



**LEGISLATIVE ASSEMBLY OF MANITOBA**

**VOTES AND PROCEEDINGS No. 73**

**FOURTH SESSION, FORTIETH LEGISLATURE**

**PRAYER**

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

Hon. Mr. DEWAR presented:

Annual Report of the Supplementary Loans and Guarantee Authority for the fiscal year ending March 31, 2015.

(Sessional Paper No. 79)

Report on Fidelity Bonds according to section 20 of The Public Officers Act dated October 28, 2015.

(Sessional Paper No. 80)

Hon. Ms. MARCELINO (Logan) presented:

Annual Report of the Department of Multiculturalism and Literacy for the fiscal year ending March 31, 2015.

(Sessional Paper No. 81)

Hon. Mr. NEVAKSHONOFF presented:

Annual Report of the Department of Conservation and Water Stewardship for the fiscal year ending March 31, 2015.

(Sessional Paper No. 82)

Annual Report of The Manitoba Habitat Heritage Corporation for the fiscal year ending March 31, 2015.

(Sessional Paper No. 83)

Annual Report of the Pineland Forest Nursery for the fiscal year ending March 31, 2015.

(Sessional Paper No. 84)

Annual Report of the Clean Environment Commission for the fiscal year ending March 31, 2015.

(Sessional Paper No. 85)

Annual Report of the Sustainable Development Innovations Fund for the fiscal year ending March 31, 2015.

(Sessional Paper No. 86)

Annual Report of the Manitoba Hazardous Waste Management Corporation for the fiscal year ending March 31, 2014.

(Sessional Paper No. 87)

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On motion of Hon. Mr. GERRARD, Bill (No. 215) – The Prevention of Interpersonal and Family Violence Through Education Act (Public Schools Act and Education Administration Act Amended)/Loi sur la prévention de la violence familiale et interpersonnelle grâce à l'éducation (modification de la Loi sur les écoles publiques et de la Loi sur l'administration scolaire), was read a First Time and had its purposes outlined.

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Pursuant to Rule 26(1), Ms. HOWARD, Messrs. PIWNIUK, ALTEMEYER and SCHULER and Hon. Mr. GERRARD made Members' Statements.

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

Immediately following the Prayer on October 20, 2015 the Honourable Member for Steinbach raised a Matter of Privilege regarding the government's lack of disclosure of untendered contracts. The Member claimed that the end result of this lack of disclosure was that Members of the Assembly were not able to fulfill their parliamentary duties, and accordingly their privileges as Members were breached individually and collectively. The Honourable Member for Steinbach concluded his remarks by moving: "That this matter involving the lack of past and ongoing disclosure of untendered contracts as required under provincial government rules be referred to a standing committee of this House."

I would like to begin by reminding the House that when ruling on privilege the Speaker deals only with the technical and procedural aspects of the matter and not, in any way, with the merits of the situation or the allegations. A Speaker's ruling neither condemns nor condones any actions referred to in a Matter of Privilege.

Moving to the matter raised, as Members know there are two conditions that must be satisfied in order for such a matter to be ruled in order as a prima facie case of privilege. First, was the matter raised at the earliest opportunity, and second, whether a prima facie case of privilege has been established.

The Honourable Member for Steinbach addressed the issue of timeliness, and I would agree with his sentiment that Private Members' Business is not an ideal time to raise such matters – unless the matter raised is related to Private Members' Business. Accordingly, I am satisfied that the matter was raised at the earliest opportunity, so this condition has been met.

Regarding the second condition of whether a prima facie case of privilege has been established, in his submission on this matter, the Member for Steinbach referenced an April 19, 1993 ruling from Speaker Fraser of the House of Commons, indicating "that the failure to disclose information was, in fact, a prima facie case of privilege."

The Member was technically correct in his reference, however a further read of the decision he cites identifies that Speaker Fraser specifically ruled that the failure of the government of the day to table a document as required by statute constituted a prima facie case of privilege.

I must respectfully point out that these are not the same circumstances as the situation described in the matter raised by the Member for Steinbach.

In reviewing the procedural authorities and previous Speaker's rulings I found no reference advising that the failure to post information on a government computer would constitute a breach of Member's privileges. Should the information in question be required by statute to be tabled in this House, then there may be some scope for privilege.

The Member for Steinbach further cited an O'Brien and Bosc reference indicating that the provision of misleading information could be found to be a prima facie case of privilege. He argued that the lack of disclosure of the information in question on the government computer resulted in a failure to provide information "and, through omission, provided misleading information."

Returning to Maingot on this point, on page 241 he states that "to allege that a Member has misled the House is a matter of order rather than privilege." Maingot also states on the same page that "To allege that a Member has deliberately misled the House is also a matter of order and is indeed unparliamentary. However, deliberately misleading statements may be treated as contempt."

Speaker Phillips ruled on August 21, 1986, that a Member raising a matter of privilege which charges that another Member has deliberately misled the House or a committee must support his or her charge with proof of intent. This same standard of proof has been applied in numerous rulings from Speakers Rocan, Dacquay and Hickey.

In his submission on this matter the Member for Steinbach did not supply proof that any Member of the Government had intentionally set out to deliberately mislead the House.

The Member also stated in his submission that the failure to disclose untendered contracts was in violation of The Financial Administration Act. On that point I must remind the House that any such claims would be a matter of law and not procedure, and as I believe all Members know, it is not the role of the Speaker to interpret or enforce matters of law.

