard) and the honourable member for River Heights (Mr. Gerrard) also offered advice to the Chair. I took this matter under advisement in order to consult with the procedural authorities.

There are two conditions that must be satisfied in order for the matter of—raised to be ruled in order as a prima facie case of privilege. First, was the issue raised at the earliest opportunity? And second, has sufficient evidence been provided to demonstrate that the privileges of the House have been breached in order to warrant putting the matter to the House?

The honourable Official Opposition House Leader (Mrs. Taillieu) asserted that she was raising the issue at the earliest available opportunity, and I accept the word of the honourable Official Opposition House Leader.

On the second issue, whether there is—sufficient evidence has been provided, there are a number of considerations that must be taken into account. First and foremost, I would like the House to be aware that when the Speaker is dealing with privilege, he or she is only dealing with the procedural aspects of the situations raised. As noted by Manitoba Speaker Fox in a ruling on privilege in 1972, the Speaker deals only with the technical and procedural aspects of the matter and not, in any way, with the merits of the situation or the allegations. Therefore, when a Speaker makes a ruling indicating that there is or is not a prima facie case of privilege, the Speaker is neither condemning nor condoning any actions taken.

Turning to the substance of the alleged matter of privilege before us, in raising the matter, the honourable House Leader of the Official Opposition noted that in *Beauchesne*, citation 24 defines parliamentary privilege as the sum of the peculiar rights by each House collectively, and by members of each House individually, without which they could not discharge their functions and are rights which are absolutely necessary for the due execution of its powers. She also noted that *Marleau and Montpetit*, in *House of Commons Procedure and Practice*, list the individual privilege of members as, among other things, the freedom from obstruction, interference, intimidation and molestation.

Both of those citations are absolutely correct. Parliamentary privilege is the sum of these peculiar rights by each House collectively, and by each House individually, without which they could not discharge their functions, and which are necessary for the due execution of its powers. Similarly, the list of individual privileges does not include the freedom from obstruction—the pardon me. Similarly, the list of individual privileges does include the freedom from obstruction, interference, intimidation and molestation. However, when dealing with issues of *prima facie* case, it is vitally important to demonstrate how either the privileges of members individually, or of the House as a collective, have been breached in actuality.

To clarify for the House, *O'Brien and Bosc*, *House of Commons Procedure and Practice*, second edition, advises on pages 60 and 61 that the rights and privileges and immunities of individual members of the House may be categorized as follows: freedom of speech; freedom from arrest in civil actions; exemption from jury duty; exemption from being subpoenaed to attend court as a witness; freedom from obstruction, interference, intimidation and molestation. The rights and powers of the House as—collectively may be categorized as follows: the regulation of its own internal affairs; the authority to maintain the attendance and service of its members; the power to discipline; the right to institute inquiries and to call witnesses and demand papers; the right to administer oaths to witnesses appearing before it; and the right to publish papers without recourse to the courts relating to the content. Therefore, in order to rule that a *prima facie* case of privilege has been established, it must be demonstrated that any of these privileges has been breached.

Now that the definition of parliamentary privilege has been clarified, let us look at the substance of the issue raised.

It was contended that some of the government staff who received the communication about attendance to observe the proceedings of the Legislature felt intimidated. This could be the case. However, it must be noted that government staff are not protected by parliamentary privilege and cannot claim the protections of parliamentary privilege. Only MLAs are protected by parliamentary privilege. As identified by Joseph Maingot on page 100 of *Parliamentary Privilege in Canada*, the second edition, in order for non-elected persons to lay claim—to claim the parliamentary privilege protection, they must be taking part in a parliamentary proceeding, such as a witness before committees or counsel who speak on behalf of petitioners for private legislation. I would note for the House that observing the activities of the Legislature from the public galleries is not the same as participating in the proceeding—or a proceeding of the Parliament.

