



**LEGISLATIVE ASSEMBLY OF MANITOBA**

**VOTES AND PROCEEDINGS No. 11**

**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. (A. Lemoine, G. Monchamp, A. Dumesnil and others)

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. (D. Simpson, S. Maglian, H. Belanger 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. (H. Buechel, L. Siragusa, S. Klowak 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. (G. Olaes, M. Pucusin, M. Olaes)

Mr. DERKACH – Legislative Assembly of Manitoba to strongly urge the Minister of Health to consider taking charge and ensuring that he will improve long-term planning efforts to develop a lasting solution to the chronic problem of pediatrician and other specialist shortages in Brandon, and to treat this as the crisis that it is and consider consulting with front-line workers, particularly doctors, to find solutions and to strongly urge the Minister of Health and the Premier of Manitoba to consider ending highway medicine now. (G. Tohon, J. Martin, W. McDonald and others)

Mr. MAGUIRE – Legislative Assembly of Manitoba to strongly urge the Minister of Health to consider taking charge and ensuring that he will improve long-term planning efforts to develop a lasting solution to the chronic problem of pediatrician and other specialist shortages in Brandon, and to treat this as the crisis that it is and consider consulting with front-line workers, particularly doctors, to find solutions and to strongly urge the Minister of Health and the Premier of Manitoba to consider ending highway medicine now. (G. Podobni, K. Flannery, C. Janzen)

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Mr. Speaker presented:

Annual Report of Elections Manitoba for the year ending December 31, 2003 including the conduct of the 38<sup>th</sup> Provincial General Election dated June 3, 2003.  
(Sessional Paper No. 24)

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Hon. Mr. ROBINSON presented:

Annual Report of Le Centre Culturel Franco–Manitobain for the fiscal year ending March 31, 2004.  
(Sessional Paper No. 25)

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Hon. Mr. SELINGER presented:

Annual Report of The Trade Practices Inquiry Act for the period ending December 7, 2004.  
(Sessional Paper No. 26)

Report on Amounts Paid to Members pursuant to subsections 52.27(1) and (2) of The Legislative Assembly Act for the fiscal year ending March 31, 2004.  
(Sessional Paper No. 27)

Return pursuant to section 20 of The Public Officers Act dated December 7, 2004.  
(Sessional Paper No. 28)

Orders in Council 172/2004 and 422/2004 filed in accordance with section 114 of The Insurance Act.  
(Sessional Paper No. 29)

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Hon. Mr. MACKINTOSH, the Minister of Justice and Attorney General made a statement regarding the passing of the Honourable Bruce Miller, Associate Chief Judge of the Provincial Court of Manitoba this weekend.

Mr. LOEWEN and, by leave, Hon. Mr. GERRARD commented on the statement.

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On motion of Hon. Ms. WOWCHUK, Bill (No. 13) – The Milk Prices Review Amendment Act/Loi modifiant la Loi sur le contrôle du prix du lait, was read a First Time and had its purposes outlined

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

Following Oral Questions on November 24, 2004, the Honourable Member for Ste. Rose rose on a matter of privilege to complain that the government and the Minister of Family Services and Housing had breached his privileges by failing to table financial information that the Opposition was seeking in relation to Hydra House. At the conclusion of his remarks, the Honourable Member for Ste. Rose moved "THAT this question be referred to the Committee on Legislative Affairs and be reported back to the House." The Honourable Government House Leader, the Official Opposition House Leader, the Member for Emerson, the Member for Fort Whyte, the Member for Inkster and the Member for Portage la Prairie 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 matter 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 Ste. Rose 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.

I would like to advise the House that I have checked the procedural authorities, and there is no reference or citation that advises that it is a matter of privilege if a government does not table information when requested to do so, with the exception of items that are required to be tabled by statute. Should the information in question sought be an item that is required by statute to be tabled, there may be some scope for privilege, as Speaker Fraser of the House of Commons ruled on April 19, 1993, that failure to table a document as required by statute was a prima facie case of privilege.

I would note that the document in question that the Honourable Member for Ste. Rose was seeking was not a document that was required to be tabled by statute, so the Speaker Fraser ruling is not applicable in this case. Nor was it a private letter that was quoted from, so our rule 39 is not applicable in this case.

