



LEGISLATIVE ASSEMBLY OF MANITOBA

VOTES AND PROCEEDINGS No. 61

THIRD SESSION, FORTY-FIRST LEGISLATURE

PRAYER

1:30 O'CLOCK P.M.

Immediately following the Prayer, Hon. Mr. FRIESEN rose on a Matter of Privilege related to comments made by the Leader of the Official Opposition during Oral Questions on June 7, 2018 regarding a discussion about estimates of cannabis revenue and moved:

THAT this House impose a remedy and reparation for this Matter of Privilege under Rule 36 and that the Leader of the Official Opposition apologize for his stating that the Minister of Finance made false statements and calling into question my forthrightness with this Assembly; as this amounts to unparliamentarily language that is not suitable for this Chamber.

And Mr. KINEW and Hon. Messrs. GERRARD and FLETCHER having spoken.

WHEREUPON Madam Speaker informed the House she would take the matter under advisement.

On motion of Hon. Mr. LAGIMODIERE, Bill (No. 201) – The Manitoba Conservation Officers Recognition Day Act/Loi sur la Journée de reconnaissance des agents de conservation du Manitoba, was read a First Time and had its purposes outlined.

Pursuant to Rule 27(1), Mr. GRAYDON, Ms. MARCELINO (Logan), Messrs. ISLEIFSON and SWAN and Hon. Mr. SCHULER made Members' Statements.

Following Oral Questions, Madam Speaker made the following ruling:

Following the Prayer on May 30th, 2018, the Honourable Member for Assiniboia raised a Matter of Privilege relating to a letter he had received from the law firm MLT Aikins regarding comments made during Second Reading debate on Private Members' Bill 208 – The Conflict of Interest Act, which had occurred earlier in the month. The Member explained that he had just returned from an out of province trip when he received the letter. He went on to indicate the letter from the law firm asserted his comments made during debate of Bill 208 and live tweets issued from him during the debate, were suggestive that the company Delta 9 was involved in impropriety and insider trading. The letter demanded a retraction of the comments. The Honourable Member for Assiniboia said that the letter was an attempt to intimidate him in his role as an MLA and this infringed on his privileges in that role.

Following the conclusion of his remarks, the Honourable Member for Assiniboia moved: “THAT the Speaker utilize her full powers under the Manitoba Legislature Act and the Legislative Assembly and Executive Council Conflict of Interest Act, specifically sections 1(2) Registered Common-Law relationship, 2(1) subsidiary corporation, 2(2) Control, 2(3) Subsidiary includes subsidiaries, 3(1) Indirect pecuniary interest, 3(2) Exception for indemnity or expenses, 3(3) Exception for common interests, 3(4) Indirect pecuniary liability, 3(5) Exception for common liabilities, 3(6) General exception, 3(7) Statutory appointments for Crown agencies, 3(8) Employees of public bodies, 4(1) Meetings involving Members insist on much more comprehensive Legislation.”

The Honourable Official Opposition House Leader also offered advice to the Chair on the issue. I took the Matter of Privilege under advisement in order to consult the procedural authorities.

Before exploring whether or not a prima facie case exists, I would like to note for the House the motion submitted by the Honourable Member for Assiniboia is not exactly the same motion that he read to the House in raising the Matter of Privilege, and that in moving the motion he added extraneous words that do not appear in the written motion he submitted. This is not acceptable practice, as the motion must be the same in what is read to the House and what is submitted in writing to the Speaker. I am raising this point so that all Honourable Members will be mindful of this for the future.

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.

For the first condition of timeliness, the Honourable Member for Assiniboia indicated that he was raising the issue on his first return to the Chamber after receiving the letter, and I accept the word of the Honourable Member that timeliness was met.