It was also contended that the email invitation was an abuse of power. Now, whether that was indeed an abuse of power will no doubt be an item of debate between members, but it is not a violation of parliamentary privilege. The matter is related to an internal administration of the department in question, and as Maingot advises on page 224 of *Parliamentary Privilege in Canada*, allegations or misjudgment or mismanagement or maladministration on the part of a minister does not come within the purview of parliamentary privilege. This same finding is supported by a 1994 ruling from Speaker Rocan, and by three rulings in 1995 and 1996 by Speaker Dacquay. It has also not been demonstrated that any information provided by civil servants to members has been purposely incorrect or overtly political in nature.

The closest comparable Manitoba privilege ruling to the case before us involves a 1972 ruling from Speaker Fox, where it was alleged by then—the then honourable leader—House Leader of the Official Opposition, the then honourable member for Morris, that civil servants were used improperly for assisting and conducting election campaigns, specifically a by-election in Wolseley. Speaker Fox ruled that there was no *prima facie* case of privilege on the basis that misjudgment, misadministration or maladministration on the part of a minister in the performance of ministerial duties does not come within the purview of parliamentary privilege.

In addition, Speaker Fox stated that the staff person in question did not come within the purview of parliamentary privilege. Speaker Fox ended off the ruling by stating, I regret, therefore, to indicate to the honourable member for Morris that the question is not a member—matter of parliamentary privilege. In making this decision, the Chair wishes to state, it is only as to form and procedure and does not prevent further discussion on the matter in some valid procedural context.

In addition, in 2004, Speaker Hickee ruled that the allegations that the Clerk of the Executive Council had written to civil servants to advise them not to attend meetings on the Public Accounts Committee did not fall within the enumerated categories of privilege, and also reiterated that civil servants do not fall within the protections of parliamentary privilege.

Therefore, I would rule, with the greatest of respect, that the rule—I would rule that the *prima facie* case of privilege has not been demonstrated and that the matter raised is not in order as a matter of privilege.

I would ask all honourable members to be mindful of the—with this ruling. I am not passing a value judgment on the concerns raised by members or on the actions taken. I would also like to remind members of the commentary from Speaker Fox, and I note that this ruling does not prevent further discussion on this matter in some other valid procedural context.

From his decision, Mrs. TAILLIEU appealed to the House,

And the Question being put, "Shall the ruling of the Chair be sustained?" It was agreed to, on the following division:

YEA

ALLAN	MACKINTOSH
ALLUM	MALOWAY
ALTEMEYER	MARCELINO (Logan)
ASHTON	MARCELINO (Tyndall Park)
BJORNSON	MELNICK
BLADY	NEVAKSHONOFF
BRAUN	OSWALD
CALDWELL	PETTERSEN
CHIEF	ROBINSON
CHOMIAK	RONDEAU
CROTHERS	SARAN
DEWAR	SELBY
GAUDREAU	SELINGER
HOWARD	STRUTHERS
IRVIN-ROSS	SWAN
JHA	WHITEHEAD
KOSTYSHYN	WIEBE
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NAY

BRIESE	MAGUIRE
CULLEN	MCFADYEN
DRIEDGER	MITCHELSON
EICHLER	PEDERSEN
EWASKO	ROWAT
FRIESEN	SCHULER
GERRARD	SMOOK
GOERTZEN	STEFANSON
GRAYDON	TAILLIEU
HELWER	WISHART..... 20

Subsequently, following Oral Questions, Mr. Speaker made the following ruling:

During debate of a government resolution on Thursday, April 19th, 2012, the honourable Government House Leader (Ms. Howard) raised a point of order concerning remarks spoken in debate by the honourable member for Morris (Mrs. Taillieu) that the Government House Leader felt were unparliamentary, although specific remarks in question were not identified. The Official Opposition House Leader (Mrs. Taillieu) also spoke to the point of order, and the Deputy Speaker (Mr. Nevakshonoff) took the matter under advisement to—in order to review Hansard.

On page 393 of Hansard for April 19th records the honourable member for Morris as saying, just prior to the raising of the point of order, in quotations, Mr. Deputy Speaker, newcomers are extremely important to our economy and our social fabric, but they don't deserve to be lied to by this NDP government. They don't deserve that, and they deserve the truth. End of quotation.

If these remarks were, indeed, the focus of the point of order raised by the honourable Government House Leader, then there is no point of order, as according to page 619 of O'Brien and Bosc, House of Commons Procedure and Practice: Expressions which are considered unparliamentary when applied to an individual member have not always been considered so when applied in a generic sense to a party.

