



**LEGISLATIVE ASSEMBLY OF MANITOBA**

**VOTES AND PROCEEDINGS No. 20**

**THIRD SESSION, THIRTY-SEVENTH LEGISLATURE**

**PRAYERS**

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

Hon. Ms. MIHYCHUK, the Minister of Industry, Trade and Mines made a statement regarding the sale of New Flyer Industries,

Mr. PENNER (Steinbach) and, by leave, Hon. Mr. GERRARD commented on the statement.

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

During Oral Questions on December 6, 2001, the Honourable Government House Leader raised a point of order regarding a telephone answering machine message that had been tabled in the House on an audio cassette tape along with an accompanying transcript. The Honourable Government House Leader asked that the Member bringing the material to the House provide the basis for who made the calls and who received the calls. The Honourable Member for Russell also spoke to the same point of order, and noted that in tabling the material, he had provided a transcript for the House, a transcript which identified a telephone number as being associated with a particular individual. I took the matter under advisement in order to review the transcript and the tape.

I thank both Honourable Members for their contribution to the point of order.

I have had the opportunity to listen to the audio tape and to review the transcript that was tabled in the House on December 6, 2001. I would like to note for the House that the Speaker is being placed in a difficult position with this ruling. I do not see my function in this case as attempting to identify the authenticity of the tape or of the information on the tape. Instead, my role in this matter is to determine whether the material is receivable and whether it conforms to House practices. The authentication of the material is not the responsibility of the Speaker.

Similarly, concerning comments regarding questions of legality in connection with the item that was tabled, I would like to advise the House that the Speaker does not determine questions of law or decide whether actions comply with the law. Beauchesne citation 31(9) advises that failure to comply with the law is not a matter for the Speaker but should be decided by the courts. Joseph Maingot advises on page 180 of the second edition of *Parliamentary Privilege in Canada* that "the Chair is in no position to interpret the law or the constitution. Whether something takes place 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 concept is supported by rulings delivered by Speaker Rocan on May 5, 1994 and by Speaker Dacquay on November 4, 1996. Therefore, I consider that my function in this case is to indicate whether a breach of the rules has occurred without condemning or condoning the legality of any actions. Nor do I consider my examination of this matter to be lending validity to any discussion of whether or not an action is legal.

Although the material tabled by the Honourable Member for Russell was on an audio cassette and had an accompanying transcript, I am ruling that the material is comparable to a written document and must therefore satisfy the same standards and criteria set out by our practices in order to be received by the House.

I would like to advise the House that in comparable circumstances where Members have tabled documents in the past without identifying information, previous Manitoba Speakers have ruled that unsigned materials are not receivable by the House. On June 2, 1970, Mr. Speaker Hanuschak ruled that according to Beauchesne citation 158(3), fourth edition, that an unsigned letter should not be read in the House.

On April 13, 1981, Mr. Speaker Graham ruled that an unsigned and unidentified document is an incomplete document and cannot be considered to be properly before the House.

Mr. Speaker Rocan ruled on November 14, 1988 that a document that was unsigned and not directed to any individual is inadmissible and cannot properly become a document of the House. He went on to state in the ruling that if the Member who had tabled the document involved in that particular ruling was prepared to sign and file a declaration regarding the unsigned and unaddressed document, then the document could be received by the House.

Mr. Speaker Rocan also ruled on November 28, 1988 and on December 2, 1992, that tabled documents in the form of letters and other unsigned documents must be signed or must bear a declaration respecting their origin, signed by the Member tabling them.

Looking at information available from other Canadian jurisdictions, Marleau and Montpetit also advise on pages 517 and 518 of *House of Commons Procedure and Practice* that “Members may not quote ... from correspondence when there is no way of ensuring the authenticity of the signature. They may quote from private correspondence as long as they identify the sender by name or take full responsibility for its contents.” Beauchesne citation 498(3) advises that when quoting a letter in the House, a Member must be willing either to give the name of the author or to take full responsibility for the contents.

On April 23, 2001, Speaker Schneider of the Yukon Legislative Assembly ruled that a Member could not table an e-mail communication in the Yukon Legislature because the name of the sender and the recipient were blocked out. He advised that the Member tabling the e-mail had two choices – to either inform the Legislature of the name of the person who wrote the e-mail, or to take full responsibility for its contents.

Based on these precedents, I am ruling that the Honourable Member for Russell should sign and submit a declaration regarding the items tabled. This action would make the items receivable by the House, because according to Beauchesne citation 494, statements by Members respecting themselves and particularly within their own knowledge must be accepted.

On the larger issue of tabling items associated with certain technologies, such as audio or video cassettes or items on computer disks, I would suggest to the House that the Standing Committee on the Rules of the House may wish to examine this issue, in order to establish criteria for the tabling of such items.

