



LEGISLATIVE ASSEMBLY OF MANITOBA

VOTES AND PROCEEDINGS No. 50

FIRST SESSION, FORTIETH LEGISLATURE

PRAYER

1:30 O'CLOCK P.M.

On motion of Mr. GOERTZEN, Bill (No. 220) – The Voter Identification Act (Elections Act Amended)/Loi sur l'identification des électeurs (modification de la Loi électorale), was read a First Time and had its purposes outlined.

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. Senkiw, J. Dueck, R. Bachinski 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. (A. Gordon, R. Smith, D. Martin and others)

Hon. Mr. STRUTHERS presented:

Annual Report of the Crown Corporations Council for the year ending December 31, 2011.
(Sessional Paper No. 69)

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

Following Oral Questions on May 28, 2012, the Honourable Official Opposition House Leader raised a matter of privilege concerning a matter of privilege she had originally brought to the attention of the House on June 15, 2011. The June 15, 2011 matter of privilege dealt with the fact that the annual report of the Children's Advocate had not been referred to the Standing Committee on Legislative Affairs within 60 days as is required by legislation. The Honourable Official Opposition House Leader noted that former Speaker Hickes had taken the June 15, 2011 matter under advisement but did not return to the House with a ruling. The Honourable Official Opposition House Leader also noted that this incident had not been captured in the Speakers' rulings collection although a point of order raised on June 2, 2011 regarding a different subject matter had been included in the Speaker's ruling collection despite no formal ruling from the Speaker. She questioned why the matter of privilege incident had not been included in the rulings collection while the point of order had been included. She also explored whether the fact that the matter of privilege ruling had not been included in the rulings collection breached her privileges as the Official Opposition House Leader, and further, sought clarification to inquire whether a Speaker is obligated to make a ruling after having taken an issue under advisement. She also noted that if a Speaker does not rule on the matter of privilege that is raised, how is the House to know whether the matter raised was or was not a prima facie case of privilege. 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.

In terms of timeliness, the Honourable Official Opposition House Leader noted that she had first raised the issue of the Children's Advocate report not being referred to committee as required in June 2011, and explained that the former Speaker had taken it under advisement and had not returned with a ruling. She did not indicate that she was raising the issue of the lack of a ruling at the earliest opportunity, but given that there are mitigating circumstances due to the original matter of privilege not being ruled on, I am inclined to be lenient on the issue of timeliness in this unique situation.

Turning to the specific issue of whether or not the issue raised on May 28, 2012 is indeed a prima facie case of privilege, I can respectfully advise the Honourable Official Opposition House Leader that it is not. Joseph Maingot, in the second edition of *Parliamentary Privilege in Canada*, states on page 14 "allegations of breach of privilege by a Member in the House that amount to complaints about procedures and practices in the House are by their very nature matters of order." He also states on page 223 of the same edition "A breach of the Standing Orders or failure to follow an established practice would invoke a point of order rather than a question of privilege." In addition, Maingot further advises on page 224 of the same edition 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, the Honourable Official Opposition House Leader cannot claim the protection of parliamentary privilege for the performance of her duties as House Leader but only as an MLA. All three of the above references from Joseph Maingot are supported by rulings from Speakers Rocan, Dacquay and Hickes.

Although it has been established that there is no prima facie case of privilege for the issues raised on May 28, 2012, I will now delve into some of the specific questions raised by the Honourable Official Opposition House Leader in order to help answer some questions and provide clarity for the House.

First, there is the issue of the matter of privilege regarding the Children's Advocate report raised by the Honourable Official Opposition Leader on June 15, 2011 that Speaker Hickeys took under advisement and did not return with a ruling. To provide clarity to the House, when a Speaker takes an issue under advisement and says he or she will return with a ruling "if necessary" or merely indicates he or she is taking the matter under advisement, but does not state clearly on the record that he or she will return to the House with a ruling, it is up to the discretion of that Speaker to decide whether a ruling is an appropriate way of dealing with the situation. In the case of the June 15, 2011 matter, Speaker Hickeys stated on page 2880 of Hansard when taking the matter under advisement "I'm going to take this matter under advisement to allow the House Leaders, hopefully, to get together and discuss this further and come up with a resolution that will – that should be agreeable to the House. I'll give that first opportunity first for the House Leaders to discuss it, so I will be taking it under advisement at this moment." In these remarks, Speaker Hickeys did not say that he would be returning to the House with a ruling. It could be the case that he felt the matter was satisfactorily resolved when a committee meeting was soon called for consideration of the Children's Advocate report, but it is not appropriate for me as Speaker to pass commentary on this or offer an opinion on whether or not a ruling should have been given by Speaker Hickeys.

It would also not be appropriate for me to deliver a ruling on the matter of privilege raised on June 15, 2011, as that was an issue that had been taken under advisement by former Speaker Hickeys. All I can do is offer the House an observation in a general sense without ruling of the specifics from last June. In previous situations where Speakers have been asked to rule or comment on the fact that laws or statutory provisions have not been complied with, Speakers Rocan, Dacquay and Hickeys all ruled that whether or not a law has been broken is something for the courts, not the Speaker to decide. In addition, Beauchesne citation 31(10) advises that the failure of the government to comply with the law is not a matter for the Speaker but shall be decided by the courts.

Also, the Honourable Official Opposition House Leader questioned why the matter of privilege from June 15, 2011 had not been included in the rulings collection while a point of order from June 2, 2011 was included. I should inform the House that the rulings collection referred to is an internal reference document prepared by the staff of the Clerk's Office to assist them with their procedural research duties and is not an official document of the House. As a courtesy, this document is also shared with the House Leaders from both sides of the House in the hope that it may be of assistance to them, however the sharing of the document does not mean that House Leaders have the prerogative to determine how the collection is prepared or depicted.

I am advised that the June 2, 2011 point of order had been included in the rulings collection because in speaking to the point of order, Speaker Hickeys had made a partial ruling on language, and had then taken the point of order under advisement, while in the case of the June 15, 2011 matter of privilege, no ruling had ever been made, therefore due to the lack of a ruling, it was not included in the rulings collection.

Wednesday, June 13, 2012

For future reference, when Members have concerns or questions about matters like this, I would invite them to speak with me in my office. I would always welcome such conversations with any Member, as it would allow me to investigate their concerns and report back to them. I am confident that Members do not wish to be construed as criticizing Assembly staff on the record, and I feel that my office would be a better place to have those conversations than on the floor of the Chamber.

I thank the House for listening to my observations.

Pursuant to Rule 26(1), Mr. GAUDREAU, Mrs. ROWAT, Messrs. JHA and SMOOK and Hon. Mr. GERRARD made Members' Statements.

In accordance with Rule 27, Hon. Mr. GERRARD rose on a Grievance.

The House resolved into Committee of Supply.

The House then adjourned at 5:01 p.m. until 10:00 a.m. Thursday, June 14, 2012.

Hon. Daryl REID,
Speaker.