

**Second Session – Forty-Second Legislature**  
of the  
**Legislative Assembly of Manitoba**  
**DEBATES**  
and  
**PROCEEDINGS**  
**Official Report**  
**(Hansard)**

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**MANITOBA LEGISLATIVE ASSEMBLY**  
**Forty-Second Legislature**

<b>Member</b>	<b>Constituency</b>	<b>Political Affiliation</b>
ADAMS, Danielle	Thompson	NDP
ALTOMARE, Nello	Transcona	NDP
ASAGWARA, Uzoma	Union Station	NDP
BRAR, Diljeet	Burrows	NDP
BUSHIE, Ian	Keewatinook	NDP
CLARKE, Eileen, Hon.	Agassiz	PC
COX, Cathy, Hon.	Kildonan-River East	PC
CULLEN, Cliff, Hon.	Spruce Woods	PC
DRIEDGER, Myrna, Hon.	Roblin	PC
EICHLER, Ralph, Hon.	Lakeside	PC
EWASKO, Wayne	Lac du Bonnet	PC
FIELDING, Scott, Hon.	Kirkfield Park	PC
FONTAINE, Nahanni	St. Johns	NDP
FRIESEN, Cameron, Hon.	Morden-Winkler	PC
GERRARD, Jon, Hon.	River Heights	Lib.
GOERTZEN, Kelvin, Hon.	Steinbach	PC
GORDON, Audrey	Southdale	PC
GUENTER, Josh	Borderland	PC
GUILLEMARD, Sarah, Hon.	Fort Richmond	PC
HELWER, Reg, Hon.	Brandon West	PC
ISLEIFSON, Len	Brandon East	PC
JOHNSON, Derek	Interlake-Gimli	PC
JOHNSTON, Scott	Assiniboia	PC
KINEW, Wab	Fort Rouge	NDP
LAGASSÉ, Bob	Dawson Trail	PC
LAGIMODIERE, Alan	Selkirk	PC
LAMONT, Dougald	St. Boniface	Lib.
LAMOUREUX, Cindy	Tyndall Park	Lib.
LATHLIN, Amanda	The Pas-Kameesak	NDP
LINDSEY, Tom	Flin Flon	NDP
MALOWAY, Jim	Elmwood	NDP
MARCELINO, Malaya	Notre Dame	NDP
MARTIN, Shannon	McPhillips	PC
MOSES, Jamie	St. Vital	NDP
MICHALESKI, Brad	Dauphin	PC
MICKLEFIELD, Andrew	Rossmere	PC
MORLEY-LECOMTE, Janice	Seine River	PC
NAYLOR, Lisa	Wolseley	NDP
NESBITT, Greg	Riding Mountain	PC
PALLISTER, Brian, Hon.	Fort Whyte	PC
PEDERSEN, Blaine, Hon.	Midland	PC
PIWNIUK, Doyle	Turtle Mountain	PC
REYES, Jon	Waverley	PC
SALA, Adrien	St. James	NDP
SANDHU, Mintu	The Maples	NDP
SCHULER, Ron, Hon.	Springfield-Ritchot	PC
SMITH, Andrew	Lagimodière	PC
SMITH, Bernadette	Point Douglas	NDP
SMOOK, Dennis	La Vérendrye	PC
SQUIRES, Rochelle, Hon.	Riel	PC
STEFANSON, Heather, Hon.	Tuxedo	PC
TEITSMA, James	Radisson	PC
WASYLIW, Mark	Fort Garry	NDP
WHARTON, Jeff, Hon.	Red River North	PC
WIEBE, Matt	Concordia	NDP
WISHART, Ian	Portage la Prairie	PC
WOWCHUK, Rick	Swan River	PC

## LEGISLATIVE ASSEMBLY OF MANITOBA

Tuesday, March 17, 2020

*The House met at 1:30 p.m.*

**Clerk (Ms. Patricia Chaychuk):** It is my duty to inform the House that the Speaker is unavoidably absent.

Therefore, in accordance with the statutes, I would ask the Deputy Speaker to please take the Chair.

**Mr. Deputy Speaker (Doyle Pivniuk):** O Eternal God, Almighty God, from Whom all power and wisdom come, we are assembled here before Thee to frame such laws as they may tend to the welfare of prosperity of our province. Grant, O merciful God, that—we pray Thee, that we may desire only in which is in accordance with Thy will, that we seek it with wisdom, know it with certainty and accomplish it perfectly for the glory and honour of Thy name and for the welfare of all our people. Amen.

Please be seated.

### ROUTINE PROCEEDINGS

**Mr. Deputy Speaker:** The honourable government—*[interjection]* Oh, yes.

Before we begin, the House rose yesterday—the honourable member of the Point Douglas was speaking on the matter of privilege she was—had raised.

I will now recognize the member to conclude her remarks by moving a motion.

### MATTER OF PRIVILEGE

*(Continued from Monday, March 16, 2020)*

**Mrs. Bernadette Smith (Point Douglas):** So, I rise on an important matter of privilege.

The care and concern shown to children is of the utmost importance, and this informs the privilege of all members here in this very House.

The matter I wish to bring forward today is serious and a long-standing concern. The matter concerns the fact that the government has failed to proclaim—*[interjection]*—I don't think everyone was here. I want them to hear. *[interjection]*

**Mr. Deputy Speaker:** The honourable member for Point Douglas.

**Mrs. Smith:** So how does this impact my privilege? Well, myself as a legislator, my rights of an MLA have been impeded by—children coming into my office, and I'll share a few examples of that.

