



LEGISLATIVE ASSEMBLY OF MANITOBA

VOTES AND PROCEEDINGS No. 48

FIRST SESSION, FORTIETH LEGISLATURE

PRAYER

1:30 O'CLOCK P.M.

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

(No. 218) – The Legislative Assembly Amendment Act/Loi modifiant la Loi sur l'Assemblée législative

(Hon. Mr. GERRARD)

(No. 219) – The Election Advertising Integrity Act (Elections Finances Act Amended)/Loi sur l'intégrité en matière de publicité électorale (modification de la Loi sur le financement des campagnes électorales)

(Mr. GOERTZEN)

The following petition was presented and read:

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. (L. Kunarski, S. Davies, V. Radford and others)

Ms. WIGHT, Chairperson of the Standing Committee on Legislative Affairs, presented its First Report, which was read as follows:

Meetings:

Your Committee met on the following occasions in the Legislative Building:

- June 30, 2011
- June 8, 2012

Matters under Consideration

- Annual Report of the Children's Advocate for the fiscal years ending March 31, 2009 and March 31, 2010 (combined report)
- Annual Report of the Children's Advocate for the fiscal year ending March 31, 2011

Committee Membership

Committee Membership for the June 30, 2011 meeting:

- Mr. ALTEMEYER (*Vice-Chairperson*)
- Ms. BLADY
- Mr. BRIESE
- Hon. Mr. CHOMIAK
- Mr. FAURSCHOU
- Ms. KORZENIOWSKI
- Hon. Mr. MACKINTOSH
- Mrs. MITCHELSON
- Mr. REID (*Chairperson*)
- Mr. SARAN
- Mrs. TAILLIEU

Committee Membership for the June 8, 2012 meeting:

- Ms. BLADY
- Hon. Mr. CHIEF
- Mr. DEWAR
- Mrs. DRIEDGER
- Mr. MCFADYEN
- Hon. Ms. HOWARD
- Mr. MARCELINO
- Mrs. MITCHELSON
- Mr. SARAN
- Ms. WIGHT
- Mr. WISHART

Your Committee elected Ms. WIGHT as the Chairperson.

Your Committee elected Mr. ALTEMEYER as the Vice-Chairperson.

Officials Speaking on Record

Officials speaking on the record for the June 30, 2011 meeting:

- Darlene MacDonald, Children's Advocate
- Bonnie Kocsis, Deputy Children's Advocate

Officials speaking on the record for the June 8, 2012 meeting:

- Darlene MacDonald, Children's Advocate

Reports Considered and Passed

Your Committee considered and passed the following reports as presented:

- Annual Report of the Children's Advocate for the fiscal years ending March 31, 2009 and March 31, 2010 (combined report)
- Annual Report of the Children's Advocate for the fiscal year ending March 31, 2011

On motion of Ms. WIGHT, the Report of the Committee was received.

Hon. Ms. HOWARD presented:

Annual Report of The Manitoba Labour Board for the fiscal year ending March 31, 2011.
(Sessional Paper No. 66)

Mr. Speaker presented:

Annual Report of the Ombudsman (Public Interest Disclosure Act – Whistleblower Protection)
for the year ending December 31, 2011.

(Sessional Paper No. 67)

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

Following Oral Questions on May 14, 2012, the Honourable Official Opposition House Leader raised a matter of privilege concerning information provided by the Honourable Minister of Finance during consideration of the Finance estimates in the Committee of Supply on May 9; information that according to the Honourable Official Opposition House Leader was deliberately misleading. She noted the Honourable Minister advised the Committee of Supply on May 9 that he had attended only three Winnipeg Jets hockey games, while on May 14, the Honourable Minister read a statement in the House acknowledging the information provided on May 9 was wrong, and that he had actually attended more hockey games and had received free tickets to attend. The Honourable Official Opposition House Leader said this was proof the Honourable Minister had deliberately misled the House and had purposely provided misleading information, which was a violation of the privileges of the Members of the House, as Members require factual information in order to do their jobs. At the conclusion of her remarks, she moved “THAT this matter be referred to the Legislative Affairs Committee and brought back to this House for a ruling.” The Honourable Government House Leader and the Honourable Member for River Heights also offered their advice to the Chair. I took the matter under advisement in order to consult with the procedural authorities.

