



## LEGISLATIVE ASSEMBLY OF MANITOBA

### VOTES AND PROCEEDINGS

FOURTH SESSION, THIRTY-EIGHTH LEGISLATURE

#### PRAYER

1:30 O'CLOCK P.M.

The following petitions were presented and read:

Mrs. STEFANSON – Legislative Assembly of Manitoba to request the Premier of Manitoba and the Minister of Health to consider providing CancerCare Manitoba with the appropriate funding necessary so that they may provide leading edge care for patients in the same manner as other provinces and to consider accelerating the process by which new cancer treatment drugs are approved so that more Manitobans are able to be treated in the most effective manner possible. (L. Shute, M. Morrow, D. Kachkowski and others)

Mr. SCHULER – Legislative Assembly of Manitoba to strongly urge the Premier to consider calling an independent public inquiry into the Crocus Investment Fund scandal. (S. Bailey, M. Bailey, K. Kroeker and others)

Mr. MCFADYEN – Legislative Assembly of Manitoba to strongly urge the Premier to consider calling an independent public inquiry into the Crocus Investment Fund scandal. (B. J. Langdon, S. Brick, F. Brick and others)

Mr. DYCK – Legislative Assembly of Manitoba to request the Premier of Manitoba and the Minister of Health to consider providing CancerCare Manitoba with the appropriate funding necessary so that they may provide leading edge care for patients in the same manner as other provinces and to consider accelerating the process by which new cancer treatment drugs are approved so that more Manitobans are able to be treated in the most effective manner possible. (A. Northmore, M. Houston, S. Witwicki and others)

Mrs. ROWAT – Legislative Assembly of Manitoba to urge the Minister of Family Services and Housing and the Premier to consider amending legislation to improve the process by which grandparents can obtain reasonable access to their grandchildren. (C. Wells, P. J. Wells, R. Bird and others)

Mr. MAGUIRE – Legislative Assembly of Manitoba to urge the Minister for Agriculture, Food and Rural Initiatives to consider holding consultations with Manitoba's cattle producers and representatives from agricultural groups before this levy is put in place. (S. Cochrane, G. Harrison, D. Griffith and others)

Mr. LAMOUREUX – Legislative Assembly of Manitoba to request the Legislative Assembly of Manitoba to consider the need to seek clarification on why the Government did not act on fixing the Crocus fund back in 2001 and to urge the Premier and his Government to cooperate in making public what really happened and call a public inquiry. (J. Hardy, L. Minuk, H. Hesse and others)

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During Oral Questions, Hon. Mr. ASHTON rose on a point of order regarding comments allegedly spoken by the Honourable Member for Russell.

WHEREUPON Mr. Speaker informed the House he would take the matter under advisement.

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

Following the daily Prayer on April 13, 2006, the Honourable Member for Inkster raised a matter of privilege regarding answers provided in the House by the Honourable Ministers of Finance and Industry, Trade and Mines on April 12, answers that the Member for Inkster asserted were purposely misleading. At the conclusion of his comments, the Honourable Member for Inkster moved “THAT this matter be referred to the Standing Committee on Legislative Affairs and that both Ministers be requested to apologize.” The Honourable Government House Leader and the Honourable Deputy Official Opposition House Leader also offered advice to the Speaker. I took the matter under advisement in order to consult 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 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.

The Honourable Member for Inkster asserted that he was raising the issue at the earliest opportunity, and I accept the word of the Honourable Member.

Regarding the second issue of whether a prima facie case was demonstrated, I would note that in raising his matter of privilege, the Honourable Member for Inkster provided a definition of prima facie which states that privilege is a complaint that contains all the necessary legal evidence for recognized cause of action and will suffice until contradicted and overcome by the defendant’s evidence.

I would suggest to the Honourable Member for Inkster that he is looking at a definition of prima facie from a legal perspective that would probably be used in the courts; however in the Legislature, we deal with a definition of privilege that is more appropriate to the parliamentary context. Maingot defines parliamentary privilege on page 221 of the second edition of *Parliamentary Privilege in Canada* as “A prima facie case of privilege in the parliamentary sense is one where the evidence on its face as outlined by the Member is sufficiently strong for the House to be asked to debate the matter and send it to a committee to investigate whether the privileges of the House have been breached or a contempt has occurred and report to the House.” Marleau and Montpetit on page 262 of *House of Commons Procedure and Practice* defines prima facie as meaning “at first sight” or “on the face of it.” Therefore, these definitions form the guideline of what Speakers follow when determining whether a prima facie case exists.

