



**LEGISLATIVE ASSEMBLY OF MANITOBA**

**VOTES AND PROCEEDINGS No. 44**

**FIRST SESSION, FORTY-FIRST LEGISLATURE**

**PRAYER**

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

Hon. Mrs. STEFANSON presented:

Annual Report of Legal Aid Manitoba for the fiscal year ending March 31, 2016.

(Sessional Paper No. 57)

Annual Review of the Office of the Chief Medical Examiner for the year ending December 31, 2014.

(Sessional Paper No. 58)

Pursuant to Rule 27(1), Mr. LAGIMODIERE, Ms. MARCELINO (Logan), Hon. Ms. CLARKE, Ms. LATHLIN and Mr. EWASKO made Members' Statements.

Following Oral Questions, Madam Speaker made the following rulings:

Immediately prior to Routine Proceedings on October 6, 2016 the Honourable Member for Fort Richmond raised a Matter of Privilege regarding comments made by Members of the opposition during a division in the House on the morning of October 6th, 2016. The Member stated that she felt her privileges as a Member, and the privilege of multiple Members of this House, had been violated.

The Member indicated that during the vote on second reading of Bill 204, "members from the other side made disparaging comments about female Members on this side of the House. While myself and other women from the government side were voting, the member for Minto, the member for Wolseley and the member for Fort Garry-Riverview shamed us for the way we were voting." The Member further indicated that these comments were only directed at female Members of the government caucus.

The Member concluded her remarks by moving: "That my privilege as a parliamentarian has been breached and I ask that an apology be offered at the earliest possible opportunity."

The Official Opposition House Leader also spoke to the matter raised before I took it under advisement.

I would note that the Members for Fort Garry-Riverview and Minto did apologize for their behaviour in the House on the morning of October 10, 2016, and I would again like to thank those Members for their sincere apologies. I believe such humility goes a long way to restoring order and respect in this place.

Turning to the case raised, a matter of privilege is a very serious undertaking for any Speaker, and I have considered this situation thoroughly. I would 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. I will address the consequences of Members' actions later in my ruling, after I address the procedural considerations.

When a matter of privilege is raised in the House there are two key points on which the Speaker must decide. First, whether or not the Member raised the matter at the earliest available opportunity, and second, whether or not a prima facie case of privilege has been established.

On the first point, when raising her matter of privilege the Honourable Member for Fort Richmond did not address the question of timeliness in her remarks. I must also note that the incident with the division occurred part way through the morning sitting of the House that day, and the Member could have raised this matter immediately after the Division while the House was still sitting. I recognize that the Member may have needed some time to gather her thoughts on this matter, however I must indicate that I do not believe the Member demonstrated that she had raised this matter at her earliest opportunity.

As O'Brien and Bosc note on page 143 of the second edition of the House of Commons Procedure and Practice, "Members must satisfy the Speaker that the matter has been raised at the earliest opportunity. When a Member does not fulfil this important requirement, the Speaker has ruled that the matter is not a prima facie question of privilege".

In the future, I would encourage Members to raise such issues in a timely manner, as the failure to do so can have an impact on the determination of the orderliness of the issue raised.

Turning to the establishment of a prima facie case of a breach of the Member's privileges, as identified by O'Brien and Bosc on pages 60 and 61 of House of Commons Procedure and Practice, second edition, these privileges include: freedom of speech; freedom from arrest in civil actions; and freedom from obstruction, interference, intimidation and molestation.

In her submission on this matter the Member for Fort Richmond claimed that while she and other female Members of her caucus were voting, the opposition Members noted above "shamed us for the way we were voting." I believe this could be considered a form of intimidation, and it is certainly behaviour that has no place in this House, or any respectful workplace.

There have been many Manitoba Speaker's rulings indicating that the Speaker is not able to rule on comments made off the record. As a point of reference, when Members do not have the floor in the House, their remarks are not attributed to them in Hansard, and are therefore considered to be off the record. Although the comments referred to by the Member for Fort Richmond do not appear on the record in Hansard, they were certainly audible during the vote.

I am certainly aware that this issue has been taken very seriously by all Members in this House, and on that basis, the Member may have a valid complaint, or a grievance, or a point of order. However, due to the comments in question being off the record, and due to the issue of timeliness I noted earlier, with the greatest of respect I must rule that a prima facie case of privilege has not been established in this case.