Regarding the second condition, of whether a prima facie case has been made, there are several conditions to explore. On the surface, whenever Members are threatened by outside sources with legal action for comments made inside the House, it is a situation that would appear to violate the privileges of the Member and of the Legislature, as parliamentary privilege does provide protection for comments made by Members during a proceeding of the Legislature. This is a well-known concept that is identified on page 92 of the third edition of *House of Commons Procedure and Practice* by Bosc and Gagnon where it states “Freedom of speech permits Members to speak freely in the Chamber during a sitting or in committees during meetings while enjoying complete immunity from prosecution or civil liability for any comment they might make.” Joseph Maingot in the second edition of *Parliamentary Privilege in Canada* also suggests on page 35 that “Members of Provincial Legislatures do have freedom of speech in debate and freedom from criminal prosecution.”

However, these protections are in place for comments that are spoken during a proceeding of Parliament or the Legislature, but they do not provide protection for comments that are repeated outside of the Chamber, whether through a press conference in the hallways, or through mailings to constituents, or to posts on social media. Even if comments repeated elsewhere are identical to comments that were made in the Legislature, these outside comments are not protected by parliamentary privilege. Bosc and Gagnon note on page 96 of the same work cited earlier that “Members should be aware that utterances which are absolutely privileged when made within a parliamentary proceeding may not be when repeated in another context, such as in a press release, a householder mailing, on an Internet site, in a television or radio interview, at a public meeting or the constituency office. Members also act at their peril when they transmit otherwise defamatory material for purposes unconnected with a parliamentary proceeding. Thus, comments made by a Member at a function as an elected representative – but outside the forum of Parliament, would likely not be covered by this privilege even if the Member were quoting from his or her own speech made in a parliamentary proceeding. Telecommunications, including technology such as electronic mail, and the Internet, should therefore not be used to transmit otherwise defamatory material.”

This reference goes on to indicate that the publication of defamatory material has been considered by most courts to be beyond the privileges of Parliament when such publication was not part of the parliamentary process to begin with. It is also noted that in 2006, the Federal Court confirmed that, since communications to constituents are not part of a parliamentary proceeding, they are not protected by parliamentary privilege.

I have reviewed carefully the letter sent by MLT Aikins to the Honourable Member for Assiniboia dated May 18, 2018 that was tabled in conjunction with the raising of the Matter of Privilege. It is quite clear that the letter is referring to social media posts and not to comments spoken in debate. The subject matter of the letter is identified in the heading as “Defamatory Social Media Posts Regarding Delta 9 Cannabis Inc.” Throughout the letter, the only references are to social media accounts and to comments on Facebook and Twitter, with a request for a retraction of the social media comments and the issuing of an apology for the same. There are no references in the letter to comments spoken by the Member in the House during the course of debate.

Given this finding, the Honourable Member for Assiniboia has not demonstrated that his privileges have been violated in relation to comments made during a proceeding of Parliament. Nor are comments made outside of the House protected by parliamentary privilege, even if repeating comments made during a proceeding in Parliament.

With the greatest of respect, I rule that a prima facie case of a breach of Privilege has not been demonstrated.

From her decision, Hon. Mr. FLETCHER 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

BINDLE	MARTIN
CLARKE	MAYER
COX	MICHALESKI
CULLEN	MICKLEFIELD
CURRY	MORLEY-LECOMTE
EICHLER	NESBITT
EWASKO	PALLISTER
FIELDING	PEDERSEN
FRIESEN	PIWNIUK
GERRARD	REYES
GOERTZEN	SCHULER
GRAYDON	SMITH (Southdale)
GUILLEMARD	SMOOK
HELWER	SQUIRES
ISLEIFSON	STEFANSON
JOHNSON	TEITSMA
JOHNSTON	WHARTON
KLASSEN	WISHART
LAGASSÉ	WOWCHUK
LAGIMODIERE	YAKIMOSKI 41
LAMOUREUX	

NAY

ALLUM	MALOWAY
ALTEMEYER	MARCELINO (Logan)
FLETCHER	MARCELINO (Tyndall Park)
FONTAINE	SMITH (Point Douglas)
KINEW	SWAN
LINDSEY	WIEBE 12