So I had a young 16-year-old female come into my office about six months ago, asking to be able to access the services of the Manitoba child advocate. But because she wasn't a child in care, she wasn't allowed to access those services. And, in fact, the Manitoba child advocate's office sent her to my office, because she lived in my riding, to get me to advocate for this young woman to be able to get advocacy from the Manitoba advocate.

So, you know, the Manitoba advocate has continually been, you know, asking this government to put into legislation—and we know that in this very House that the act was given royal assent over a year ago. And this young women, like I said, was in my office six months ago, and we've still been trying to work with her to get her the services she needs. She isn't a child that's living at home. She's been couch surfing. But she's not allowed to access the services of the Manitoba child advocate.

And I want to go back to, you know, why the child advocate's role was expanded in the first place. When we think about, you know, the young 15-year-old Tina Fontaine and how she fell through so many cracks and ended up, you know, being murdered and found in the Red River, these are—this is just one example that we do not want to repeat in this province.

And this government, by not bringing that legislation in, is opening, you know, young people up to this possibly happening to them. And they need to access the services of the Manitoba child advocate—and having a year of it being proclaimed and not actually being put into legislation by, you know, the—this very place, we have to, you know, in fact, make sure that we're looking after all children in this province and not just children that are in the CFS system.

And right now, Deputy Speaker, that impedes my job as the MLA for Point Douglas to fully do my job and service my constituents because I can't say to this young girl that, hey, you can go access the service of the Manitoba child advocate, because, in fact, this young child, young woman, cannot, and she's still

been couch surfing for six months now without any services. She doesn't want to go into Child and Family Services. She needs some advocacy to make sure that she gets the services she needs.

And the child advocate actually wants to provide services to this child, but because it is—not been proclaimed in this very House, they are limited in the scope and the support that they're—are allowed to supply to children in this province. And the children—

**Mr. Deputy Speaker:** Order.

Could the honourable member for Point Douglas (Mrs. Smith)—I would encourage to move out your motion. You're starting to debate again and we're—confirmed that is a prima facie violation.

**Mrs. Smith:** I'm just trying to share some examples of how my job as an MLA for Point Douglas—

**Mr. Deputy Speaker:** Order.

I believe that the person from Point—the member from Point Douglas is challenging the Speaker. I ask that the member from Point Douglas please conclude her motion.

**Mrs. Smith:** So my ability is impeded as an MLA to perform my functions because when people come into my office and then are trying to access the services that the child advocate office—

**Mr. Deputy Speaker:** Again, I would warn the member for Point Douglas to put forward her motion on the prima facie violation.

**Mrs. Smith:** So as the MLA for Point Douglas and, you know, when people come into my office and I'm impeded by doing my job. The act that—was given royal assent over a year ago, and yet the government has refused to proclaim it; this impedes my ability as an MLA to perform my functions which—I cannot service my constituents in Point Douglas because the government has not—

**Mr. Deputy Speaker:** The honourable member for Point Douglas, you have repeated yourself many times, even through last—yesterday and then even today.

So would the member for Point Douglas please put forward her motion?

\* (13:40)

**Mrs. Smith:** So I've taken the time to consult authorities and experts on the matter, and have observed the actions of government officials and other individuals on this issue. I have taken the time in order

to form my opinion and do the research on this matter. As such—[*interjection*]

**Mr. Deputy Speaker:** Order.

**Mrs. Smith:** —I move, seconded by the member from Concordia, that this matter be moved to an all-party committee for consideration.

Miigwech.

**Mr. Deputy Speaker:** Before recognizing any other members to speak, I would remind the House that remarks at this time for the honourable members are limited—strictly relevant comments about whether the alleged matter of privilege has been raised at the earliest opportunity, whether the prima facie case has been established.

**Hon. Kelvin Goertzen (Government House Leader):** Clearly, the timeliness has not been met, as it's a matter that's been raised several times in the House previously. It is certainly not a prima facie case, Mr. Deputy Speaker.

I will say again, and I'm glad that the member opposite's comments were being broadcast on TV, Mr. Deputy Speaker—glad, but also a little sad that people have to see how the NDP is acting in the Legislature at an unprecedented time, not in Manitoba's history and not in Canada's history, but in the history of the world.

And I said this somewhat yesterday: when Manitobans have gone through different emergencies in the past, whether that's war or floods—and I remember more distinctly the flood of 1997, where people came together, and there was concern and there was fear, and there was a lot of worry during the flood of 1997 and nobody knew exactly how that would entirely play out, but when it did play out and when it was over, more than they remembered the water and more than they remembered the fear that they might have had at the time, they remembered what they did to help their neighbours and what they did to help other Manitobans. That was the endearing and enduring memory of the 1997 flood.

Now, there are many things left to be done and written about the pandemic that is happening in the world and has been called in Manitoba as well, Mr. Deputy Speaker. But I believe that when it is over, however long that takes, that what will be remembered most clearly is what Manitobans did for each other, is what neighbours did for each other, what communities did for each other—whether that was helping them get supplies or helping them socially to

get through periods where they may have been isolated. And long after we've moved past COVID-19, what'll sustain Manitoba in their memories will be how we did it together.