While I cannot formally rule on these off the record comments, I must state as plainly as I am able that I do not approve of such behaviour in this place. At the start of this new Legislature I believe we all have an opportunity to set, and maintain, a new and better tone of respect and civility in our interactions in this House.

Before I conclude I must address some other aspects of this situation which have caused me great concern.

After I took this matter under advisement on October 6, 2016, Members from both sides of the House referred to the matter on numerous occasions outside of the House, in spite of the convention that matters taken under advisement by the Speaker should not be discussed inside or outside of the House until the ruling has been delivered. I will acknowledge that we have many new Members this year and that some may not have been aware of this important convention. As you are now all aware of it, I will look forward to your future cooperation.

I would also like to note for all Members the importance of decorum during a division. Our Clerks and Pages take their roles very seriously in this place and do their utmost at all times to ensure that we follow the rules and practices of this House. As it is the most formal process for capturing a decision of this House, conducting a recorded vote is among the most important tasks our Table Officers undertake. To have to do that work amid heckling and other disruptions from Members is unacceptable. Our House Staff are professionals and they can, and do accomplish their tasks in such unfavourable conditions, but they should not have to deal with such disturbances.

More than that however, I would ask Members to imagine themselves at the age of 16 or 17, several weeks into a fascinating new job, standing before this intimidated Assembly reciting the names of 56 Members, by memory. Imagine then having to perform such a daunting task amid distracting chatter from Members.

I believe you can now understand why I am taking this point so strongly. During a recorded division in this House the only sounds that should be heard are the voices of the Page and our Clerk or Deputy Clerk. I will expect complete cooperation from all Members in this regard as long as I am Speaker of this House.

\* \* \*

Shortly after the daily Prayer and the raising of two points of order on the morning of Tuesday, October 11, 2016, the Honourable Government House Leader raised a matter of privilege regarding comments that he said were attributed to the Honourable Member for St. Johns in the media that appeared to be a reflection on the Speaker. The comments dealt with a potential change whereby certain areas in the Legislative Building and on the Legislative Grounds might come under the purview of the Speaker's Office for booking these spaces, and the comments complained of appeared to indicate this change could lead to a crackdown on protests. The Honourable Government House Leader also stated that the remarks in the media made reference to departmental staff being non-partisan while the Speaker is an elected Progressive Conservative. He concluded his remarks by moving "THAT my privilege as a parliamentarian has been breached and that the Member for St. Johns should retract her statement and apologize to the House."

The Official Opposition House Leader also offered advice to the Chair. 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.

On the issue of timeliness, the Honourable Opposition House Leader indicated that the article in question appeared in print on Thursday, and concluded on that basis that the timeliness factor had not been met. This issue was covered by a number of media in online and print editions that appeared at some point late on Thursday afternoon and on Friday. It is virtually impossible to know when print editions carrying the story were delivered on Thursday or when Members may have had a chance to read the material online, so I cannot determine whether the issue was raised at the earliest opportunity or not.

On the second issue of whether a prima facie case of privilege has been demonstrated, the comments that are the subject of this complaint were made outside of the House, and I must advise the House that comments made outside of the Chamber are not the basis for parliamentary privilege. O'Brien and Bosc state on page 614 of the second edition of *House of Commons Procedure and Practice* "The Speaker has no authority to rule on statements made outside of the House by one Member against another." Similarly, Beuchesne citation 31(1) advises that statements made outside of the House by a Member may not be used as the basis for a question of privilege. This finding has also been supported in numerous rulings on privilege made by former Manitoba Speakers Walding, Phillips, Rocan, Dacquay and Hickes. On this basis, I must respectfully rule that the matter raised is not in order as a prima facie case of privilege.

That being said, as Speaker I would like to bring to the attention of the House some concerns I have over actions that have taken place recently, actions that could be very harmful to the office of Speaker in Manitoba.

These actions include Members from both sides of the House raising in the media issues that have been taken under advisement by the Speaker. One such example is the Matter of Privilege that I took under advisement on October 6. Since taking the matter under advisement, Members from both sides of the House have either held press conferences or talked to the media about the issue in spite of the convention that matters are not discussed when taken under advisement until the Speaker returns to the House with a ruling.