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During Oral Questions on December 6, 2001, the Honourable Government House Leader raised a point of order regarding the content of a question addressed by the then Honourable Member for Lac du Bonnet to the Honourable Minister of Education and Training. The Honourable Government House Leader contended that the question was asking the Honourable Minister of Education and Training to comment on a third party conversation, namely a telephone conversation or message that was tabled in the House on an audio cassette, along with an accompanying transcript. The Honourable Government House Leader asserted that the question was seeking information that could not be rightly sought from a Minister because the question was based on a third party conversation. The Honourable Official Opposition House Leader also spoke to the same point of order. I took the matter under advisement in order to review the issue and consult the procedural authorities.

I would like to note for the House that I had previously taken the matter of the tabled cassette tape under advisement earlier during the same Question Period on December 6, 2001. Therefore, as Speaker I should have either cautioned Members to not ask questions about the matter taken under advisement, or to rephrase the questions so that questions were not incorporating the matter already taken under advisement. This is in conformity with rulings from Speaker Rocan on December 20, 1994 and from Deputy Speaker Laurendeau on April 25, 1997 which state that matters taken under advisement should not be referred to during Question Period.

Turning to the substance of the point of order raised by the Honourable Government House Leader, I am being asked as the Speaker to indicate whether it is appropriate for a Minister to be answering questions that are based on third party conversations. As Speaker, I have no way of knowing whether or not the Minister would be privy to any third party conversations, or whether or not the Minister has information on that subject and can provide an answer to the House. There are no previous Manitoba rulings on this exact point, and I was not able to find reference to prohibitions on this type of question in the procedural authorities. In the absence of guidance from precedents or procedural authorities, I am reluctant to establish a new criteria concerning third party conversations. If this issue is one that the House feels strongly about, perhaps it would be appropriate for the Standing Committee on the Rules of the House to contemplate whether restrictions should be placed on questions related to third party conversations. I would also like to note that a Minister is not under obligation to answer any question that is addressed to that Minister, and can indeed chose to not answer the question.

Therefore I rule there is no point of order.

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During Oral Questions on December 6, 2001, the Honourable Member for Russell raised a matter of privilege regarding the tabling of a letter by the Honourable Minister of Education, Training and Youth. The Honourable Member for Russell indicated that his privileges were violated because the letter in question had been provided by the Honourable Minister to the media prior to being tabled in the House. He concluded his remarks by moving "THAT the actions of the Minister of Education in providing copies of a letter or document to the media without first providing that document to the Legislature as requested, after that document had been repeatedly asked for by Members of this House, constitutes a breach of privileges of the Members of this House, and that this matter be referred to a committee of this House." The Honourable Government House Leader, the Honourable Member for River Heights, the former Member for Lac du Bonnet and the Honourable Minister of Transportation and Government Services also spoke to this issue. I took the matter under advisement in order to consult the procedural authorities.

When a matter of privilege is raised in the House, there are two aspects that the Speaker must decide. The first is whether the matter was raised at the earliest available opportunity, and second, whether a prima facie case of privilege has been established.

The Honourable Member for Russell asserted that he was rising at the earliest opportunity on this issue once he ascertained that copies had been provided to the media. The Speaker is not in possession of information that would verify if and when the letter had been provided to the media, therefore the Speaker must accept the word of the Honourable Member for Russell that he did indeed raise the matter at the earliest opportunity.

Regarding the second issue, of whether a prima facie case of privilege has been established, there are several rulings from Manitoba Speakers on the subject of information being provided to the media prior to being provided to Members.

On June 2, 1983, a matter of privilege was raised respecting the distribution of a news release regarding a bill at the same time that a bill was distributed. Mr. Speaker Walding ruled that there was not a matter of privilege. He stated that "the matter of which he complains may be a matter of discourtesy but it is not a matter of privilege."

On July 8, 1986, a matter of privilege was raised regarding a press conference held to announce amendments to a government Bill prior to the Bill being introduced for second reading. Madam Speaker Phillips ruled on July 11, 1986 that there was no matter of privilege. In her ruling she quoted from the fifth edition of Beauchesne, citation 19(3) "statements made outside the House by a Member may not be used as the basis for a question of privilege." She also quoted a November 23, 1976 ruling from Speaker Jerome of the House of Commons "it is clear that parliamentary privilege does not extend, and never has extended, to compelling a Minister or Prime Minister to make a statement in the House under any circumstances, regardless of the importance of the subject."

On June 26, 1991, a point of order was raised concerning the release of a report by the government of the day at a press conference prior to the report being tabled in the House. On July 4, 1991, Mr. Speaker Rocan ruled that there was no point of order nor were there grounds for raising the issue as a matter of privilege. In his ruling, he stated that, and I quote, "the rules and customary modes of proceeding apply only to activities occurring within the House, however the action complained of occurred outside the House, therefore it does not qualify as a point of order. Further, there is not, in my understanding, any custom that reports must be tabled in the House before being released to the media." Speaker Rocan also cited Beauchesne citations 352 and 31(10). Citation 352 states that "the option of a Minister to make a statement either in the House or outside it may be the subject of a comment, but is not the subject of a question of privilege." Citation 31(10) reads "the question has often been raised whether parliamentary privilege imposes on ministers an obligation to deliver ministerial statements and to make announcements and communications to the public through the House of Commons or to make these announcements or statements in the House rather than outside the Chamber. The question has been asked whether Hon. Members are entitled, as part of their parliamentary privilege, to receive such information ahead of the general public. I can find no precedent to justify this suggestion."