But a little bit of that memory—a little bit of that memory—will always be what the NDP, the New Democratic Party who wants to purport to be government, did at that time. And I think it'll linger in the memories of Manitobans for a very long time—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Goertzen:** When they ultimately end up going to the ballot box and asking for support to be a government, people will remember.

Would you choose a government who acted at a time of a pandemic emergency the way they are acting now? *[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Goertzen:** Because if they act like this now—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Goertzen:** —how would they ever act when it wasn't an emergency, Mr. Deputy Speaker?

**Mr. Deputy Speaker:** The honourable member for River Heights. *[interjection]* The honourable member for River Heights. *[interjection]* Order.

**Hon. Jon Gerrard (River Heights):** Mr. Deputy Speaker, on this matter of privilege. Clearly this was a matter which could have been—was indeed—raised earlier on. *[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Gerrard:** It doesn't qualify as a matter of privilege. If the member for Point Douglas (Mrs. Smith) had wanted to raise concerns about children and youth, she should have been following what's going on in Manitoba at the moment. She should have been following that daycares have been cancelled as of the end of the day on Friday.

There are many questions which we need to ask the government. Where will the children go? One presumes at home, but that's not always easy and sometimes may not be possible. Where will the child-care workers get paid? Will they just suddenly lose their income? The government hasn't provided an answer. Will essential workers in health care and other areas be able to have the child care they need so they can work? And the government has indicated that they

are working on this but that they don't have a solution yet.

How will those who are working now who have to stay at home because there's no child care, how will they get an income? How will they be able to pay their bills? How will Manitobans—so many Manitobans who will be affected by the measure—how will they survive in these turbulent times?

The government needs to provide an answer, and the opposition—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Gerrard:** —the opposition needs to provide an answer as to why they are showing an extraordinary level of disrespect for the rest of the Legislature.

The opposition needs to—*[interjection]*

**Mr. Deputy Speaker:** The honourable member for River Heights.

**Mr. Gerrard:** The opposition needs to explain, when they should have been in question period and asking questions, why they are raising matters of privilege. There are many other options that the opposition has to influence the course of legislation, and by raising matter of privilege after matter of 'pliverage,' the opposition is actually using up time that we should be debating important bills and discussing them and criticizing them and raising issues that will result as the bills having been tabled.

Those are my comments.

Merci. Miigwech. Thank you.

**Mr. Deputy Speaker:** A matter of privilege is a serious concern. I am going to take this matter under advisement to consult with authorities. I will return to the House with a ruling.

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**Ms. Nahanni Fontaine (Official Opposition House Leader):** On House business.

**Mr. Deputy Speaker:** The honourable member for Point Douglas, on House business. Oh, I'm sorry, the honourable member for—Opposition House Leader, on business—House business.

**Ms. Fontaine:** I would like to canvass the House for leave to set aside—*[interjection]*—pardon me.

Deputy Speaker, I would like to ask—*[interjection]*

**Mr. Deputy Speaker:** The honourable member for St. Johns.

**Ms. Fontaine:** Deputy Speaker, I would like to ask you to canvass the House for leave to set aside routine proceedings today, move to orders of the day and the presentation of the budget speech, including all stages of the budget procedure listed on page 84 of the rule book in appendix D, including the tabling of all budget documents.

**Mr. Deputy Speaker:** It has been—is there leave that—to canvass the House to set aside routine proceedings today, move to the orders of the day and presentation of the budget speech, including all stages of the budget procedures listed on page 84 of the rule books in 'apppractice' D, including the tabling of all budget documents?

**Some Honourable Members:** Agreed.

**Some Honourable Members:** No.

**Mr. Deputy Speaker:** No—I hear a no. The leave has been denied.

The member for—the honourable Government House Leader, on House business.

**Mr. Goertzen:** Is there leave for the House to not see the clock today until all stages of the budget procedure listed on page 84 of the rule book in appendix D, including the tabling of all budget documents, are completed?

**Mr. Deputy Speaker:** Is there leave for the House to see the clock today until all stages of budget procedures listed in page 84 of the rules booked in apprentice D, including the tabling of all budget documents, are completed? *[interjection]* It's not to see the clock.

**Some Honourable Members:** Agreed.

**Some Honourable Members:** No.

**Mr. Deputy Speaker:** No? I hear a no. Access—leave is denied.

\* (13:50)

**Mr. Gerrard:** Mr. Deputy Speaker, I ask leave for all members to move directly to the matter of urgent public importance and debate the issues around COVID-19, which is a pandemic and which is affecting all of us and which all of us should be paying attention to.

**Mr. Deputy Speaker:** Is there leave to move that we debate about—is it leave to move to magic urgent of

'covee' 19 presented by the honourable member for River Heights (Mr. Gerrard)?

**An Honourable Member:** No.

**Mr. Deputy Speaker:** No? I hear a no. Leave is denied.

The honourable member for Concordia, on—?

**Mr. Matt Wiebe (Concordia):** On a matter privilege

#### MATTER OF PRIVILEGE

**Mr. Deputy Speaker:** The honourable member for Concordia, on a matter of privilege.

**Mr. Matt Wiebe (Concordia):** On a very important matter of privilege—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Wiebe:** And before I do get to that matter of privilege, I just wanted to, once again, on behalf of our caucus, express our gratitude to those front-line workers, those teachers, those nurses who are out there right now, who are working hard to see us through this pandemic. We have so much gratitude for the work that they do. And for those who are suffering right now, who are ill, especially members of this Chamber or in addition to members of this Chamber, I just wanted to offer our sincere condolences and our thoughts for your situation that you're in right now.

