



**LEGISLATIVE ASSEMBLY OF MANITOBA**

**VOTES AND PROCEEDINGS No. 35**

**SECOND SESSION, THIRTY-EIGHTH LEGISLATURE**

**PRAYERS**

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

The following petitions were presented:

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. (J. Cheema, S. Grewal, J. Budde and others)

Mr. GOERTZEN – Legislative Assembly of Manitoba to request the Premier of Manitoba to consider ending his government's forced unionization plan of companies involved with the Red River Floodway expansion and to consider entering into discussions with business, construction and labour groups to ensure any qualified company and worker, regardless of their union status, is afforded the opportunity to bid and work on the floodway expansion project. (H. Funk, L. Funk, S. Funk and others)

Mrs. DRIEDGER – 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 seniors and other vulnerable Manitobans suffering from this debilitating disease; to consider reversing his decision to deny Alzheimer's patients in personal care homes access to certain medications; and to consider implementing a provincial Alzheimer's strategy. (I. Van Niekerk, A. Gregora, D. Rivalin and others)

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Hon. Mr. LEMIEUX presented:

Supplementary Information for Legislative Review 2004-2005 – Departmental Expenditure Estimates – Transportation and Government Services.

(Sessional Paper No. 55)

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Hon. Mr. RONDEAU, the Minister responsible for Healthy Living made a statement regarding National Nursing Week, May 10 to 16, 2004,

Mrs. DRIEDGER commented on the statement.

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The following Bills were severally read a First time and had their purposes outlined:

(No. 49) – The Municipal Amendment Act/Loi modifiant la Loi sur les municipalités  
(Hon. Ms. MIHYCHUK)

(No. 50) – The Municipal Assessment Amendment Act/Loi modifiant la Loi sur l'évaluation municipale  
(Hon. Ms. MIHYCHUK)

(No. 212) – The Pension Freedom Act (Pension Benefits Act Amended)/Loi sur la liberté de choix en matière de pension (modification de la Loi sur les prestations de pension)  
(Mr. SCHULER)

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

During Oral Questions on April 27, 2004, the Honourable Member for Turtle Mountain rose on a matter of privilege based on comments made by the Honourable Minister of Finance, comments which the Honourable Member for Turtle Mountain contended besmirched the employees and management at Manitoba Lotteries Corporation. In addition, the Honourable Member for Turtle Mountain complained that the Honourable Minister of Finance had quoted from a legal opinion but refused to table it. At the conclusion of his remarks, the Honourable Member for Turtle Mountain moved "THAT the Minister of Finance did break the privileges of myself by quoting directly from a legal opinion, indicating that illegal activities were occurring at the Manitoba Lotteries Corporation; and THAT this House finds the Minister of Finance in contempt of the House for casting aspersions against employees of the Manitoba Lotteries Corporation, and further, THAT this Minister be directed to withdraw his comments and apologize or provide to this House this legal opinion as referenced by the Minister, and THAT this matter be referred to the Standing Committee on Legislative Affairs for the Committee's consideration." The Honourable Government House Leader, the Honourable Official Opposition House Leader and the Honourable Member for Ste. Rose 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 considered a prima facie case of privilege. First, was the matter raised at the earliest opportunity, and second, is there sufficient evidence that a prima facie breach of privilege has occurred.

The Honourable Member for Turtle Mountain stated that he was raising the issue at the earliest opportunity, and I accept the word of the Honourable Member. I would, however, like to address one comment that the Honourable Member made in conjunction with reviewing the video recording of Question Period. The video recording of Question Period is not the official record of what is said in the House. Actually, the printed Hansard is the official version of what is said. The 22<sup>nd</sup> edition of Erskine May states on page 230 "The Official Report (Hansard) remains the authoritative record of what is said in the Commons, and the Speaker has stated that the tapes cannot be used for the purpose of casting doubt on the validity of the Official Report (Hansard)." I would also point out that it is stated on the Legislative Assembly website that the audio and video content provided is provided for information purposes only, and that the printed versions are the official record.