The following petitions were presented and read:

Ms. KLASSEN – Legislative Assembly of Manitoba to urge the Provincial Government to immediately begin implementation of plans to convert systems and forms to be more inclusive of Two-Spirit and other non-binary individuals, whether it be to include a third gender option, or no requirement for gender on forms, unless medically or statistically necessary, including health cards, and birth certificates; to immediately instruct the Manitoba Public Insurance corporation to offer a third gender option, or no gender requirement for licenses or any other form of provincial identification; to instruct Manitoba Health, Seniors and Active Living to offer the option of Manitoba Health Cards with no gender in order to reduce the anxieties of transgender and non-binary persons accessing the healthcare system as a first step; and to consider revisiting legislation that may need updating to meet the needs of its citizens in this regard. (W. Jaeye, M. Beloff, K. Boulay and others)

Hon. Mr. GERRARD – Legislative Assembly of Manitoba to urge the Provincial Government to immediately begin implementation of plans to convert systems and forms to be more inclusive of Two-Spirit and other non-binary individuals, whether it be to include a third gender option, or no requirement for gender on forms, unless medically or statistically necessary, including health cards, and birth certificates; to immediately instruct the Manitoba Public Insurance corporation to offer a third gender option, or no gender requirement for licenses or any other form of provincial identification; to instruct Manitoba Health, Seniors and Active Living to offer the option of Manitoba Health Cards with no gender in order to reduce the anxieties of transgender and non-binary persons accessing the healthcare system as a first step; and to consider revisiting legislation that may need updating to meet the needs of its citizens in this regard. (N. Reynolds, N. Reynolds, D. Reynolds and others)

Mrs. SMITH (Point Douglas) – Legislative Assembly of Manitoba to urge the Premier of Manitoba and the Minister of Justice to immediately call a Public Inquiry into the systems that had a role in the life and death of Tina Fontaine as well as the function of the administration of justice after her death and that the terms of reference of a Public Inquiry be developed jointly with the caregivers of Tina Fontaine and/or the agent appointed by them. (A. Kerr, B. Cohn, J. Dixon and others)

Hon. Mr. FLETCHER – Legislative Assembly of Manitoba to urge the Provincial Government to take the necessary steps to ensure that the Vimy Arena site is not used for an addiction treatment facility and to take the necessary steps to ensure the preservation of public land along Sturgeon Creek for the purposes of park land and recreational activities for public use (including being an important component of the Sturgeon Creek Greenway Trail and the Sturgeon Creek ecosystem) under the current designation of PR2 for the 255 Hamilton Avenue location at the Vimy Arena site, and to maintain the land to continue to be designated for Parks and Recreation Active Neighbourhood/Community. (D. Penner, L. Sommerfield, K. Sommerfield and others)

The House resumed the debate on the Proposed Motion of Hon. Ms. SQUIRES:

THAT Bill (No. 29) – The Wildlife Amendment Act (Safe Hunting and Shared Management)/Loi modifiant la Loi sur la conservation de la faune (pratiques de chasse sécuritaires et gestion intégrée de la faune), be now read a Second Time and be referred to a Committee of this House.

And on the Proposed Amendment of Mr. KINEW:

THAT the motion be amended by deleting all the words after the word "THAT" and substituting the following:

This House declines to give Second Reading to Bill (No. 29) – The Wildlife Amendment Act (Safe Hunting and Shared Management)/Loi modifiant la Loi sur la conservation de la faune (pratiques de chasse sécuritaires et gestion intégrée de la faune), because Bill (No. 29) fails to institute the principles necessary for a system of co-management for safe hunting in Manitoba.

And the debate continuing on the amendment,

And Mr. SWAN speaking at 5:00 p.m. The debate was allowed to remain in his name.

Monday, June 11, 2018

The House then adjourned at 5:00 p.m. until 10:00 a.m. Tuesday, June 12, 2018.

Hon. Myrna DRIEDGER,
Speaker.