In addition, Speaker Fraser also ruled on September 26, 1991 in a case of a matter of privilege raised complaining that the government of the day had made its constitutional reform package available to certain journalists and non-elected individuals before tabling the documents in the House, the Speaker ruled that the Member in question might have grounds for a complaint, but it was not a question of privilege. There are also rulings from Manitoba Speakers that support this finding, including a ruling from Speaker Walding in 1982, rulings from Speaker Rocan in 1992 and 1995, and Speaker Dacquay in 1995.

I must therefore respectfully rule that there is no prima facie case of privilege.

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Following the prayer on November 25, 2004, the Honourable Member for Ste. Rose rose on a matter of privilege regarding the provision of financial information pertaining to Hydra House to members of a specific committee and to the media after the House had adjourned for the day. The Honourable Member for Ste. Rose asserted that having the information presented in this manner circumvented the appropriate privileges of the Members in the Chamber. He concluded his remarks by moving "That this matter be referred to the Standing Committee on Legislative Affairs." The Honourable Government House Leader 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 Ste. Rose 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.

Beauchesne citation 31(10) advises that "the question has often been raised whether parliamentary privilege imposes on ministers an obligation to deliver ministerial statements and to make announcements and communications to the public through the House of Commons or to make these announcements or statements in the House rather than outside the Chamber. The question has been asked whether Honourable Members are entitled, as part of their parliamentary privilege, to receive such information ahead of the general public. I can find no precedent to justify this suggestion."

Similarly, citation 352 reads "the option of a Minister to make a statement either in the House or outside of it may be the subject of comment, but is not the subject of a question of privilege."

In reading these citations, I am equating the release of information by provision of written copy to the issuance of a statement by a Minister, in that in both cases, a Minister is providing information.

Looking at precedents established by previous Manitoba Speakers, in 1992, Speaker Rocan ruled on a complaint raised by an Opposition Member that the then Minister of Health was releasing information to select groups in the community while refusing to provide the same information to Members in the House was not a matter of privilege. In 1995, Madam Speaker Dacquay ruled that a complaint that the then Minister of Health had not informed the House about permanent closure of community hospitals in spite of repeated questions in the House while providing different information to the media outside the House was not a prima facie case of privilege.

Although Members of the House may disagree with how the information was released in this situation and may find the actions to be discourteous, I must rule that these actions do not fulfil the criteria for a prima facie case of privilege. Having said that, members of the government may wish to reflect on the complaint that was raised, and in order to avoid creating similar complaints in the future, government members may wish to consider the advisability of also tabling the information in the House in the future, so that all Members may have access to the material sought.

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Following the Prayer on November 25, 2004, the Honourable Official Opposition House Leader rose on a matter of privilege regarding a letter that had been sent to the Honourable Member for Southdale in his capacity as Chair of the Public Accounts Committee by the acting Clerk of the Executive Counsel. The Honourable Official Opposition House Leader contended that this action was a muzzle on the civil service, as the letter indicated that civil servants were being advised to not attend the Public Accounts meeting in spite of a letter of invitation from the Chairperson of the Public Accounts Committee. At the conclusion of his remarks, the Honourable Official Opposition House Leader moved "THAT this matter be referred to the Committee on Legislative Affairs and that it be reported back to this Chamber. The Honourable Government House Leader, the Honourable Member for Inkster, the Honourable First Minister and the Honourable Member for River East offered advice to the Chair on this 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 Official Opposition House Leader 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.

Joseph Maingot, on page 224 of the second edition of *Parliamentary Privilege in Canada* advises that parliamentary privilege is concerned with the special rights of Members, not in their capacity as ministers or party leaders, whips or parliamentary secretaries, but strictly in their capacity as Members in their parliamentary work. Therefore, a complaint of a prima facie case of privilege could not be extended to a Member in his or her duties as a Committee Chairperson.

In addition, based on the information provided, it is not evident that a breach of privilege occurred in this instance. As I ruled on April 29, 2004, just to be clear on this point, according to Marleau and Montpetit, in *House of Commons Practice and Procedure*, the individual parliamentary privileges of Members are freedom of speech, freedom from arrest in civil action, exemption from jury duty, exemption from appearing as a witness, and freedom from obstruction, interference, intimidation and molestation. On the basis of the information provided, the complaint does not appear to fall into any of the enumerated categories of privilege.

