



**LEGISLATIVE ASSEMBLY OF MANITOBA**

**VOTES AND PROCEEDINGS No. 30**

**FIRST SESSION, FORTIETH LEGISLATURE**

**PRAYER**

**10:00 O'CLOCK A.M.**

By leave, it was agreed for the House to deal with Second Reading of Bill (No. 204).

Mr. GOERTZEN moved:

THAT Bill (No. 204) – The Criminal Property Forfeiture Amendment Act/Loi modifiant la Loi sur la confiscation de biens obtenus ou utilisés criminellement, be now read a Second Time and be referred to a Committee of this House.

And a debate arising,

And Mr. GOERTZEN, Hon. Mr. SWAN, Mr. SCHULER, Hon. Mr. RONDEAU, Mrs. MITCHELSON and Mr. GAUDREAU, having spoken,

And Ms. CROTHERS speaking at 11:00 a.m. The debate was allowed to remain in her name.

Ms. WIGHT moved:

Resolution No. 2: Manitoba Volunteers

WHEREAS Manitoba volunteers make a tremendous contribution to communities across the province, helping organizations and neighbourhoods become stronger and more vibrant; and

WHEREAS volunteers make a difference through their actions to make Manitoba a great place to live; and

WHEREAS individuals and volunteer organizations support health, the arts, sports and recreation, economic development, community revitalization, housing and more; and

WHEREAS the 2007 National Survey of Giving, Volunteering and Participating indicated that 54 per cent of Manitobans over the age of 15 volunteer, which translated into approximately 81.5 million hours annually and was valued at over \$733 million in minimum wage dollars; and

WHEREAS people who volunteer often learn much about themselves and feel a greater sense of purpose and belonging; and

WHEREAS volunteers are integral to the well-being of Manitobans as they often provide services and support to individuals and groups that governments are not able to provide; and

WHEREAS those who volunteer their time and energy to various activities and organizations are often the unsung heroes of their communities.

THEREFORE BE IT RESOLVED that the Legislative Assembly of Manitoba commend all those who, through their dedicated volunteer efforts, add immeasurably to their communities and to our province.

And a debate arising,

And Ms. WIGHT, Mr. SCHULER, Ms. CROTHERS, Messrs. HELWER and CALDWELL, Hon. Mr. GERRARD and Mr. GAUDREAU having spoken,

And the Question being put. It was agreed to.

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**1:30 O'CLOCK P.M.**

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

(No. 24) – The Energy Savings Act/Loi sur les économies d'énergie

(Hon. Mr. CHOMIAK)

(No. 208) – The Remembrance Day Awareness Act and Amendments to The Public Schools Act/Loi sur la sensibilisation au jour du Souvenir et modifiant la Loi sur les écoles publiques

(Mr. GRAYDON)

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The following petitions were presented and read:

Mr. GOERTZEN – Legislative Assembly of Manitoba to request that the Minister of Health to ensure additional personal care homes and long-term care space are made available in the City of Steinbach on a priority basis. (P. Toews, R. Krentz, P. Koop 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. (O. Gentes, S. Derbowka, L. Gosselin and others)

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

Following the prayer on Thursday, April 26, 2012, the Official Opposition House Leader raised a matter of privilege regarding the government's alleged interference with the distribution of passes to the Public Gallery of the Legislative Chamber on Thursday, April 19, 2012, as well as the use of the committee rooms that day. She indicated that guests of her caucus were denied entry into the gallery and were not offered the option of using the committee room, which had been set up for public gallery overflow. She asserted that the gallery and the committee rooms had been "reserved for NDP guests and not guests of the opposition." She concluded that these actions were "an abuse of power from a political source" which put staff in a position to "have to do the government's bidding". The Honourable Government House Leader and the Honourable Member for River Heights also offered advice to the Chair and I took this matter under advisement in order to consult with the procedural authorities.

As Members know, 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? Second, has sufficient evidence been provided to demonstrate that the Member's privileges have been breached in order to warrant putting the matter to the House?