There are two conditions that must be satisfied in order for the matter 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 asserted that she was raising the issue at the earliest available opportunity, and I accept the word of the Honourable Official Opposition House Leader, especially given that the statement made by the Honourable Minister of Finance was made on May 14. I would, however, like to address one aspect of the timeliness issue. The Honourable Official Opposition House Leader had indicated in raising the matter of privilege on May 14 that she did not have the May 9 Hansard in the Chamber. I would like to respectfully assure her and the House that the May 9 Hansard was delivered to the House to all Honourable Members on May 10 and was also posted on the Assembly web site in compliance with the 24 hour requirement for distribution of Hansard.

Turning to the issue of whether a prima facie case of privilege exists in this case, I, as Speaker, must first note this is a difficult issue to deal with, as the subject matter is one that Members on all sides of the House have strong personal feelings about, as well as very different points of view. I would like to again remind all Honourable Members that when the Speaker is dealing with a determination about prima facie privilege, he or she is not taking sides in a dispute, or saying that one point of view has more merit over another, or that someone is right and someone is wrong. The Speaker is limited strictly to looking at the information presented, and making a procedural determination based on the procedural authorities and the precedents and rulings from previous Speakers.

Turning to Manitoba precedents and procedural authorities, previous Manitoba Speakers have dealt with matters of privilege related to deliberate misleading of the House, and their rulings have been clear and consistent. Speakers Walding, Phillips, Rocan, Dacquay and Hickes have all ruled that in order to find a Member has deliberately misled the House means providing that the Member purposely intended to mislead the House by making statements with the knowledge that these statements would mislead. As explained by Speaker Hickes in a 2011 ruling, “a burden of proof exists that goes beyond speculation or conjecture, but involves providing absolute proof, including a statement of intent by the Member involved, that the stated goal is to intentionally mislead the House, as it is possible Members may have inadvertently misled the House by unknowingly putting incorrect information on the record.”

Speaker Hickes also ruled in 2007, that providing information that shows the facts are at variance is not the same as providing proof of intent to mislead. Speaker Dacquay also ruled that without a Member admitting in the House that he or she had the stated goal of misleading the House when putting remarks on the record, it is virtually impossible to prove that a Member had deliberately intended to mislead the House.

The House of Commons Standing Committee on Procedure and House Affairs, in its 50th report, released in 2002, made some very important points about misleading and deliberately misleading. The report stated “Intent is always a difficult element to establish in the absence of an admission or a confession. It is necessary to carefully review the context surrounding the incident involved, and to attempt to draw inference based on the circumstances. Any findings must, however, be grounded in facts and have an evidentiary basis. Parliamentary committees charged with examining questions of privilege must exercise caution and act responsibly in drawing conclusions... In the words of Parliamentary Practice in New Zealand, it must be established that the Member in making the statement knew at the time the statement was made that it was incorrect and in making it the Member intended to mislead the House.”

Also, Joseph Maingot advises on page 241 of the second edition of *Parliamentary Privilege in Canada*, that to allege a Member has misled the House is a matter of order, not privilege, and to allege that a Member has deliberately misled the House is also a matter of order.

What is not in dispute in this case is the fact that incorrect information was provided to the Committee of Supply on May 9 by the Honourable Minister of Finance. I believe all sides of the House would agree this is true. Where the issue becomes problematic, however, is that some believe the provision of that information was done as a deliberate attempt to mislead the Committee of Supply, while the Honourable Minister of Finance characterized the provision of this information as inadvertent. At the heart of it, there are different perceptions and beliefs related to this situation.

Following the guidance of the rulings of previous Manitoba Speakers, I have carefully looked at the statement of the Honourable Minister of Finance on May 14 to try and find a stated goal or admission that the Minister had intentionally set out to mislead. In the statement, the Honourable Minister of Finance stated "I inadvertently misled the House." He also said "The information I put on the record was incorrect." He admits providing wrong or incorrect information and that he did mislead, but he does not come out and say that he deliberately intended to mislead.

I would note again that the Honourable Minister of Finance stated that he inadvertently misled, as opposed to deliberately mislead. The Concise Oxford Dictionary, ninth edition, provides the definition of deliberately as "intentional, fully considered, not impulsive, slow in deciding, cautious" while the same dictionary defines inadvertent as "unintentionally, not properly attentive, negligent."