I do, however, Mr. Deputy Speaker, rise on a very important matter of privilege, and it is one that I do believe is incredibly timely and, in particular, at this time of year, is something that is on the minds of all Manitobans, in addition to the struggles that we're having with, of course, with COVID-19 and the global pandemic.

The reason that I rise today with—is with regards to strategic infrastructure in this province and the ways in which this government has impeded my ability as a legislator to execute my duties and serve the members of my constituency, as well as all Manitobans, at this important time.

So, as I said, Mr. Deputy Speaker, I rise on this very important matter of privilege, and my matter of privilege is regarding the Pallister government's misstatement of what is called the strategic infrastructure budget and, in particular, how that relates to flood mitigation and flood fighting leading into a particularly precarious spring.

As to the matter of timeliness, I would like to address that first, Mr. Deputy Speaker, and, once again, I believe that there is an opportunity to

understand that phrase in a slightly nuanced way. We understand that timeliness and what's called the earliest opportunity is an important part of a matter of privilege. It is, in fact, one of the two most important standards that must be met in order for a matter of privilege to be considered here before the House.

But we—what we would like to stress here, Mr. Deputy Speaker, is that the earliest opportunity cannot simply mean the next immediate moment in time in which any one member would have the ability to speak. We believe that to be too simple of an understanding of this phrase, and doesn't truly take into account the realities that we have as legislators in the modern context. So we understand this to be something that must be taken into account within the context in which the legislator finds himself or herself, but also for members be given the time to consult the relevant authorities, to be given the opportunity to study and to consult the various experts on the matter, as the case may be, as well as to review the evidence that has been compiled on the matter at hand. And in this case, of course, there is significant evidence that I would like to read into the record and ensure that is being fully considered by yourself.

I believe this sort of thorough review of the evidence will not only determine for a particular member whether they have a reasonably—whether they reasonably ought to have believed that a matter of privilege has indeed been raised—that is, that there is a prima facie case for believing that a member of this Chamber's privilege has been breached—but it will also form the basis of any ruling or judgment regarding that matter that the Speaker or the Deputy Speaker and his or her team would ultimately make.

As a result of the acquisition of correct and accurate information by members, it must be taken to account and into consideration in the determination as to whether or not a member has brought their concern forward in that timely fashion. Thus, the question of reasonable in this is not fully objective in the sense that there is a fixed or a set or a proper amount of time for bringing forward the matter of privilege to this House. In fact, what we would argue is that the question would depend both on the objective facts which need to be sorted, or whether the information that is required in order to bring forward this claim of a matter of privilege has—has been forthcoming, whether it's been made available in a timely fashion and whether it's understandable or comprehensible for all members to fully sort through.

So neither is the question, I would argue, Mr. Deputy Speaker, either fully subjective in this case. It cannot be a question of the speed of each individual member or on their willingness to expend the time to investigate a matter to determine whether a matter of privilege has been brought to this House in a timely fashion. Obviously, each member has his or her or their own resources that they bring to the table that they are able to employ in order to investigate a matter such as this. But it's also, I think, an understanding that, based on the interests or the concerns of the member, that the timeliness would depend on whether their, again, willingness to expend the time to fully investigate that matter, and that is, I think, a very important nuance that does need to be taken into account with regards to these matters.

So it's properly understood, then, we would argue, as an intersubjective standard, Mr. Deputy Speaker; therefore, a standard that must reflect the true capabilities of the members to acquire that information, to bring it forward to this House and taking into account, of course, the demands that this House may reasonably make of all members to bring forward matters at the earliest opportunity.

So then I would argue that the question of timeliness is best understood as contextual, as I stated earlier, Mr. Deputy Speaker, and this digression helps understand the timeliness question with respect to the matter that I am bringing forward today.

So, again, that would be my argument with regards to the timeliness, and I do think that there is quite a bit there to parse through, and I do hope that the Deputy Speaker—again, the larger team and Madam Speaker herself—consider those very, very carefully because they are, I believe, much more nuanced than a simple understanding of the text might indicate.

So, therefore, Mr. Deputy Speaker, as to the test of privilege, which is the matter at hand, I refer to the House of Commons Procedure and Practice, the second edition, which is commonly known as O'Brien and Bosc, for guidance on this particular question.

Once again, Mr. Deputy Speaker, we look to page 111—[interjection]

**Mr. Deputy Speaker:** Order. Order. I just want to remind everyone, if you can keep your discussions quietly, and if you need to talk, go to the loge. I just need to hear the speaker.

The honourable member for Concordia, on the matter of privilege.

**Mr. Wiebe:** You know, it's quite telling that members on the opposite side don't want to listen to what we have to say here. There's very important matters of privilege that are being brought forward, issues that I think are important to all Manitobans, and yet we, you know, obviously don't have the respect of those members to listen and to pay attention to those, and I'd like to give you as Deputy Speaker that respect as well, which I think is so very important here in this place.

\*(14:00)

So once again—so what I'm referring to here, page 111, O'Brien and Bosc, where they write, quote: A member may also be obstructed or interfered with in the performance of his or her parliamentary functions by non-physical means. In ruling on such matters, the Speaker examines the effects of the incident or event on what—it had on the member's ability to fulfill his or her parliamentary responsibilities. So if, in the Speaker's view, the member was not obstructed in the performance of his or her parliamentary duties and functions, then, in fact, a prima facie case of privilege cannot be found. End quote.