The Honourable Official Opposition House Leader indicated that she was satisfied that she was raising the issue at the earliest available opportunity, but I would note that she raised the matter one week following the events and I am unsure whether or not that was in fact the earliest opportunity to raise the matter in the House. When raising such matters I would encourage Members to clearly explain to the Chair how they may have met the requirement of timeliness.

On the second issue of whether sufficient evidence has been provided, there are a number of considerations that must be taken into account. I would first like to remind the House that when dealing with privilege, the Speaker is only considering the procedural aspects of the situation raised.

The Honourable Official Opposition House Leader correctly referenced *Beauchesne's* citation 24 which defines parliamentary privilege as the sum of peculiar rights enjoyed 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 referenced *House of Commons Procedure and Practice* first edition by Marleau and Montpetit, which lists the individual privilege of members as, among other things, freedom from obstruction, interference, intimidation and molestation. While those references are valid, to establish a *prima facie* case it is essential to demonstrate specifically how the privileges of Members, or of the House, have been breached.

Turning to the establishment of the *prima facie* case of a breach of Member's privileges, as identified by O'Brien and Bosc on pages 60 and 61 of the *House of Commons Procedure and Practice*, second edition, these privileges include: freedom of speech; freedom from arrest in civil actions; and freedom from obstruction, interference, intimidation and molestation.

The Honourable Official Opposition House Leader stated that the events of the day as she described denied the rights of MLAs to bring visitors to the gallery. I must point out that the protections of parliamentary privilege do not extend to guests of MLAs – only to MLAs. As identified by Joseph Maingot on page 100 of *Parliamentary Privilege in Canada*, second edition, in order for non-elected persons to claim the protection of privilege, they must be taking part in a parliamentary proceeding, such as witnesses appearing before committees. I would note for the House that observing the activities of the Legislature from the Public Galleries is not the same as participating in a proceeding of Parliament.

The matter raised by the Honourable Official Opposition House Leader is not unlike one which occurred in this place in June 1990, when the then Honourable Member for Rupertsland raised a matter of privilege regarding public access to the galleries of this Chamber while Members were considering amendments to the Canadian Constitution relating to the Meech Lake Accord. In his ruling on that matter Speaker Rocan also stated that privilege does not extend to visitors to a legislature. He also advised the Assembly of House of Commons Speaker Sauve's ruling from May 29, 1980, in which she stated that a complaint made by an elected Member that some of his constituents had been denied access to the gallery of the House of Commons was not a question of privilege, but one of security. In 1990 Speaker Rocan determined that while the matter raised was a most serious complaint, it was not a matter of privilege.

In the current matter, the Honourable Official Opposition House Leader also asserted that the alleged interference with the gallery and committee rooms was an abuse of power. Whether or not there was an abuse of power may be a topic of debate between Members, but it is not a violation of parliamentary privilege.

In reviewing the events of that day as described by the Honourable Official Opposition House Leader I do not find a demonstration of a specific breach of any Members' privileges. The Honourable Official Opposition House Leader did not establish how the actions she identified made it impossible or more difficult for her to carry out her parliamentary duties, and this is the fundamental test which must be met by a claim of breach of privilege.

In consideration of these many factors, I would respectfully rule that a 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 Honourable Members to note however that with this ruling, I am not passing a value judgment on the concerns raised by Members, and I remind the House that this decision is not based on the substance of the matter; it is based very specifically on procedure, which is the limit of the Speaker's responsibilities in such matters.

For the record I would also like to note that the events of that day were challenging for the Assembly staff, and I applaud their efforts on that occasion as I appreciate the pressure under which they performed their duties. I recognize that Members may have legitimate concerns about the events of that day, and I would encourage a meeting with the House Leaders to discuss access to our public galleries and the use of our committee rooms.