Accordingly, I must rule that there is no prima facie evidence of a breach of privilege. I should note that I am led to believe that the issue of witnesses appearing before the Public Accounts is one of several items that may be referred to the Standing Committee on the Rules of the House, and perhaps it would be appropriate for this issue to be discussed in that larger context by the Rules Committee.

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Following Oral Questions on November 26, 2004, the Honourable Official Opposition House Leader rose on a point of order regarding the use of Beaudesne citation 409(6) by the Speaker to request that a question directed to the Minister of Health about actions in a previous portfolio be rephrased. The Honourable Official Opposition House Leader contended that on page 421 of *House of Commons Procedure and Practice*, it states that if the Minister chooses to reply, the Speaker has allowed the Minister to do so. I took the matter under advisement in order to consult the procedural authorities.

I have researched the provisions in Beaudesne and in *House of Commons Procedure and Practice*, and have found that there is no inconsistency. Beaudesne citation 409(6) states: "A question must be within the administrative competence of the government. The Minister to whom the question is directed is responsible to the House for his or her present Ministry and not for any decisions taken in a previous portfolio." On page 427 of *House of Commons Procedure and Practice*, it states that an oral question should not "address a Minister's former portfolio or any other presumed functions, such as party or regional political responsibilities." There is therefore no inconsistency between these two procedural references.

In raising his point of order, the Honourable Official Opposition House Leader contended that a reference on page 421 dealt with the issue of questions being rephrased, however I would like to point out for the House that this reference to questions being rephrased is not made in the context of questions to Ministers about former portfolios. Just to be clear, I will read the paragraph in question aloud for the House: "The Speaker has implicit discretion and authority to rule out of order any question posed during Question Period if satisfied that it is in contravention of House rules of order, decorum and procedures. In ruling a question out of order, the Chair may suggest that it be rephrased in order to make it acceptable to the House. Or, where such question has been posed, if a Minister wishes to reply, the Speaker, in order to be equitable, has allowed the Minister to do so." This paragraph discusses the general practice of the Speaker asking that a question be rephrased and does not say that this is to occur in the case of a question addressed to a Minister for responsibilities in a previous portfolio. Given that the reference on page 427 makes it clear that oral questions are not to be addressed to Ministers for a former portfolio, I would rule that there is no point of order.

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Pursuant to Rule 26(1), Messrs. LOEWEN and SWAN, Mrs. DRIEDGER, Messrs. SCHELLENBERG and CULLEN made Members' Statements.

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By leave, the Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 4) – The City of Winnipeg Charter Amendment Act (Differential Business Tax Rates)/Loi modifiant la Charte de la ville de Winnipeg (taux de taxe d'entreprise différentiels), as amended and reported from the Standing Committee on Intergovernmental Affairs:

Hon. Mr. GERRARD moved:

*THAT Bill 4 be amended in Clause 3 by replacing the proposed subsection 334.1(5) with the following:*

**Revision of business property tax classification**

**334.1(5)** Without limiting the generality of section 329, a person in whose name a premises is assessed for business assessment and classified for the purposes of section 334.1 may apply to the board of revision under Part 8 of *The Municipal Assessment Act* for revision of the business tax classification of the premises. Divisions 1 and 2 of this Part and Part 8 of *The Municipal Assessment Act* apply to the application and revision in the same manner as any other application for revision of a property classification.

And a debate arising,

And Hon. Messrs. GERRARD and SMITH and Mr. REIMER having spoken,

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

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By leave, Hon. Mr. MACKINTOSH moved:

THAT Bill (No. 4) – The City of Winnipeg Charter Amendment Act (Differential Business Tax Rates)/Loi modifiant la Charte de la ville de Winnipeg (taux de taxe d'entreprise différentiels), as amended and reported from the Standing Committee on Intergovernmental Affairs, be concurred in and be now read a Third Time and passed.

And a debate arising,

And Hon. Mr. MACKINTOSH, Messrs. REIMER and LOEWEN, Mrs. MITCHELSON, Mrs. STEFANSON and Mr. LAMOUREUX having spoken,

And Mrs. DRIEDGER speaking at 5:30 p.m. The debate was allowed to remain in her name.

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The House then adjourned at 5:30 p.m. until 1:30 p.m. Wednesday, December 8, 2004.

Hon. George HICKES,  
Speaker.