Although the Honourable Minister of Finance acknowledges that he misled the House, he characterized this action as inadvertent, as opposed to deliberate or intentional. Therefore the Speaker has to accept the word of the Honourable Minister of Finance, as Beauchesne's citation 494 advises it has been formally ruled by Speakers that statements by Members respecting themselves and particularly within their own knowledge must be accepted. Manitoba Speakers Rocan, Dacquay and Hickes have ruled that all Honourable Members are Honourable Members, and their words must be accepted. Perhaps had the Honourable Minister of Finance provided more detail and information in the statement as to how the inadvertent misleading came to pass, it might have helped clear up the matter for the House and remove all possible doubt the misleading was not done deliberately, but as it stands, the Minister categorized the misleading as inadvertent, and the Speaker must accept the word of the Honourable Minister, as indeed I would accept the word of all Honourable Members.

Therefore, with the greatest of respect, and based on the procedural authorities and the rulings of previous Speakers, I rule there is no prima facie case of privilege.

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	KOSTYSHYN
ALLUM	LEMIEUX
ALTEMEYER	MACKINTOSH
ASHTON	MALOWAY
BJORNSON	MARCELINO (Logan)
BLADY	MARCELINO (Tyndall Park)
BRAUN	MELNICK
CALDWELL	NEVAKSHONOFF
CHIEF	OSWALD
CHOMIAK	RONDEAU
CROTHERS	SARAN
DEWAR	SELBY
GAUDREAU	STRUTHERS
HOWARD	SWAN
IRVIN-ROSS	WIEBE
JHA	WIGHT..... 32

NAY

BRIESE	MAGUIRE
CULLEN	MCFADYEN
DRIEDGER	MITCHELSON
EICHLER	PEDERSEN
EWASKO	SCHULER
FRIESEN	SMOOK
GERRARD	STEFANSON
GOERTZEN	TAILLIEU
GRAYDON	WISHART..... 19
HELWER	

Pursuant to Rule 26(1), Ms. WIGHT, Messrs. MAGUIRE, CALDWELL and BRIESE and Ms. BRAUN made Members' Statements.

Mrs. TAILLIEU moved the following Opposition Day Motion:

That the Legislative Assembly urge the Provincial Government to agree that the Premier and Cabinet Ministers are not above the law and when they break a law they must be held accountable with penalties as would any other Manitoban.

And a debate arising,

And Mrs. TAILLIEU, Hon. Ms. HOWARD, Mr. MCFADYEN, Mrs. MITCHELSON, Mr. EICHLER, Mrs. STEFANSON, Messrs. SCHULER, CULLEN and HELWER, Mrs. DRIEDGER, Hon. Mr. GERRARD and Messrs. WISHART, MAGUIRE, FRIESEN, EWASKO, SMOOK and GOERTZEN having spoken,

And the Question being put. It was negatived, on the following division, on the following division:

YEA

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

NAY

ALLAN	KOSTYSHYN
ALLUM	LEMIEUX
ALTEMEYER	MACKINTOSH
ASHTON	MALOWAY
BJORNSON	MARCELINO (Logan)
BLADY	MARCELINO (Tyndall Park)
BRAUN	MELNICK
CALDWELL	NEVAKSHONOFF
CHIEF	OSWALD
CHOMIAK	RONDEAU
CROTHERS	SARAN
DEWAR	SELBY
GAUDREAU	STRUTHERS
HOWARD	WIEBE
JHA	WIGHT..... 30

Hon. Ms. HOWARD moved:

THAT Bill (No. 2) – The Protecting Affordability for University Students Act (Council on Post-Secondary Education Act Amended)/Loi sur la protection de l'accessibilité aux études universitaires (modification de la Loi sur le Conseil de l'enseignement postsecondaire), reported from the Standing Committee on Human Resources, be concurred in and be now read a Third Time and passed.

Monday, June 11, 2012

And a debate arising,

And Hon. Ms. HOWARD having spoken,

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

The House then adjourned at 5:00 p.m. until 10:00 a.m. Tuesday, June 12, 2012.

Hon. Daryl REID,
Speaker.