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**

ALLUM	MACKINTOSH
ALTEMEYER	MALOWAY
ASHTON	MARCELINO (Logan)
BJORNSON	MARCELINO (Tyndall Park)
BLADY	MELNICK
BRAUN	NEVAKSHONOFF
CALDWELL	OSWALD
CHIEF	PETTERSEN
CHOMIAK	ROBINSON
CROTHERS	SARAN
DEWAR	SELBY
GAUDREAU	SELINGER
HOWARD	STRUTHERS
IRVIN-ROSS	SWAN
JHA	WHITEHEAD
KOSTYSHYN	WIEBE
LEMIEUX	WIGHT..... 34

**NAY**

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

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During Members' Statements on Friday, April 27, the Honourable Member for Tuxedo rose on an alleged matter of privilege concerning the budget documents she said were provided during the budget lock up on April 17, 2012. She contended that a backgrounder on fee increases was provided in the media lock up but not in the third party lock-up. She suggested this impacted on her ability to serve as the Finance Critic. At the conclusion of her remarks, she moved "THAT this matter be referred to the Standing Committee on Legislative Affairs for consideration, and then reported back to this House." The Honourable Government House Leader and the Honourable Member for Steinbach also offered advice to the Chair on this matter. 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 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 Member for Tuxedo asserted that she was raising this matter at the earliest available opportunity; however the actions she noted took place during the budget lock up on April 17. I do have some questions as to whether this matter was indeed raised at the earliest opportunity based on the information provided. I would therefore encourage Members, in a case such as this, to provide information and clarification to the Speaker to help make the case that the matter is being raised at the earliest opportunity, as that would greatly assist the Speaker.

The Honourable Member for Tuxedo has made the argument that she was impacted in her ability as the Finance Critic to perform her duties due to the information not being provided in the third party lock up. However, she did not advise whether this information was or was not subsequently provided to MLAs after the budget lock up was over, as copies of the budget documents were provided to MLAs after the lock up. Also, if she is attempting to argue that a prima facie case of privilege exists because staff did not receive a copy of the document during the budget lock up, may I remind the House that I just ruled last Thursday that parliamentary privilege does not extend to staff.

In addition, I must also advise the House that Joseph Maingot advises on page 224 of the second edition of *Parliamentary Privilege in Canada* that “parliamentary privilege is concerned with the special rights of Members, not in their capacity as ministers or as party leaders, whips, or parliamentary secretaries, but strictly in their capacity as Members in their parliamentary work. Therefore, allegations of misjudgment, or mismanagement, or maladministration on the part of the minister in the performance of his ministerial duties do not come within the purview of parliamentary privilege.”

These findings are supported by several rulings from Manitoba Speakers. Speaker Rocan ruled in 1994, Speaker Dacquay ruled 3 times in 1995/96, and Speaker Hickes ruled in 2005/06 that ministerial responsibilities do not form the basis for privilege. In addition, Speaker Hickes also made it clear in a 2008 ruling that privilege does not deal with Members in their capacity as party leaders or critics.

And with the greatest of respect, I would rule based on the information provided 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**

ALLUM	MACKINTOSH
ALTEMEYER	MALOWAY
ASHTON	MARCELINO (Logan)
BJORNSON	MARCELINO (Tyndall Park)
BLADY	MELNICK
BRAUN	NEVAKSHONOFF
CALDWELL	OSWALD
CHIEF	PETTERSEN
CHOMIAK	ROBINSON
CROTHERS	SARAN
DEWAR	SELBY
GAUDREAU	SELINGER
HOWARD	STRUTHERS
IRVIN-ROSS	SWAN
JHA	WHITEHEAD
KOSTYSHYN	WIEBE
LEMIEUX	WIGHT..... 34

**NAY**

BRIESE	MAGUIRE
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FRIESEN	SMOOK
GERRARD	STEFANSON
GOERTZEN	TAILLIEU
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Pursuant to Rule 26(1), Messrs. CULLEN and WHITEHEAD, Mrs. MITCHELSON, Mr. PETTERSEN and Mrs. ROWAT made Members' Statements.

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In accordance with Rule 31(8), the Government House Leader announced that the Drainage Inside the Dike Resolution will be considered next Tuesday, May 15, 2012.

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The House resolved into Committee of Supply.

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**Tuesday, May 8, 2012**

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The House then adjourned at 5:01 p.m. until 1:30 p.m. Wednesday, May 9, 2012.

Hon. Daryl REID,  
Speaker.