This finding is supported in—by rulings of previous Manitoba Speakers. Speaker Rocan twice ruled in 1991 that the phrase "one big lie" was ruled in order, because it was not targeted to—at specific individuals. Similarly, Speaker Dacquay, in 1997, ruled that there was no point of order when the term "one big lie" was raised as objectionable because the phrase was not made in context of specific individuals. She similarly ruled the same way in 1999 when the phrase, in quotations, I have never encountered so many liars in one proceeding, end of quotations, was also deemed—

Speaker Hickes also made similar rulings regarding the use—

Speaker Dacquay, in 1997, ruled that there was no point of order when the term "one big lie" was raised as objectionable because the phrase was not made in context of specific individuals.

She similarly ruled the same way in 1999 when the phrase, quotations, I have never encountered so many liars in one proceeding, end of quotations, was also deemed in order because it was not aimed at specific individuals.

Speaker Hickes also made similar rulings regarding the use of the word "liar," in quotations, in 2001 and twice in 2002 because the words were not made in relation to specific members.

I, therefore, find that there is no point of order, but I would like to advise the House that I, as Speaker, will continue to be vigilant in listening to the debate and monitoring the language used.

Pursuant to Rule 26(1), Ms. CROTHERS, Mr. FRIESEN, Hon. Mr. CHOMIAK, Messrs. MAGUIRE and CALDWELL made Members' Statements.

In accordance with Rule 31(9), the Opposition House Leader announced that the Downloading of Provincial Responsibilities Resolution will be considered on the next Thursday of Private Members' Business.

The House resumed the Interrupted Debate on the Proposed Motion of Hon. Mr. STRUTHERS:

THAT this House approves in general the budgetary policy of the Government.

And the proposed amendment moved by Mr. MCFADYEN as follows:

THAT the motion be amended by deleting all of the words after "House" and substituting:

therefore regrets this budget fails to address the priorities of Manitobans by:

- a) breaking the Premier's promise not to increase taxes; and
- b) imposing \$184 million in new taxes on hard pressed Manitoba families, who are also facing higher hydro rates and property taxes, increased child care fees and a range of other hidden taxes; and
- c) driving gas prices higher at a time when gas prices in Manitoba have already increased 12% so far this year, further increasing the burden on Manitoba families, while cutting spending on Manitoba's crumbling infrastructure; and
- d) failing to take action to build safe communities as Manitoba has become the violent crime capital of Canada with Winnipeg's murder rate reaching an all time high in 2011; and
- e) failing to recognize the importance of agriculture, food production and rural communities; and
- f) failing to take action to protect Manitobans from future floods and failing to adequately compensate families for past damages; and
- g) failing Manitoba students who scored among the lowest in Canada on national and international reading, math and science tests; and
- h) creating an even bigger sinkhole of debt, now at \$27.6 billion and rising, which as a result will force Manitoba families to pay higher taxes in the years ahead; and
- i) failing to encourage greater trade opportunities with Alberta, British Columbia and Saskatchewan by refusing to join the New West Partnership; and
- j) failing to undertake a review of program spending across all government services; and
- k) failing to tackle the red tape burden that is hurting business and private investment in Manitoba; and
- l) failing to comply with recommendations of the Public Utilities Board to carry out an independent review of Manitoba Hydro's capital program; and
- m) mismanaging \$35 billion in federal transfer payments received since 2000; and
- n) failing to offer a plan to encourage private investment to create opportunity and wealth so Manitobans can feel hope that our province will one day emerge from the hole of debt and dependency and see a brighter future.

As a consequence, the Provincial Government has thereby lost the confidence of this House and the people of Manitoba.

And the debate continuing on the amendment,

And Ms. WIGHT, Mr EICHLER and Ms. BLADY having spoken.

And Mr. SCHULER speaking at 5:00 p.m. The debate was allowed to remain in his name.

Thursday, April 26, 2012

The House then adjourned at 5:00 p.m. until 10:00 a.m. Friday, April 27, 2012.

Hon. Daryl REID,
Speaker.