Again, that is from page—from O'Bosc [*phonetic*] and Brien [*phonetic*—as I stated earlier—which is, as we know here in this Chamber, the undisputed source of information regarding the appropriate way in which we ought to understand parliamentary privilege in this House as well as in the Houses across the country.

Several comments regarding these particular comments, I believe are in order. We know that the Speaker's view of the matter is clearly of the utmost importance, but, more importantly, interference should not be construed in narrow physical terms, and we certainly know this from the work that we do as legislators here in this place. We know that interference in this case could be understood as, in a discussion of privilege or contempt, that would go beyond that physical interference, say, in this case—and I know you've given us guidance with regards to this in the past, Mr. Deputy Speaker—say, on the physical ability of members to enter the Chamber to occupy their seats and, therefore, to speak. That, of course, would be a very clear indication or a clear execution of interference, and in that case a matter of privilege would be clear. It would be physical, it would be direct and it would be something that certainly would fit within the guidelines that have been outlined by O'Brien and Bosc and, certainly, the rules of this Chamber.

However, in this case what we're arguing is that it would actually rather extend to any matter that would impede a member's ability to do their job, and it is this type of interference that one—cannot fully be enumerated in advance. This is an important point that I think all members need to think about very clearly. We speak in this House often of the ability to, you know, to enter facts on the record that are, some would argue, maybe alternative facts or other phrases could—that have been constructed in order to justify one's playing fast and loose with those particular facts.

What I would argue—and in particular with this case that we are discussing here, this matter of privilege that is before the Legislature today, I think it is so very important to understand that the ability that we have as legislators to discuss and to debate issues of importance to our constituents, or in this case issues that could affect all Manitobans as potential flood waters once again come down our rivers and threaten many people in this province, it is absolutely vital that we once again have all the information with which to make a quality debate, to ask questions that, you know, that get to the heart and to the point of the matter and really give people the answers that they're seeking. Because that is certainly what folks are looking for at this time, as they always are.

So, again, as O'Brien and Bosc note, it is impossible to codify all incidents which might be interpreted as matters of obstruction. It would also be impossible to codify all incidents which would be interpreted as interference and, likewise, it would be impossible to codify all incidents which might be interpreted as intimidation. And then, again, those would be very clear and they would be very easy to build into a solid case of prima facie case against the privilege of an individual member.

However, some matters that are found to be prima facie include the damaging of a member's reputation, the usurpation of the title of the Member of Parliament, the intimidation of members and their staff, and the intimidation of witnesses before committees and the provision of misleading information.

I would emphasize that last point, Mr. Deputy Speaker, and I believe that speaks most clearly to the argument that I am making here this afternoon. The most important authorities, arguably, apart from the Supreme Court of Canada, hold that the provision of misleading information constitutes a breach of privileges of members of this House. And it is clear that this government and its Premier (Mr. Pallister)



and ministers have proven themselves to be guilty of the provision of such misleading information.

It must be noted that information which is misleading is not the same, as I said earlier, as false information. The standard definition of misleading is that a statement or assertion gives the wrong idea or the wrong impression. However, it is clear, Mr. Deputy Speaker, that the partial presentation of information, which, on its own, is not incorrect, can nonetheless give the wrong idea to a reasonable observer. And thus it bears repeating that the standard of the interference of a member's ability to do her job does not require her to show that the government provided false information, only misleading information.

Now, again, we see this daily, I would argue, with regards to how government operates. There have been many clever names given to this sort of information that is given. But there is a major difference when the information that is given is misleading rather than simply false. And, again, at a time when members of this House are certainly doing the best that they can within their own constituencies to work with their constituents when they have questions—whether it's about daycare, about the closure of schools, about access to health-care programs at this time of a global pandemic and of COVID-19; likewise, in this case, where members are also soon to be at the centre, potentially, of questions with regards to flooding and with regards to personal safety and safety of property—that they are going to be most concerned about.

This is, we know, as the Premier has pointed out now many times in his press conferences, you know, the state of Manitoba right now. We know that COVID-19 is here. We know that the global pandemic is affecting the people of Manitoba in the same way that we know that the flood waters of the Red and the Assiniboine will rise and it's simply a question of how much. And that is where I believe that the information that we have as legislators is going to be so very vital and so important for us to be able to provide to our constituents, to the wider public.

Now, if I have been given false information—again, that's a dispute over the facts. That has, I believe, been covered many times, rulings from the Speaker and from other Speakers across the Commonwealth. But in this case, I believe that misleading information occupies a slightly different category. And it creates a situation that I believe, I would argue is even more dangerous in order to fulfill our duties as legislators and the expectation that as I

occupy my seat in the Legislature that I ask the kind of questions that are relevant and would be appreciated by those who are most concerned about their future and about what's coming here in this province.

So I believe, while you could argue, Mr. Deputy Speaker, that it's a weaker test, I also do believe that it's one that nonetheless infringes on my ability to do my job. And then it almost goes without saying at that point that this provision of the false information that is being given is a case where false information misleads a member, and that member, then, is unable to fulfill their duty, fulfill their obligation to their constituents and to the people of Manitoba in our role in the official opposition.

\* (14:10)

So if it's been established—and this is, again, what we hope you taken under consideration here this afternoon, Mr. Deputy Speaker—that if it is, in fact, established that false information has been put on the record in this House, then this would impede a member in their duty and that would be a clear prima facie case that we could then consider as a matter of privilege.

