



**LEGISLATIVE ASSEMBLY OF MANITOBA**

**VOTES AND PROCEEDINGS No. 25**

**THIRD SESSION, FORTY-SECOND LEGISLATURE**

**PRAYER**

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

The following Bills were read a First Time and had their purposes outlined:

(No. 204) – The Louis Riel Act/Loi sur Louis Riel

(Mr. KINEW)

(No. 218) – The Somali Heritage Week Act/Loi sur la Semaine du patrimoine somalien

(MLA ASAGWARA)

Madam Speaker presented:

Annual Report of the Ombudsman for the year ending December 31, 2019.

(Sessional Paper No. 35)

Pursuant to Rule 27(1), Mr. ISLEIFSON, Ms. NAYLOR, Hon. Mrs. GUILLEMARD, Ms. MARCELINO and Mr. MICHALESKI made Members' Statements.

Following Oral Questions, Madam Speaker made the following ruling:

On March 17, 2020, the Honourable Member for Flin Flon rose in the House alleging that a Matter of Privilege regarding cuts to healthcare and to front line services and the constitutionality of Bill 28 had occurred. The Member alleged that the attempts of the Government to implement the Bill without proclaiming it affected his ability to do his job as an MLA. The Member concluded his comments by moving “*THAT this issue be referred to an all-party committee for resolution immediately.*” The Honourable Government House Leader and the Honourable Member for River Heights also offered advice to the Chair. The Deputy Speaker then took the matter under advisement in order to consult the procedural authorities.

I thank all Honourable Members for their contributions to the Matter of Privilege.

In raising privilege, Members must satisfy two conditions in order for the matter to be ruled in order as a *prima facie* case. It needs to be demonstrated that the issue was raised at the earliest opportunity, and that sufficient evidence has been provided to demonstrate that the privileges of the House have been breached, in order for the matter to be put to the House.

The Honourable Member for Flin Flon suggested that the criteria for determining the earliest opportunity should be interpreted in a “holistic or contextual matter” and “cannot simply mean the next moment in time in which a Member has ability to speak”. The procedural authorities disagree with the Member’s contention. Bosc and Gagnon advise on page 145 of the third edition of *House of Commons Procedure and Practice* that “the matter of privilege to be raised in the House must have recently occurred and must call for the immediate action of the House.” Therefore the Member must satisfy the Speaker that the matter is being brought to the House as soon as practicable after becoming aware of the situation. I ask Members to keep this in mind when assessing the aspect of timeliness in the future as I am not satisfied the condition was met in this case.

Regarding the second issue of whether a *prima facie* case was demonstrated, the issue raised does not qualify as a breach of the privileges of the House. Potential impacts of legislation on the general public do not breach the privileges of the House as parliamentary privilege does not apply to the general public. In addition, disagreement by Members with proposed or existing legislation does not fulfill the criteria of a breach of privilege, rather it is an issue of a difference of opinion and beliefs.

Regarding the issue of cuts to health care, the Member essentially alleged that administrative or policy decisions made by the Provincial Government in regards to the funding of healthcare were grounds for a Matter of Privilege. I would note for the House that Joseph Maingot advises on page 224 of the second edition of *Parliamentary Privilege in Canada* that allegations of misjudgement, or mismanagement or maladministration on the part of a Minister in the performing of his (or her) ministerial duties does not come within the purview of parliamentary privilege. This finding is supported by one ruling from Speaker Rocan in 1994, three rulings from Speaker Dacquay in 1996 and one by Speaker Hickes in 2006.

I would remind the House that the individual protections for Members under parliamentary privilege include:

- freedom of speech;
- freedom from arrest and civil actions;
- exemptions from jury duty;
- freedom from obstruction, interference, intimidation and molestation; and
- the exemption from attendance as a witness.

In order for a *prima facie* case of privilege to be found, one or more of these individual protections would need to be demonstrated to have been violated.

In regards to the Member's comments that he could not fulfill his role as an MLA to hold the Government to account because Bill 28 was not yet proclaimed, Maingot further advises on page 224 of the same edition that "parliamentary privilege is concerned with the special rights of Members, not in their capacity as ministers or as party leaders, whips, or parliamentary secretaries, but strictly in their capacity as Members in their parliamentary work." Therefore, the Honourable Member for Flin Flon cannot claim the protection of parliamentary privilege for the performance of his duties as a Critic but only as an MLA. All of the above references from Joseph Maingot are supported by rulings from myself as well as from Speakers Rocan, Dacquay and Hickes.

The Member has not demonstrated any obstruction or impediment regarding the function of the House nor the discharge of his duty. Given that Members have been able to ask questions in Oral Questions, raise Grievances, make Members' Statements and participate in debate and in committee meetings, it is difficult to agree with the suggestion that the Member was impeded from performing his parliamentary duty. I must therefore rule with the greatest of respect that the matter raised does not fulfill the criteria of a *prima facie* case of privilege.

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The following petitions were presented and read to the Legislative Assembly of Manitoba:

Mr. BRAR – To urge the Minister of Justice to immediately reverse the decision to close the DCC and proceed with the previous plan to build a new correctional and healing centre with an expanded courthouse in Dauphin.

Mr. BUSHIE – To urge the Provincial Government reverse cuts and closures that negatively impact patients' ability to access timely, quality health care; and to make real investments in Manitoba's public health care system that will improve the timeliness and quality of care for patients by increasing the number of beds across the system, and recruiting and retaining an adequate number of nurses and other health professionals to meet Manitoba's needs.