Joseph Maingot, in the second edition of *Parliamentary Privilege in Canada*, advises on page 224 that "a complaint that a Minister of the Crown has made a statement outside the House rather than in the House or that the government provides information only to its supporters in the House may well amount to a grievance against the government, but in the absence of an order in the House forbidding such activity, there is no personal or corporate privilege that has been breached in the doing, and neither does it constitute contempt of the House in the 'privilege' sense."

I would also like to reference a point raised by the Honourable Member for Russell during his raising of the matter of privilege regarding the fact that the House of Commons has had some recent experience with information briefings concerning a federal bill being provided to the media in a lock-up one and one half hours prior to being released in the House. Although the House of Commons Modernization Committee did release a report recommending that more ministerial statements and announcements be made in the House of Commons, Speaker Milliken noted in a ruling delivered on October 29, 2001 that while he recognized that there are words in this report that would be of solace to any Member making the argument that a breach of privilege occurred because of information being provided outside of the House prior to being given to Members, he did state "I question whether the report has changed the situation such that failure to make a statement in the House has become a question of breach of privileges of the House." Speaker Milliken then went on to rule that there was no prima facie case of privilege because the Minister of Transport held a press conference to announce a \$75 million dollar bailout for Canada 3000 rather than making the announcement in the House first.

Based on the rulings cited from Manitoba Speakers, and on the citation from Maingot indicating that in the absence of orders forbidding such activity, such cases are not prima facie privilege, I would rule that there is not a prima facie case of privilege. However, I would encourage Members if they are displeased with the past practices of the House on this issue, that the matter could be discussed by the Standing Committee on the Rules of the House, in order to contemplate whether such an order should be adopted by the Manitoba Legislative Assembly.

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Following the Prayer on April 22, 2002, the Honourable Member for Fort Whyte rose on a matter of privilege to offer an apology to the House and to Crocus Investments and its unit holders, for comments he made outside of the Chamber regarding Crocus Investments. I took the matter under advisement in order to consult the procedural authorities.

The longstanding Manitoba practice and requirement is that a Member raising a matter of privilege concludes by moving a substantive motion. This is confirmed by rulings of Speaker Forbes in 1965, Speaker Graham in 1980, Speaker Walding in 1982, Speaker Phillips in 1986, Speaker Rocan in 1990 and 1991, and Speaker Dacquay in 1999. The Honourable Member for Fort Whyte did not move a substantive motion at the conclusion of his remarks.

In addition, a Member rising in the House on a matter of privilege to offer an apology does not satisfy the criteria for a prima facie case of privilege.

Therefore, I rule that the matter raised is out of order and is not a matter of privilege.

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Pursuant to Rule 23(1), Mr. NEVAKSHONOFF, Mrs. STEFANSON, Messrs. SCHELLENBERG, MAGUIRE and MALOWAY made Members' Statements.

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The House resumed the Adjourned Debate on the Proposed Motion of Hon. Mr. SELINGER:

THAT this House approve in general the budgetary policy of the government.

And on the Proposed Amendment of Mr. MURRAY

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

therefore regrets this budget ignores the present and future needs of Manitobans by:

- (a) failing to offer Manitobans any vision for an innovative, successful and sustainable future;
- (b) failing to provide a long-term personal income tax reduction strategy that addresses the fact that middle-income Manitobans are the highest taxed west of Quebec;
- (c) failing to provide a sustainable provincial spending plan;
- (d) failing to provide Manitobans with timely disclosure of the \$150 million retroactive tax imposed on Manitoba Hydro in order to avoid a deficit in the 2001/02 budget year;
- (e) failing to provide an economic development plan to provide sustainable economic growth for Manitoba;

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(f) failing to provide any incentive for young people to remain in Manitoba despite recent information showing that Manitoba suffered a net inter-provincial migration loss of 4,549 people in 2001, up 47 percent from the previous year; and

(g) failing to provide adequate supports to Manitoba's agricultural sector.

As a consequence, the Government has thereby lost the confidence of this House and the people of Manitoba.

And the debate continuing on the amendment,

And Mr. HAWRANIK, Hon. Mr. SALE, Mr. GILLESHAMMER, Hon. Ms. WOWCHUK and Mr. PITURA having spoken,

And Mr. SCHELLENBERG speaking at 5:56 p.m. The debate was allowed to remain in his name.

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The House then adjourned at 5:56 p.m. until 10:00 a.m. Friday, April 26, 2002.

Hon. George HICKES,  
Speaker.