



LEGISLATIVE ASSEMBLY OF MANITOBA

VOTES AND PROCEEDINGS No. 50

FIRST SESSION, THIRTY-SEVENTH LEGISLATURE

PRAYERS

10:00 O’CLOCK A.M.

Hon. Mr. MACKINTOSH moved:

THAT Bill (No. 34) – The Statute Law Amendment Act, 2000/Loi de 2000 modifiant diverses dispositions législatives, be now read a Second Time and be referred to a Committee of this House.

And a debate arising,

And Hon. Mr. MACKINTOSH having spoken,

The debate was, on motion of Mr. LAURENDEAU, adjourned.

Hon. Mr. MACKINTOSH moved:

THAT Bill (No. 36) – The Summary Convictions Amendment Act/Loi modifiant la Loi sur les poursuites sommaires, be now read a Second Time and be referred to a Committee of this House.

And a debate arising,

And Hon. Mr. MACKINTOSH having spoken,

The debate was, on motion of Mr. LAURENDEAU, adjourned.

Hon. Mr. CHOMIAK moved:

THAT Bill (No. 37) – The Miscellaneous Health Statutes Repeal Act/Loi abrogeant diverses lois en matière de santé, be now read a Second Time and be referred to a Committee of this House.

And a debate arising,

And Hon. Mr. CHOMIAK having spoken,

The debate was, on motion of Mrs. DACQUAY, adjourned.

Thursday, June 22, 2000

The House resumed the Adjourned Debate on the Proposed Motion of Hon. Mr. LATHLIN:

THAT Bill (No. 5) – The Wildlife Amendment Act/Loi modifiant la Loi sur la conservation de la faune, be now read a Second Time and be referred to a Committee of this House.

And the debate continuing,

And Hon. Mr. GERRARD having spoken,

The debate was allowed, by leave, to remain in the name of Mr. ENNS.

The House resumed the Adjourned Debate on the Proposed Motion of Hon. Mr. CHOMIAK:

THAT Bill (No. 7) – The Protection for Persons in Care Act/Loi sur la protection des personnes recevant des soins, be now read a Second Time and be referred to a Committee of this House.

And the debate continuing,

And Ms. KORZENIOWSKI having spoken,

The debate was allowed, by leave, to remain in the name of Mr. LAURENDEAU.

The House resumed the Adjourned Debate on the Proposed Motion of Hon. Ms. MIHYCHUK:

THAT Bill (No. 31) – The Electronic Commerce and Information, Consumer Protection Amendment and Manitoba Evidence Amendment Act/Loi sur le commerce et l'information électroniques, modifiant la Loi sur la protection du consommateur et la Loi sur la preuve au Manitoba, be now read a Second Time and be referred to a Committee of this House.

And the debate continuing,

And Mr. MALOWAY having spoken,

The debate was allowed to remain in his name and, by leave, in the name of Mrs. DACQUAY.

1:30 O'CLOCK P.M.

Mr. SANTOS, Chairperson of the Committee of Supply, presented the Report of the Proceedings of the Committee of June 21, 2000 as follows:

IN THE COMMITTEE

The following Resolutions were adopted:

14.2 RESOLVED that there be granted to HER MAJESTY a sum not exceeding THIRTY-TWO MILLION, ONE HUNDRED SEVENTY-EIGHT THOUSAND, EIGHT HUNDRED DOLLARS for CULTURE, HERITAGE AND TOURISM:

CULTURE, HERITAGE AND RECREATION
PROGRAMS \$32,178,800.00

for the fiscal year ending the 31st day of March, 2001.

14.3 RESOLVED that there be granted to HER MAJESTY a sum not exceeding TEN MILLION, FIVE HUNDRED FIFTEEN THOUSAND, EIGHT HUNDRED DOLLARS for CULTURE, HERITAGE AND TOURISM:

INFORMATION RESOURCES \$10,515,800.00

for the fiscal year ending the 31st day of March, 2001.