And in this instance—and this is the heart of the issue that I bring forward—the failure of the government to update both producers and those working with regards to flood mitigation through this House, through committee, through any of the many tools that this government has at its disposal to disperse information.

At this point, Mr. Deputy Speaker, at a time where we see the actions in the Legislative Assembly being less important than the information that's being given to the public directly through public health officials, I think, has put a fine point on the importance of disseminating the information in any means necessary, especially when we're talking about emergency scenarios. I think it's very clear that the government has a number of tools at its disposal: the ability to execute a plan and to communicate that plan in a way that I think gets to the public in the fastest way. We certainly know in today's world where we have social media we have access to instant communications. And, again, this is the entire government, the department, in this case, of Infrastructure—any department which is affected—would be able to give this information in a lightning-speed way and in a way that doesn't simply rely on the functioning of the Legislature.

You know, it's been suggested a few times by the member for River Heights (Mr. Gerrard) that we should get to question period. Well, I—you know, I would argue—and I think most members would agree—that question period certainly isn't answer period. We, at the best of times, don't get answers in this place and, you know, to suggest that that's the only way that members can get information in this place is ludicrous. And I think that it's certainly most important for the public to hear the facts and not facts that certainly mislead them—which, again, is the point that I'm making here today.

So once again, Mr. Deputy Speaker, I think the evidence that I have should be put on the record, should be stated very clearly. And what the heart of this matter is is the information that has been released by this government with regards to what is it—again, termed strategic infrastructure. And what it—this particular matter of privilege—is about is how that strategic infrastructure has been counted, has been accounted in terms of the internal accounting within the government, but then, most importantly, how that information has been disseminated to the public. By doing this, we believe that they have misled Manitobans and they have misled all of us in this Chamber regarding the true nature of the government's infrastructure spending.

When this government, of course, was first elected, we know that they indicated strategic infrastructure would contain several items, and I'd like to list them very quickly here for you today, Mr. Deputy Speaker. We know that, first and foremost, the government indicated that highways and bridges would be included and counted towards the strategic infrastructure budget within this province. We know that they also indicated that water-related capital would be counted towards the strategic infrastructure budget within this province. Parks, cottages, camping, all included as part of the strategic infrastructure listed in this province. The Building Manitoba Fund, which of course we know as an important fund that—we know that capital grants that are offered through that program are vitally important to building our province. Maintenance and preservation on our highways is one of the items that was listed as being counted towards the strategic infrastructure budget in this province.

Included in that, of course, we know that maintenance and preservation with regards to water infrastructure and water—strategic water infrastructure projects here in this province were to be included.

And, again, that speaks very much to my point here today.

In addition, and there are just a couple of more, but they are significant, and this is the Health capital spending that is supposed to be included or was listed as being part of the strategic infrastructure budget by this government; the Education infrastructure budget to be included as strategic infrastructure; housing, Mr. Deputy Speaker; and, of course, Northern Affairs and the work that's done in those communities.

So, as you can see, that's a list of one, two, three, four, five, six, seven, eight, nine, 10 items within this government that I would suggest make up the bulk of this government's work within the infrastructure space. That was what was considered as or listed as part of the strategic infrastructure. And, again, we could pick each one of those apart.

For instance, and I'm just picking this one, but parks, cottages and camping. Well, you know, I'm, as my colleague from St. Johns knows, I'm, you know—I like to spend as much time outdoors as I can. I certainly am—appreciate our provincial parks and enjoy going camping when I can. There are certainly an infrastructure component to those, but to list that as part of what we would call strategic infrastructure might be a bit of a stretch for some who are understanding what the strategy behind that strategic infrastructure might actually be. So, those were the—did I say 10?—10 items that were initially indicated by this government as strategic infrastructure, and that was when this government was first elected.

However—and this is where it becomes very important that members of this Chamber understand how this information can be particularly misleading—what we saw in the next year, the next budget year, we understand that there were additions to that 10—those 10 items, and there were some items that were left out, unfortunately.

So these are the items that were included in that next year's budget: highways infrastructure and airport runway capital, Mr. Deputy Speaker—all of a sudden the transportation equipment and aircraft were included as part of strategic infrastructure; the maintenance and preservation of highways, as it should be, was considered strategic infrastructure once again; water-related infrastructure—and this was an expanded scope of that particular area that the government was now including as part of the strategic infrastructure budget that it was willing to bring forward here in the province; again, maintenance and preservation of water infrastructure, as I mentioned

earlier; Health was once again included; Education; housing.

But included on top of those was also municipal and local infrastructure. Now this, Mr. Deputy Speaker, if you've had a chance to look at the budget, includes a much-expanded definition of strategic infrastructure than was originally mentioned, and, in particular, this would be a large portion of the provincial budget when including those municipal and local infrastructure projects. Likewise, public service buildings, equipment and technology was also included. Again, technology was included as a strategic infrastructure priority. And parks, cottage and camping, once again, was also included as strategic infrastructure.

So, what the government managed to do in this case was set out a list of priorities for strategic infrastructure that then morphed within one year of being elected where they added airport runway capital; they added highway maintenance, transportation and equipment; and included in that the aircraft owned and operated by the Province. They included public service buildings, they included equipment and, again, they included technology. So there was a much broader definition of what was called strategic infrastructure. I would say not only are we questioning the word strategic in this case, but maybe even questioning the word infrastructure. But, certainly, that would be for a debate for another day.