Maingot again advises on page 180 that whether a matter in the House is constitutional or legal is not for the Chair to decide. The Chair only decides whether we are following our own rules.

This sentiment is supported by a February 5, 1992, ruling by the House of Commons Speaker Fraser, and again by multiple rulings from Manitoba Speakers Rocan, Dacquay and Hickey.

I do understand that this matter is of serious concern for Members, and I recognize that the issue of Members' access to information has been addressed before in this House.

Usually such concerns have been raised in the context of the release of reports and information outside of the House prior to their distribution in the House.

However, in this instance we are dealing with a case where the information referred to was not intended for release in the House, and therefore does not relate directly to the proceedings of this House.

As Joseph Maingot advises on page 222 of the second edition of Parliamentary Privilege in Canada, in order for a breach of privilege to have occurred, the activity in question must involve a proceeding in Parliament, that is, the breach must have occurred in the House or in a Committee.

This concept is supported by rulings from Speaker Rocan in 1988 and 1991, by rulings from Speaker Hickey in 2003 and 2008, and by rulings that I delivered in the House in 2013 on May 13, May 21 and August 27.

As I explained in my 2013 rulings, activities such as debate in the Chamber do constitute a proceeding in Parliament, while events taking place outside of the Chamber do not fall within that purview. I must indicate that attempting to access research materials in the Legislative Library does not constitute a proceeding of Parliament.

Based on these procedural references and Speaker's rulings, and with the greatest of respect, I must rule that a *prima facie* case of privilege has not been established in this case.

From his decision, Mr. GOERTZEN 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	LATHLIN
ALTEMEYER	LEMIEUX
BLADY	MACKINTOSH
CALDWELL	MALOWAY
CHIEF	MARCELINO (Tyndall Park)
CHOMIAK	MELNICK
CROTHERS	NEVAKSHONOFF
DEWAR	OSWALD
GAUDREAU	ROBINSON
HOWARD	SARAN
IRVIN-ROSS	SELINGER
JHA	SWAN
KOSTYSHYN	WIGHT.....26

NAY

BRIESE	MARTIN
CULLEN	MITCHELSON
DRIEDGER	PEDERSEN
EICHLER	PIWNIUK
EWASKO	ROWAT
GERRARD	SCHULER
GOERTZEN	SMOOK
GRAYDON	STEFANSON
HELWER	WISHART..... 18

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The following petitions were presented and read:

Mr. SCHULER – Legislative Assembly of Manitoba to urge that the Provincial Government improve the safety at the pedestrian corridor at the intersection of PTH# 206 and Cedar Avenue in Oak Bank by considering such steps as highlighting pavement markings to better indicate the location of the shoulders and crosswalk, as well as installing a lighted crosswalk structure. (M. Stroud, J. McLean, M. Gurthan and others)

Mr. EWASKO – Legislative Assembly of Manitoba to urge the Provincial Government to consider collaborating with other levels of government to research the economic benefits and construction costs of a marina in Lac du Bonnet. (R. Bannatyne, D. Farebrother, R. Laforte and others)

Mr. SMOOK – Legislative Assembly of Manitoba to urge the Minister responsible for Manitoba Hydro to immediately provide a written explanation to all Members of the Legislative Assembly regarding what criteria were used and the reasons for selecting the preferred routing for the Minnesota-Manitoba Transmission Line including whether or not this routing represented the least intrusive option to residents of Tache, Springfield, St. Anne, Stuartburn, Piney and La Broquerie. (C. Poiron, D. Vandal, A. Poiron and others)

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Mr. GOERTZEN moved the following Opposition Day Motion:

That the Legislative Assembly of Manitoba condemn the Provincial Government's actions in repeatedly violating procurement rules in awarding untendered contracts, as highlighted in the March 2014 Report from the Auditor General of Manitoba, including announcing a \$5 million contract for flood fighting equipment without tender and without Treasury Board approval on July 25, 2014.

And a debate arising,

And Mr. GOERTZEN, Hon. Mr. ASHTON, Mr. SCHULER, Hon. Mr. ALLUM, Mrs. STEFANSON, Hon. Mr. GERRARD, Mrs. MITCHELSON and Mr. HELWER having spoken,

And the Question being put. It was negatived, on the following division:

**YEA**

BRIESE  
CULLEN  
DRIEDGER  
EICHLER  
EWASKO  
GERRARD  
GOERTZEN  
GRAYDON  
HELWER

MARTIN  
MITCHELSON  
PEDERSEN  
PIWNIUK  
ROWAT  
SCHULER  
SMOOK  
STEFANSON  
WISHART..... 18

**NAY**

ALLAN  
ALLUM  
ALTEMEYER  
ASHTON  
BLADY  
BRAUN  
CALDWELL  
CHIEF  
CHOMIAK  
CROTHERS  
DEWAR  
GAUDREAU  
HOWARD  
IRVIN-ROSS  
JHA  
KOSTYSHYN

LATHLIN  
LEMIEUX  
MACKINTOSH  
MALOWAY  
MARCELINO (Logan)  
MARCELINO (Tyndall Park)  
MELNICK  
NEVAKSHONOFF  
OSWALD  
PETTERSEN  
ROBINSON  
SARAN  
SELINGER  
SWAN  
WIGHT.....31

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The House then adjourned at 4:32 p.m. until 10:00 a.m. Thursday, October 29, 2015.

Hon. Daryl REID,  
Speaker.