14.5 RESOLVED that there be granted to HER MAJESTY a sum not exceeding SEVEN HUNDRED SIXTY-ONE THOUSAND, SEVEN HUNDRED DOLLARS for CULTURE, HERITAGE AND TOURISM:

SENIORS DIRECTORATE \$761,700.00

for the fiscal year ending the 31st day of March, 2001.

14.6 RESOLVED that there be granted to HER MAJESTY a sum not exceeding FOUR MILLION, SEVEN HUNDRED FIVE THOUSAND, NINE HUNDRED DOLLARS for CULTURE, HERITAGE AND TOURISM:

CAPITAL GRANTS..... \$4,705,900.00

for the fiscal year ending the 31st day of March, 2001.

Resolutions were reported.

Report was received and the Committee of Supply obtained leave to sit again.

The following Bills were, by leave, severally introduced, had the purposes outlined thereof and were read a First Time:

(No. 39) – The Insurance Amendment Act/Loi modifiant la Loi sur les assurances
(Recommended by His Honour, the Lieutenant Governor)
(Hon. Mr. LEMIEUX)

(No. 40) – The Business Names Registration Amendment, Corporations Amendment and Partnership Amendment Act/Loi modifiant la Loi sur l'enregistrement des noms commerciaux, la Loi sur les corporations et la Loi sur les sociétés en nom collectif
(Hon. Mr. LEMIEUX)

(No. 42) – The Public Schools Amendment and Consequential Amendments Act/Loi modifiant la Loi sur les écoles publiques et modifications corrélatives

(Hon. Mr. CALDWELL)

Hon. Mr. LEMIEUX presented:

Message from His Honour, the Lieutenant Governor recommending the disposition of public revenue for Bill (No. 39)

(Sessional Paper No. 169)

During Oral Questions, Mr. Speaker interjected and requested that all Honourable Members should be referred to by their constituency or their portfolio and requested the comments spoken by Hon. Mr. GERRARD be withdrawn,

WHEREUPON Hon. Mr. GERRARD withdrew his remarks.

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

On June 5, 2000, the Honourable Official Opposition House Leader rose on an alleged matter of privilege, alleging that the audio portion of the section of the Committee of Supply meeting in the Chamber had been interrupted on the cable channel coverage provided within the Legislative Building on June 1, 2000, in favour of a government press conference. The Honourable Official Opposition House Leader asserted that three government ministers were responsible for this action, and that the action superceded the authority of the Legislative Assembly with regard to the broadcast of the proceedings. The Honourable Deputy Government House Leader also spoke to the matter, indicating that to his knowledge, the Ministers referenced had not directed that any such action take place. The Honourable Member for Lac du Bonnet and the Honourable Member for River Heights also offered advice to the Chair on this matter. I took the matter under advisement in order to peruse the procedural authorities.

I thank all Members for their contributions to the matter raised.

There are two conditions that must be satisfied in order for the matter raised to be considered a prima facie case of privilege. First, was the matter raised at the earliest opportunity, and second, is there sufficient evidence that the privileges of the House have been breached to warrant putting the matter to the House.

Regarding the issue of timeliness, the Honourable Official Opposition House Leader did raise the matter on the first sitting day after the matter arose and therefore did raise the matter in the House at the earliest opportunity.

Concerning the second condition, of whether there exists sufficient evidence that the privileges of the House have been breached, I must advise the House of the following items. Although the Honourable Official Opposition House Leader indicated that control of broadcasting systems, according to Marleau and Montpetit in *House of Commons Procedures and Practices* remains with the House and is under the supervision of the Speaker, acting on behalf of all Members, it must be noted that Manitoba practice is at variance with the practice followed by the House of Commons. The House of Commons has a broadcasting section that is run for the House by House employees, while in Manitoba the broadcasting of House proceedings is conducted for the Legislative Assembly by staff from Information Services of the Department of Culture, Heritage and Tourism, with some funding provided by the Legislative Assembly. To my knowledge, the Assembly has not adopted any type of guidelines or issued any directives regarding the broadcasting of the video and audio portions of the House or Committee proceedings.