\*(14:20)

What was also then done, not only were those added and an expanded definition added, but also the government, within that first budget year, managed to remove bridges, maintenance and preservation of water assets, and they also removed capital investments in Northern Affairs communities. So that was within that first year, Mr. Deputy Speaker. However, they weren't done yet, because if we look at what they called their mid-year financial report and then look at the third quarter financial report from this year, once again the parameters have changed and once again this government's definition of what's called strategic infrastructure has completely changed.

And now, in this case, it only includes four categories, and those include roads, the highways in this province, bridges, and what's now being termed flood protection. It includes Health, Education and housing. There's a nebulous definition of other provincial infrastructure which is—which has yet to be parsed, exactly what that means. But it's sort of a catch-all category which may include some of the

items that were initially indicated as being part of strategic infrastructure, or may include some of the items that were included in the budget the following year that were given.

So we're actually operating with three different categories, or three different instances in time that we are not sure which one the category—which category these items fit into, or if they do at all.

And then, on top of that, if you can believe it, Mr. Deputy Speaker, Manitoba Liquor & Lotteries was now added as a fourth category that, again, you know, from what we can understand, does not include any of the other strategic infrastructure categories that could possibly be fitting within that.

So again this is additional portions of the budget which are now being tied to what's called strategic infrastructure. So many of the categories are missing and the Manitoba Liquor & Lotteries is a completely new addition within the—just the last year.

So, we understand why this is being done, but what is impeding my work as a legislator and what is impeding my ability to perform my duties on behalf of my constituents and of the people of Manitoba is that this government is changing what the definition of a strategic infrastructure investment is midway through a budgeting year.

So in one instance they can cut spending; they can underspend in others. They can maybe increase an amount in what, you know, most reasonable Manitobans would not consider strategic infrastructure, but use that to simply play a shell game in order to move the money around, to indicate, oh, well, spending is on track; or to say, oh, well—you know, as they often do—well, the cuts aren't that bad. Don't worry; we know we're cutting, but, you know, it's not that bad; don't worry. Tell your constituents, you know, don't—not to worry; it's not that bad, you know. This could be the message that we're getting. But, instead, we can't even, you know, pinpoint—we can't even get a snapshot of what that strategic infrastructure is.

And so in my role as the Infrastructure critic for the official opposition—and I would argue in the role that every member of this Chamber on the opposition benches has to their constituents—because, you know, I look over at my friend from Union Station, and I know when they say, you know, capital within the health-care department is an important aspect that we need to be considering, you know, it is impossible for us to actually parse, you know, is that part of the

strategic infrastructure? What part of the health-care capital spending is part of that strategic infrastructure spending, and how can we, then, report to our constituents, to our stakeholders and to Manitobans what the real picture is that we're dealing with?

Again, I'm looking at my colleague from Point Douglas, and I know that if she's looking at, you know, how the health-care capital spending, especially in an important area like addictions, might impact her constituents or the people of Manitoba—in her role as our mental health and addictions critic—how is she, then, able to report that to her constituents and to the people of Manitoba? Whether spending has gone up, whether it's gone down, whether it's been cut, whether it's been frozen—and we don't know that because it's being lumped into a larger category and then into subcategories that are consistently changing and evolving, which isn't helpful for any of us here in this Chamber.

I know my friend from Keewatinook has been doing incredible work on behalf of his constituents as well, and I know that he has a lot of questions with regards to the people in his constituency and how they might understand the capital spending that's being done, not just in his area, but, I would argue—and he sits as part of a northern caucus that takes the concerns of northern Manitobans very seriously, and they have, you know, major strategic infrastructure deficits, you know. And at the same time as the government is selling off, you know, strategic—*[interjection]*

**Mr. Deputy Speaker:** Order.

I just want to remind the member from Concordia, if he can speak through the Speaker—the Chair. It seems like the discussion is going—like I hear you from having your back towards me.

**Mr. Wiebe:** You know, Mr. Deputy Speaker, once again, it is—I appreciate your guidance because I get so off track when I get, you know, heckled by any member in this Chamber. I sometimes turn and I want to address them directly, but I know, in fact, that I should be directing my comments to you. *[interjection]*

Now, I notice that we've had some members from the government benches speak up, and I do believe that they're also wondering about the strategic infrastructure in their own constituencies. They're saying, is that bridge that needs to be rebuilt in my constituency, is that now considered strategic infrastructure? And I'm sure the minister has said, no, that's now been removed from that list, and then

maybe six months later it'll be back on the list. Regardless, the work isn't being done. The investments aren't being made. And I know that members on the backbench are certainly making that known here in the Chamber today, and I encourage them to continue that advocacy in the caucus room, and for those that are at the Cabinet table, to continue to bring that message forward to their Premier (Mr. Pallister), who's ignoring the real concerns of their constituents.

But, you know, instead, they simply chirp from the backbenches and, you know, simply don't stand up for members of their own constituency when it comes to even, you know, issues like the Dauphin jail and how that affects the Parkland. And we wonder, why aren't members standing up? Why aren't they making more noise about that? Is that now included as part of strategic infrastructure?

