



LEGISLATIVE ASSEMBLY OF MANITOBA

VOTES AND PROCEEDINGS No. 6

THIRD SESSION, THIRTY-EIGHTH LEGISLATURE

PRAYERS

1:30 O'CLOCK P.M.

The following petitions were presented and read:

Mrs. TAILLIEU – Legislative Assembly of Manitoba to request that the Minister of Transportation and Government Services to consider paving Highway 200 between Highways 205 and 305 to ensure a smooth, safe and uninterrupted use of Highway 200. (M. Gagnon, D. Gagnon, R. Gagnon and others)

Mrs. DRIEDGER – Legislative Assembly of Manitoba to request the Provincial Government to consider redirecting administrative cost savings to front line health care workers and to treat front line health care workers with the respect they deserve and to consider supporting the Healthcare Employees' Pension Plan by not cutting pension benefits. (B. Moar, K. Lawrence, D. Friesen and others)

Mr. EICHLER – Legislative Assembly of Manitoba to request that the Minister of Transportation and Government Services to consider having Highway 227 paved from the junction of Highway 248 and 227 all the way to Highway 16 the Yellow Head route and to request the Premier of Manitoba to consider supporting said initiatives to ensure for the safety of our Manitobans and all Canadians who travel along Manitoba Highways. (S. Hildebrandt, L. Hildebrandt, R. Buors and others)

Mr. LAMOUREUX – Legislative Assembly of Manitoba to request the Legislative Assembly of Manitoba to consider recognizing the need to sit for a minimum of 80 days in any given calendar year. (R. Acuna, S. Merdoza, A. Limbuza)

Mr. REIMER – Legislative Assembly of Manitoba to request the Minister of Health to ensure that his attempts to balance his department's finances are not at the expense of the health and well-being of vulnerable Manitobans suffering from addiction and to consider monitoring the waiting lists for addiction treatment and to consider ensuring that timely treatment for Manitobans with addictions is not compromised by the Provincial Government's decision to cut the AFM's annual budget. (S. Janz, A. McDonald, C. Ford and others)

Mr. Speaker presented:

Annual Report of the Children's Advocate for the fiscal years ending March 31, 2003 and March 31, 2004.

(Sessional Paper No. 19)

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Hon. Ms. MELNICK presented:

Annual Report of the Department of Family Services and Housing for the fiscal year ending March 31, 2004.

(Sessional Paper No. 20)

Hon. Mr. MACKINTOSH presented:

Copy of Regulations filed under The Regulations Act, being Manitoba Regulations Nos. 173/2003 to 202/2004.

(Sessional Paper No. 21)

On motion of Hon. Ms. OSWALD, Bill (No. 8) – The Manitoba Council on Aging Act/Loi sur le Conseil manitobain du vieillissement, was read a First Time and had its purposes outlined.

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

Following the Prayer on November 22, 2004, the Honourable Member for River Heights rose on a matter of privilege concerning comments that were made in the House on July 31, 2002 by the then Minister of Family Services and Housing in connection with Hydra House. The Honourable Member for River Heights contended that the statements made on July 31, 2002 were misleading in light of information that was more recently provided by a report of the Auditor General and by information discussed in the Standing Committee on Public Accounts. At the conclusion of his remarks, the Honourable Member for River Heights asked that the House find that the statements made by the current Minister of Health in the Legislative Chamber on July 31, 2002, provided misleading information and therefore directs the Minister of Health to apologize to the House and to all Manitobans for his statement. The Honourable Government House Leader offered advice to the Chair. I took the matter under advisement, however on November 23, 2004, I did allow the Honourable Official Opposition House Leader, the Honourable Member for Inkster, the Honourable Member for River East and the Honourable Government House Leader to offer further advice to the Speaker. I would like to note that I allowed this due to the exceptional circumstance of the issue having been initially raised on opening day. Normally, when the Speaker takes the matter under advisement, no further advice is permitted to be given at a future time.

I thank all Members for their advice to the Chair on this matter.

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.

Regarding the first condition, the Honourable Member for River Heights asserted that he was raising the matter at the earliest opportunity, and I accept the word of the Honourable Member. I note from some comments made by Members that other Members in the House take issue with the fact that a matter of privilege was raised on the opening day of a new session. While it is not for the Speaker to comment on the appropriateness of such actions, Members do have the opportunity to address this issue in another forum, such as in the Standing Committee on the Rules of the House.

Regarding the second condition, whether there is sufficient evidence that the privileges of the House have been breached, it is important to determine whether parliamentary privilege has been breached in the actions complained.

Joseph Maingot, in the second edition of *Parliamentary Privilege in Canada* advises on page 241 that to allege that a Member has misled the House is a matter of order rather than privilege. In addition, it has been ruled by Speakers in Manitoba that the Member raising the matter of privilege must furnish proof of intent. Speaker Phillips ruled so in 1987, while Speaker Rocan made similar rulings 7 times between 1988 and 1995. Speaker Dacquay made 9 such rulings between 1995 and 1999. In a ruling that she gave on April 20, 1999, she advised that short of a Member acknowledging to the House that he or she deliberately and with intent set out to mislead, it is virtually impossible to prove that a Member has deliberately misled the House. Similarly, Deputy Speaker Santos made one ruling finding no proof of intentional misleading in 2001, while as Speaker; I have made three such rulings during the period 1999 to 2003.

I would also note for the House that Joseph Maingot states on page 224 in the second edition of *Parliamentary Privilege in Canada* that allegations of misjudgement, or mismanagement or maladministration on the part of a minister in the performance of his ministerial duties do not come within the purview of parliamentary privilege. This concept is supported by a ruling from Speaker Fox in 1972, from a ruling by Speaker Rocan in 1994, and by three rulings from Speaker Dacquay in 1996.