In a ruling given by Madam Speaker Phillips on June 20, 1986, the privileges of Parliament, as enumerated in Maingot's *Parliamentary Privilege in Canada* were defined as the following: individual privileges are freedom of speech, freedom from arrest in civil process, exemption from jury service, and the privilege relating to members summoned as witnesses. The corporate or collective privileges of Parliament were defined as the power to punish for contempt (or its penal jurisdiction), the right to regulate its own constitution, the right to regulate its own internal affairs free from interference, the right to discipline its own members, the right to institute inquiries and call for witnesses (persons, papers and records) and the right to settle its own code of procedure.

Erskine May defines privilege as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions." Maingot on page 224 of *Parliamentary Privilege in Canada* (second edition), states 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 a minister in the performance of his ministerial duties does not come within the purview of parliamentary privilege."

On page 80 of Maingot's *Parliamentary Privilege in Canada*, it is stated that: Privilege of Parliament is founded on necessity, and is comprised of those rights that are absolutely necessary for the due execution of its powers. Arguably, necessity should be a basis for any claim that an event was part of a "proceeding in Parliament" i.e. what is claimed to be a part of a proceeding in Parliament and thus protected should be necessarily incidental to a proceeding in Parliament. Maingot further advises on page 81 that proceedings in Parliament do not include speeches in the Chamber or in committee. Additionally, on page 49, Maingot also asserts that electronic Hansard (i.e. broadcast by television or audio) is a broadcast of the debates of the House, however debates are not proceedings of the House and are therefore not covered by parliamentary privilege.

In a ruling given on April 3, 1991, Mr. Speaker Rocan referenced an April 29, 1971 ruling given by Speaker Lamoureux of the House of Commons, which states that the nature of a Member's parliamentary privilege is limited. The ruling advises that "parliamentary privilege does not go much beyond the right of free speech ... and the right of a Member to discharge his duties in the House as a Member." He noted that in many cases if a Member has a cause for complaint, it ought to be taken up in the form of a grievance against the Minister or government by way of a substantive motion, and not a matter of privilege.

Mr. Speaker Fox ruled on March 30, 1972, that allegations of misjudgment, mismanagement or maladministration on the part of a Minister in the performance of his ministerial duties does not come within the purview of parliamentary privilege.

Madam Speaker Dacquay, in a ruling given on June 2, 1995, quoted from Maingot's Parliamentary Privilege in Canada, and stated that "while it will be seen that the Member enjoys all of the immunities necessary to perform his parliamentary work, this privilege or right ... is nevertheless subject to the practices and procedures of the House. Thus allegations of breach of privilege by a Member which amount to complaint about procedures and practices in the House are by their very nature matters of order."

In a case raised in the Canadian House of Commons concerning the alleged exceeding of authority by a Committee in televising a broadcast of its proceedings without authorization of the House, Speaker Fraser ruled on April 9, 1987 that although the Committee had shifted the authority and the power against the rules, he did not feel as the Speaker that it was in the interests of Members for him to pursue the matter. He noted that the House of Commons Board of Internal Economy had not presented an order to the House regarding the televising of Committee proceedings. Given this, Speaker Fraser ruled that the obligation lies with Members of all parties to put the procedural rules in place to enable this to happen. This could be construed to be similar to the current situation in Manitoba – at present there are no rules or guidelines in place regarding the broadcasting of audio and video proceedings of the House, and it would be appropriate for the House, not the Speaker, to put those guidelines in place.

Although the Member may have a serious complaint or grievance, I am ruling that he did not establish a prima facie case of privilege, and therefore rule his motion out of order as a matter of privilege. I would, however, suggest to the Member that he may wish to pursue the issue of audio broadcasting of House and Committee proceedings with either the Standing Committee on the Rules of the House or the Legislative Assembly Management Commission, in order to further discuss this issue and perhaps raise the issue of establishing guidelines for the broadcasting of House and Committee proceedings.