Concerning the specific case that the Honourable Member for Inkster has raised, this is a similar issue that has been raised in our Legislature many times over the years. The first test that a Speaker must apply when such a claim comes up is whether or not the Member raising the matter of privilege has provided specific proof of intent to mislead on the part of the Member in question. Speakers Phillips, Rocan and Dacquay have, in previous rulings, cited the necessity for specific proof to be provided on the record that the Member purposefully and deliberately set out to mislead the House. Speaker Dacquay went as far as to advise the House that without a Member admitting in the House that he or she had the stated goal of misleading the House when putting remarks on the record, it is next to impossible to prove that indeed a Member had deliberately intended to mislead the House. In the words of the federal Standing Committee on Procedure and House Affairs in its fiftieth report, “Intent is always a difficult element to establish, in the absence of an admission or confession.” In the case raised by the Honourable Member for Inkster, I have perused Hansard and found no admission by the Honourable Ministers of Finance or Industry, Trade and Mines that they were purposely setting out to mislead the House.

The procedural authorities also offer commentary on the issue of misleading the House. Joseph Maingot makes the point on page 241 of the second edition of *Parliamentary Privilege in Canada* that allegations that a Member has misled the House are in fact matters of order and not matters of privilege. In addition, when Manitoba Speakers have been asked to rule on whether matters of privilege involving the alleged misstatements by Members or the provision of misinformation or inaccurate facts by Ministers, Speakers Phillips, Rocan and Dacquay have ruled that such situations appeared to be disputes over facts, which according to Beauchesne citation 31(1) does not fulfill the criteria of a prima facie case of privilege.

Furthermore, it has been ruled in the Canadian House of Commons and also in this Legislature concerning cases of whether or not answers offered by Ministers are false in comparison with other information, it is not the role of the Speaker to adjudicate on matters of fact. Instead, this is something that is left up to the House to form an opinion on.

I believe what we have here is a case of a disagreement with the government, and of course in parliamentary democracies, Members can disagree with the government in power and express this disagreement through a variety of means, including but not limited to questions, statements and debate. However, in this instance, a prima facie case of privilege has not been demonstrated. I would therefore rule with the greatest of respect that the matter raised is not in order as a prima facie case of privilege.

From his decision, Mr. LAMOUREUX 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**

ALLAN	MACKINTOSH
ALTEMEYER	MALOWAY
ASHTON	MARTINDALE
BJORNSON	MCGIFFORD
BRICK	MELNICK
CALDWELL	NEVAKSHONOFF
CHOMIAK	OSWALD
DEWAR	REID
DOER	ROBINSON
IRVIN-ROSS	RONDEAU
JENNISSON	SANTOS
JHA	SCHELLENBERG
KORZENIOWSKI	SELINGER
LATHLIN	SMITH
LEMIEUX	SWAN ..... 30

**NAY**

CULLEN	GOERTZEN
CUMMINGS	HAWRANIK
DERKACH	LAMOUREUX
DRIEDGER	MITCHELSON
DYCK	REIMER
EICHLER	ROWAT
FAURSCHOU	STEFANSON
GERRARD	TAILLIEU ..... 16

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Prior to Members' Statements, Hon. Mr. GERRARD rose on a Matter of Privilege and moved:

THAT this matter be referred to a Standing Committee of this House.

And Mrs. TAILLIEU, Hon. Mr. ASHTON and Mr. DERKACH having spoken.

WHEREUPON Mr. Speaker informed the House he would take the matter under advisement.

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Subsequently prior to Members' Statements, Mr. LAMOUREUX rose on a point of order alleging that the person that spoke on behalf of the Government was not listening to the Matter of Privilege previously raised.

WHEREUPON Mr. Speaker ruled that there was no point of order.

From his decision, Mr. LAMOUREUX 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**

ALLAN	MARTINDALE
ALTEMEYER	MCGIFFORD
ASHTON	MELNICK
BJORNSON	NEVAKSHONOFF
BRICK	OSWALD
CALDWELL	REID
CHOMIAK	ROBINSON
DEWAR	RONDEAU
DOER	SALE
IRVIN-ROSS	SANTOS
JHA	SCHELLENBERG
KORZENIOWSKI	SELINGER
LEMIEUX	SMITH
MACKINTOSH	SWAN ..... 29
MALOWAY	

**NAY**

CULLEN	HAWRANIK
CUMMINGS	LAMOUREUX
DERKACH	MAGUIRE
DRIEDGER	MITCHELSON
DYCK	PENNER
EICHLER	REIMER
FAURSCHOU	ROWAT
GERRARD	STEFANSON
GOERTZEN	TAILLIEU ..... 18

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The House then adjourned at 5:10 p.m. until 10:00 a.m. Friday, April 28, 2006.

Hon. George HICKES,  
Speaker.