Turning to the substance of the issue raised by the Honourable Member for Turtle Mountain, he contended that the Honourable Minister was obligated to table a document, and the Honourable Member for Turtle Mountain cited a quotation from Marleau and Montpetit which states that "Any document quoted by a Minister in debate or in response to a question during Question Period must be tabled. Indeed, a Minister is not at liberty to read or quote from a dispatch, an official written message or government affairs or other state paper without being prepared to table it." I would note for the House that I undertook a careful review of the response provided by the Honourable Minister of Finance, and though the Minister made reference to a document, he did not quote from the document, therefore the reference from Marleau and Montpetit is not applicable in this case. In addition, we have our own Manitoba practice and Manitoba rule 39 which states "Where in a debate a Member quotes from a private letter, any other Member may require the Member who quoted from the letter to table the letter from which the Member quoted but this rule does not alter any rule or practice of the House relating to the tabling of documents other than private letters." Our practice is clear, and has been upheld by previous Speakers, that the document must be a private letter, and it must be read or quoted from in order to compel a Member to table it. This concept is supported from a 1989 ruling by Speaker Rocan, a 1996 ruling by Speaker Dacquay, and a 2000 ruling that I made.

Concerning the argument that reference was made to a legal opinion which would therefore require the Minister to table the legal opinion, I would note for the House that I ruled on July 4, 2000, that it has been the contemporary practice of the House to permit Members to ask Ministers if the Minister has received a legal opinion or to ask that the legal opinion be tabled, however it is up to the Minister to decide to answer the question or to decide to table the opinion if asked to do so. It is also not in order to ask a Minister to state his or her opinion of the legal opinion. Therefore, the Minister cannot be compelled to table the opinion.

Given that none of the individual privileges of the Member, such as freedom of speech, freedom from arrest in civil matters, exemption from jury duty, exemption from appearing as a witness, and freedom from obstruction, interference, intimidation or molestation occurred, I would rule that there is no prima facie case of privilege. Also, the allegation of contempt does not appear to fit within the definition of contempt as provided by Joseph Maingot in the second edition of *Parliamentary Privilege in Canada*; which is defined as any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his parliamentary duty, or which has a tendency, directly or indirectly to produce such results may be treated as contempt even though there is no precedent for the offence.

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During Oral Questions on April 27, 2004, the Honourable Member for Ste. Rose raised a matter of privilege concerning comments made by the Honourable Government House Leader in speaking to a matter of privilege raised by the Honourable Member for Turtle Mountain. The Honourable Member for Ste. Rose contended that the Honourable Government House Leader had reflected on his ability to serve his constituents and on his ability to serve in the Chamber and had therefore breached his privileges as a Member. At the conclusion of his remarks, the Honourable Member for Ste. Rose moved "THAT this serious matter be referred to the Committee on Legislative Affairs and be reported in this House." The Honourable Government House Leader, the Official Opposition House Leader and the Honourable Member for Carman 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 considered a prima facie case of privilege. First, was the matter raised at the earliest opportunity, and second, is there sufficient evidence that a prima facie breach of privilege has occurred.

The Honourable Member for Ste. Rose has met the first condition in that the issue was indeed raised at the earliest opportunity.

Regarding the second condition, I must rule that the matter raised does not qualify as a prima facie case of privilege. Joseph Maingot, on pages 254 and 255 of the second edition of Parliamentary Privilege in Canada states "language spoken during a parliamentary proceeding that impugns the integrity of Members would be unparliamentary and a breach of order contrary to the Standing Orders but not a breach of privilege." This finding is supported by two rulings from Speaker Rocan in 1994 and 1995, as well as a ruling that I made in the House in 2001.

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

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During Oral Questions on April 28, 2004, the Honourable Official Opposition House Leader raised two points of order concerning the taking of photographs by a political staff member from the press gallery. The Honourable Government House Leader and the Honourable Member for Inkster spoke to the first point of order. I took both points of order under advisement in order to review the issue.

Given that the substance of both points of order raised deal with the same issue, this ruling will address both points of order.

The issue of access to the Public and Press Galleries and the taking of photographs is something that is within the purview of the Legislative Assembly Management Commission to determine. The Commission has already dealt with the issue of the taking of photographs from the Public Galleries, and it was previously decided that photographs are not to be taken from the Public Gallery. The Commission does have policies in place that intersessionally allow photographs to be taken of Members at their desks, provided that the photos are not used for election campaigns, however the Commission has not yet dealt with the issue of the taking of photographs by political staff from the Press Gallery. As Speaker, I intend to raise this issue with the Commission for its consideration, and up until such a time as the Commission considers and establishes policies or guidelines, political staff will not be permitted to take photographs from the Press Gallery.

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Pursuant to Rule 26(1), Messrs. CALDWELL and SCHULER, Ms. BRICK, Mrs. ROWAT and Mr. JENNISSEN made Members' Statements.

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The House resolving into the Committee of Supply.

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The House then adjourned at 5:33 p.m. until 1:30 p.m. Tuesday, May 11, 2004.

Hon. George HICKES,  
Speaker.