Even though there is no prima facie case of privilege regarding comments that were attributed to the Member for St. John's in the media concerning the possibility of the Speaker being given the jurisdiction to approve the use of certain spaces in the Legislative Building and Legislative grounds, there is concern about the attributed explanation that this would be a crackdown on the use of the building by the public. If the comments as reported in the media are correct, then they are a reflection on the office of Speaker, and are also a reflection on the non-partisan staff of the Assembly, chiefly the Clerk and her staff who advise the Speaker. The comments also do not take into account that the Speaker is not part of the Executive and does not take action on behalf of the Executive.

I would like to remind Members of the steps taken by the Manitoba Legislative Assembly since 1999 to enhance the independence and neutrality of the Speakership. In that year, the Assembly adopted rules to provide for the secret ballot election of the Speaker, breaking with the practice of the Speaker being the appointee of the Premier of the day. Several years after that, the Assembly changed the practice of having the Government House Leader defend the Assembly estimates during the consideration of the Committee of Supply and instead the estimates are now presented by the Speaker on behalf of the entire Assembly. The Assembly also changed *The Legislative Assembly Act* such that the person holding the office of Speaker now remains as Speaker until a new Speaker is elected, as opposed to that person ceasing to be a Speaker when the electoral writ is dropped. In addition, the Assembly also recently changed the rules of the House to remove the appeal of Speaker's rulings on points of order in recognition of the independence and neutrality of the Speaker.

In addition to these measures, Speakers Hickes and Reid also stopped attending caucus meetings and party events while in office as Speaker to provide a distance between the office of Speaker and political parties and the Executive, and this is a tradition that I too have carried on with since my election as Speaker. I am the Speaker of the Legislative Assembly, not the Speaker of the Government. It is therefore disconcerting to see Members taking actions and saying comments that are reflections on the office of Speaker. I would urge Members to be mindful of their comments and to be aware that such comments could serve to undermine the independence, neutrality and authority of the Speakership.

---

Prior to Petitions, Ms. FONTAINE rose on a point of order and voluntarily apologized to the House for her comments outside of the House that appeared to be a reflection on the Office of the Speaker.

---

The following petition was presented and read:

Mr. MALOWAY – Legislative Assembly of Manitoba to urge the Provincial Government do all that is possible to prevent the Bell takeover of MTS and preserve a more competitive cell phone market so that cellular bills for Manitobans do not increase unnecessarily.

---

Hon. Mr. WISHART moved:

THAT Bill (No. 15) – The Sexual Violence Awareness and Prevention Act (Advanced Education Administration Act and Private Vocational Institutions Act Amended)/Loi sur la sensibilisation et la prévention en matière de violence à caractère sexuel (modification de la Loi sur l'administration de l'enseignement postsecondaire et de la Loi sur les établissements d'enseignement professionnel privés), be now read a Second Time and be referred to a Committee of this House.

And a debate arising,

And Hon. Mr. WISHART having spoken,

And Mr. KINEW and Ms. KLASSEN having questioned the Minister,

And the debate continuing,

And Mr. KINEW, Hon. Ms. SQUIRES, Ms. KLASSEN, Mrs. GUILLEMARD, Ms. FONTAINE and Ms. MORLEY-LECOMTE having spoken,

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

**YEA**

ALLUM	MARCELINO (Logan)
BINDLE	MARCELINO (Tyndall Park)
CLARKE	MARTIN
COX	MICHALESKI
CULLEN	MICKLEFIELD
CURRY	MORLEY-LECOMTE
EICHLER	NESBITT
EWASKO	PALLISTER
FIELDING	PEDERSEN
FLETCHER	PIWNIUK
FONTAINE	REYES
FRIESEN	SARAN
GERRARD	SCHULER
GRAYDON	SELINGER
GUILLEMARD	SMITH
HELWER	SMOOK
ISLEIFSON	SQUIRES
JOHNSON	STEFANSON
JOHNSTON	SWAN
KINEW	TEITSMA
KLASSEN	WHARTON
LAGIMODIERE	WIEBE
LAMOUREUX	WISHART
LATHLIN	WOWCHUK
LINDSEY	YAKIMOSKI..... 51
MALOWAY	

**NAY**

.....0

The Bill was accordingly read a Second Time and referred to a Committee of this House.

---

The House then adjourned at 4:54 p.m. until 10:00 a.m. Tuesday, October 18, 2016.

Hon. Myrna DRIEDGER,  
Speaker.