Although this issue is one that is of obvious importance and significance to many Members in the House, with the greatest of respect, I must rule on the basis of the procedural authorities and on the basis of rulings from previous Manitoba Speakers, there is no prima facie case of privilege.

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Following the Prayer on November 23, 2004, the Honourable Member for River Heights rose on an alleged matter of privilege regarding comments made by the Honourable Attorney General and the Honourable First Minister. The Honourable Member for River Heights asserted that comments made by the Honourable Minister of Justice at a Governance in Canada conference and by the Honourable First Minister on a local radio station were a slur on the dignity of the Chamber. At the conclusion of his remarks, the Honourable Member for River Heights moved "THAT the House finds the statements of the Premier and Minister of Justice to be contemptuous and ones which go against the dignity of the House." The Honourable First Minister, the Honourable Official Opposition House Leader and the Honourable Member for Steinbach offered advice to the Chair on the matter. I took the matter under advisement in order to consult 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.

Regarding the first condition, the Honourable Member for River Heights asserted that he was raising the matter at the earliest opportunity, and I accept the word of the Honourable Member.

Regarding the second condition, whether there is sufficient evidence that the privileges of the House have been breached, it is important to determine whether parliamentary privilege has been breached in the actions complained of.

In the sixth edition of *Beauchesne*, citation 31(3) advises that statements made outside of the House by a Member may not be used as the basis for a question of privilege. Marleau and Montpetit state on page 522 of *House of Commons Practice and Procedure* that the Speaker has no authority to rule on statements made outside the House by one Member against another.

Rulings from Manitoba Speakers support these findings from the procedural authorities. It has been ruled a number of times by Manitoba Speakers that comments made outside the Assembly Chamber cannot form the basis for a prima facie case of privilege. Speaker Walding ruled so in 1983, while Speaker Phillips made similar rulings in 1986 and 1987. Speaker Rocan ruled six times, between 1988 and 1995, that statements made outside the House cannot form the basis of privilege while Speaker Dacquay also ruled the same way in 1995.

On the basis of commentary from the procedural authorities and from rulings of previous Manitoba Speakers, I must therefore respectfully rule that there is no prima facie case of privilege.

Pursuant to Rule 26(1), Messrs. MALOWAY, PENNER and MARTINDALE, Mrs. TAILLIEU and Mr. SWAN made Members' Statements.

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

THAT the following address be presented to His Honour the Lieutenant Governor:

We, the Members of the Legislative Assembly of Manitoba thank your Honour for the gracious speech addressed to us at this Third Session of the Thirty-Eighth Legislature of Manitoba.

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

THAT the Motion be amended by adding at the end of the sentence the following words:

But this House regrets

(a) the government's failure to commit to elimination of all education tax off of residential property and farmland; and

- (b) the government's failure to commit to not closing or converting rural hospitals; and
- (c) the government's failure to commit to addressing the pediatric doctor shortage in Brandon; and
- (d) the government's failure to provide any strategy to address growing wait lists throughout Manitoba; and
- (e) the government's failure to initiate a review of health care regionalization; and
- (f) the government's failure to meaningfully address the growing concerns related to organized crime including the fact that since November 2000 Manitoba has been the scene of 37 biker-related murders and attempted murders; and
- (g) the government's failure to develop a long-term economic strategy to address anemic job growth and make Manitoba a "have" province; and
- (h) the government's failure to adequately address the BSE crisis and to provide any plan to increase slaughter capacity in Manitoba, thereby threatening not only the stability of the livestock sector but all those other sectors in Manitoba's economic that are so reliant on its well-being; and
- (i) the government's failure to recognize and encourage the important role private sector involvement has in growing Manitoba's economy; and
- (j) the government's failure to acknowledge that balanced budgets have only been achieved through significant raids on Manitoba Hydro and the Fiscal Stabilization Fund; and
- (k) the government's failure to acknowledge their raid on Manitoba Hydro contributed to a 10% increase in Hydro rates; and
- (l) the government's failure to commit to calling an independent public inquiry into the spending of taxpayer money at Hydra House; and
- (m) the government's failure to commit to strengthening the role and function of the Public Accounts Committee.

AND HAS THEREBY lost the trust and confidence of the people of Manitoba and this House.

And the proposed sub-amendment moved by Hon. Mr. GERRARD as follows:

THAT the amendment moved by the Honourable Member for Kirkfield Park be amended by adding thereto the following words:

THAT this House further regrets:

1. the government's failure to provide Manitobans with accessible health care, leading to concern among patients and health care providers;

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2. the government is not accountable or transparent to the people of Manitoba;
3. the government has no plan to address child poverty in Manitoba, the second highest in Canada;
4. the government has failed to adequately address education taxes on residential property and farmland;
5. the government has failed to implement an effective strategy to address the growing problem of crime;
6. the government has no economic plan to move Manitoba out of the ranks of the 'have-not' provinces;
7. the government has failed to take action to clean up lakes like Kississing Lake; and
8. the government has failed to take action with respect to the long waiting times for testing for sleep disorders.

And the debate continuing on the sub-amendment,

And Mrs. TAILLIEU, Messrs. JENNISSEN and PENNER, Ms. KORZENIOWSKI, Mr. HAWRANIK and Hon. Mr. ASHTON having spoken,

And the Question being put on the sub-amendment. It was negatived.

And the debate continuing on the amendment.

And Mr. GOERTZEN speaking at 5:30 p.m. The debate was allowed to remain in his name.

The House then adjourned at 5:30 p.m. until 1:30 p.m. Tuesday, November 30, 2004.

Hon. George HICKES,
Speaker.