Mr. LINDSEY – To urge the Minister of Justice to immediately reverse the decision to close the DCC and proceed with the previous plan to build a new correctional and healing centre with an expanded courthouse in Dauphin.

Mr. MALOWAY – To urge the Minister of Justice to immediately reverse the decision to close the DCC and proceed with the previous plan to build a new correctional and healing centre with an expanded courthouse in Dauphin.

Ms. MARCELINO – To urge the Provincial Government to increase funding for licensed not for profit child care programs in recognition of the importance of early learning and child care in Manitoba which will also improve quality and stability in the workforce.

Mr. MOSES – To urge the Minister of Justice to immediately reverse the decision to close the DCC and proceed with the previous plan to build a new correctional and healing centre with an expanded courthouse in Dauphin.

Ms. NAYLOR – To urge the Provincial Government to increase funding for licensed not for profit child care programs in recognition of the importance of early learning and child care in Manitoba which will also improve quality and stability in the workforce.

Mr. SANDHU – To urge the Minister of Justice to immediately reverse the decision to close the DCC and proceed with the previous plan to build a new correctional and healing centre with an expanded courthouse in Dauphin.

Mr. WASYLIW – To urge the Minister of Justice to immediately reverse the decision to close the DCC and proceed with the previous plan to build a new correctional and healing centre with an expanded courthouse in Dauphin.

Mr. WIEBE – To urge the Minister of Justice to immediately reverse the decision to close the DCC and proceed with the previous plan to build a new correctional and healing centre with an expanded courthouse in Dauphin.

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The Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 4) – The Retail Business Hours of Operation Act (Various Acts Amended or Repealed)/Loi sur les heures d'ouverture des commerces de détail (modification ou abrogation de diverses lois), reported from the Standing Committee on Social and Economic Development:

Ms. LAMOUREUX moved:

*THAT Bill 4 be amended by replacing Clause 1(2) with the following:*

*1(2) The following is added after section 80 as part of Division 12 of Part 2:*

**RETAIL EMPLOYEES' RIGHT TO  
REFUSE TO WORK**

**Retail employees may refuse to work**

**81(1)** Subject to subsection (6) and the regulations, an employee in a retail business establishment may refuse to work on a certain day if the employee gives the employer

(a) at least 14 days' notice before the day; or

(b) as much notice as is reasonable and practicable in the circumstances if the employee is scheduled to work less than 14 days before the day.

**No changes to employment**

**81(2)** An employer must not lay off or terminate the employment of an employee, or change the employee's working conditions or wage rate, because the employee, after giving the required notice, refuses or attempts to refuse to work in accordance with subsection (1).

**Exception**

**81(3)** Subsection (2) does not apply if the employer lays off or terminates the employment of an employee, or changes the employee's working conditions or wage rate, for reasons unrelated to the employee refusing or attempting to refuse to work in accordance with subsection (1).

**Right to file complaint**

**81(4)** An employee who claims that they have been laid off or terminated or that their working conditions or wage rate has been changed contrary to subsection (2) may file a complaint with an officer under section 92.

**Complaint to be filed within six months**

**81(5)** A complaint must be filed within six months after the date of the alleged contravention.

**Limitation**

**81(6)** A person is not entitled under this section to refuse to work more than once a week.

**Meaning of "retail business establishment"**

**81(7)** In this section, "retail business establishment" has the same meaning as in *The Remembrance Day Act*.

And a debate arising,

And Ms. LAMOUREUX and Mr. LINDSEY having spoken,

And the Question being put on the amendment. It was negatived.

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Ms. LAMOUREUX then moved:

*THAT Bill 4 be amended in Clause 1(3) of the English version by striking out "on a Sunday" of the proposed clause 92(1)(b.1).*

And a debate arising,

And Ms. LAMOUREUX and Mr. LINDSEY having spoken,

And the Question being put on the amendment. It was negatived.

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Ms. LAMOUREUX then moved:

*THAT Bill 4 be amended in Clause 6 by striking out "as if Remembrance Day were a Sunday" and substituting "in respect of such a refusal" in the proposed section 3.3.*

And a debate arising,

And Ms. LAMOUREUX and Mr. LINDSEY having spoken,

And the Question being put on the amendment. It was negatived.

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Hon. Mr. FIELDING moved:

THAT Bill (No. 4) – The Retail Business Hours of Operation Act (Various Acts Amended or Repealed)/Loi sur les heures d'ouverture des commerces de détail (modification ou abrogation de diverses lois), reported from the Standing Committee on Social and Economic Development be concurred in and be now read a Third Time and passed.

And a debate arising,

And Hon. Mr. FIELDING, Messrs. LINDSEY and WASYLIW, Ms. LAMOUREUX, Mrs. SMITH (Point Douglas) and Mr. MOSES having spoken,

And the Question being put. It was agreed to.

The Bill was accordingly concurred in, read a Third Time and passed.

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During the debate, Mr. SALA rose on a Matter of Privilege suggesting that his privilege of freedom of speech as a Member have been infringed as a result of intimidation from the Secretary of the Treasury Board and moved:

THAT this matter be immediately referred to a Special Committee of this House so the privileges of all Members may be respected and the Government be properly held to account.

And Hon. Messrs. GOERTZEN and GERRARD having spoken,

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

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The House then adjourned at 5:00 p.m. until 10:00 a.m. Thursday, December 3, 2020.

Hon. Myrna DRIEDGER,  
Speaker.