* * *

On June 5, 2000, the Honourable Deputy Government House Leader rose on an alleged matter of privilege, asserting that the Honourable Opposition House Leader, in the raising of a matter of privilege, had made an allegation that several Government Ministers were responsible for the switching off of the audio portion of the Chamber section of the Committee of Supply on June 1, 2000, which was replaced by a government press conference. The Honourable Deputy Government House Leader disputed that the Ministers indicated had been involved or had caused the action to take place, and concluded his remarks by moving that the House ask the Honourable Opposition House Leader to withdraw the assertion. The Honourable Official Opposition House Leader and the Honourable Member for Portage la Prairie offered advice on the alleged matter of privilege. I took the matter under advisement in order to peruse the procedural authorities.

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 considered a prima facie case of privilege. First, was the matter raised at the earliest opportunity, and second, is there sufficient evidence that the privileges of the House have been breached to warrant putting the matter to the House.

With respect to the first condition, I find that the matter was raised at the earliest opportunity, in that the Honourable Deputy Government House Leader did raise the matter shortly after the initial matter of privilege was raised by the Honourable Leader of the Official Opposition, so the condition of timeliness has been met.

Regarding the second condition, it has not been demonstrated that the privileges of the House have been breached. Beauchesne citation 25 advises that parliamentary privilege does not go much beyond the right of free speech in the House and the right of a Member to discharge his/her duties in the House as a Member. Marleau and Montpetit on page 51 of *House of Commons Practice and Procedure* list the rights and immunities of Members individually as being: freedom of speech, freedom from arrest in civil actions; exemption from jury duty, and exemption from attendance as a witness. The rights and powers of the House as a collective may be categorized as: the power to discipline, the regulation of internal affairs, the authority to maintain the attendance and service of Members, the right to institute inquiries and to call witnesses, the right to administer oaths to witnesses, and the right to publish papers containing defamatory material. I have difficulty in categorizing the complaint of the Honourable Minister as fitting into one of these categories.

In addition, Beauchesne citation 31(1) advises that a dispute arising between two Members as to allegations of facts does not fulfill the conditions of parliamentary privilege. This point is reinforced by rulings from Manitoba Speakers. Mr. Speaker Graham ruled on March 6, 1980 that a dispute between two Members as to allegations of fact did not constitute a breach of privilege. This finding is also contained in similar rulings from Mr. Speaker Rocan on August 3, 1988, June 28, 1989 and March 14, 1990, and by a ruling given by Madam Speaker Dacquay on December 10, 1997.

I would also like to point out for the House that Mr. Speaker Fox ruled on March 30, 1972, that allegations of misjudgment, mismanagement or maladministration on the part of a minister in the performance of his ministerial duties does not come within the purview of parliamentary privilege.

Although the Honourable Minister may have a complaint of imputation of motives or a grievance, it has not been demonstrated that a prima facie case of privilege exists, and I must rule the motion out of order as a matter of privilege.

Mr. LAURENDEAU voluntarily withdrew his remarks.

By leave, Hon. Mr. MACKINTOSH for Hon. Mr. CHOMIAK presented:

Supplementary Information for Legislative Review 2000-2001 – Departmental Expenditure Estimates – Health and Addictions Foundation of Manitoba.

(Sessional Paper No. 170)

Pursuant to Rule 23(1), Messrs. STRUTHERS, PITURA, MALOWAY, PENNER (Steinbach) and SMITH (Brandon West) made Members' Statements.

Thursday, June 22, 2000

Mr. Speaker having left the Chair and the House resolving itself into a Committee to consider of the Supply to be granted to Her Majesty;

And the House continuing in Committee.

The House then adjourned at 6:10 p.m. until 1:30 p.m. Monday, June 26, 2000.

Hon. George HICKES,
Speaker.