We've heard that parks and—

**Mr. Deputy Speaker:** Order. Order.

I just want to, with the greatest respect, and—that the member should be focusing on how the privilege of—their privilege—House has been breached: privileges such as freedom of speech; freedom of arrest in civil action; exemption from jury duty; freedom from obstruction or intimidation; or dealing with the rights of House as a collective, including the regulations of internal affairs of the House, the authority of—to maintain the attendance and service of the members, the power of discipline, the rights of institute requires—inquiries and to call witnesses and demand papers, the rights to administer oaths of witnesses and the rights to publish papers.

These are what should be raised when trying to prove the prima facie breach of privilege has occurred, rather than debating policy issues.

**Mr. Wiebe:** Once again, Mr. Deputy Speaker, your guidance is very much welcomed, and I do have prepared notes that I do try to adhere to. I, you know, I get off track when I'm heckled—*[interjection]*—and I know that the member—the Minister for Conservation is asking why parks, cottage and camping was dropped from the strategic infrastructure budget, and I would imagine she's probably asking the same questions I am.

So, if we do have time, I would imagine that after I'm done my matter of privilege, she'd be happy to get up and she can ask that same question, and maybe the Premier—*[interjection]*

**Mr. Deputy Speaker:** Order.

\* (14:30)

**Mr. Wiebe:** –maybe other members could actually give us some information here in the House, but certainly we're not seeing it—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Wiebe:** –in official documents that have been so far tabled here in this House. *[interjection]*

Again, my apologies, Mr. Deputy Speaker. I get heckled; I'm like a cat with a ball of yarn. I get off-track very easily and, you know, I'm—I just—I constantly want to, you know, answer and speak to the concerns that the backbench is having, because they're not—the government side is just—they want to ask these questions, too, and they're being muzzled every single day. They certainly feel that the matter of privilege would probably apply to their situation as well. I can feel their pain, but—and so I try to give them voice. But I take your advice here to stay on track to make sure that I'm adhering to your expert guidance.

So this is the concern that I have, Mr. Deputy Speaker, and this is where I believe that a particular matter of privilege that I have is actually very relevant and very important, and I do believe that it is something that I'm sure you'll want to rule on here today once you hear all the facts and you know everything that members of this House have to say about it.

So, what the argument is is that because of these—this misinformation that has been put on the record, this misdirection and a litany of information that, not only is wrong and is factually incorrect, it is unfortunately misleading. And this is where the matter of privilege—is really key to understand: that misleading information is what is making my job as a legislator more—not only more difficult to do, but I would argue impossible to do, and therefore constitutes a very serious breach of our rules here in this House, and is therefore warranted as a—to be brought forward as a matter of privilege. These particular cuts that we've seen, whether—and again, whether they are cut or whether they are being underspent within the budget, is completely impossible to discern under the category of strategic infrastructure because those particular categories that have been put forward by the government are shifting so quickly.

And we know that some have been dropped. We know that the Department of Conservation has apparently been dropped from that. We know that Manitoba Liquor & Lotteries has been brought into

that category. We know that Health, Education and housing was originally stated within that category, and now potentially is not. It doesn't include all of the items within that department that folks would understand to be strategic infrastructure. We know that there's a catch-all, Mr. Deputy Speaker, other provincial infrastructure that maybe the members opposite, a particular bridge that I heard them asking about might be included in that, but we don't know. We don't hear if that's included in that catch-all term. We don't know if the Dauphin jail was originally a part of that strategic infrastructure, was dropped. Well, you know, when a healing centre was proposed, whether that was dropped and cut like everything else that this government is cutting.

So we don't know, and that equates to what's ultimately hundreds of millions of dollars less that is on the table. And when we're talk about such a key discussion point for the Legislature—it was certainly a key discussion point during the election campaign. I know, I knocked on several door—well, I knocked on a lot of doors, Mr. Deputy Speaker. But I knocked on several doors where, you know, people indicated, well, they said, you know, I—we're concerned my roads aren't being fixed. I'm concerned that the highways within this province aren't being fixed. And so they asked me, so why is that not being done? Was that not something that the government said they were going to prioritize? And they said—and I had to tell them, no, that they, in fact, reneged on their commitment in the 2016 election.

But beyond that—

**Mr. Deputy Speaker:** Order.

With the respect, I have to ask the member to deal with whether the prima facie case here, as noted, is getting into a debate of policy issues and straying from the established prima facie case. I would remind the member again to please provide us with the parliamentary privilege as was previously outlined.

**Mr. Wiebe:** Well thank you very much, Mr. Deputy Speaker. Exactly, I will definitely take your advice with regards to that because I think that is the most key point that we do need to focus on here.

So, again, when we talk about what the information that was disseminated originally by the government, we understand kind of the context within that—what—how that was framed.

What we don't know and what is then intentionally misleading and, in this case, impeding on my ability as a legislator to ask proper questions, to

probe and to dig into specific budget items, is the fact that hundreds of millions of dollars less has been spent. We know that, Mr. Deputy Speaker. It's been verified by the federal Parliamentary Budget Officer, who shows that Manitoba's per capita infrastructure has fallen to one of the lowest here in Manitoba, across the entire country. We know that—this to be the case.

And yet, because those—of those shifting parameters, of those differing categories, it's impossible for myself to ask about, you know, issues that are—capital projects that are related to my constituency or, in this case, related to Infrastructure as my role as critic for Infrastructure. It's impossible for me to understand how municipal and local infrastructure could be included in one update and then dropped in the next. And it impedes my ability, then, to ask those questions.

And I simply want to put on the record once again that every single member of this opposition, likewise, would like to be able to ask those important questions. I—maybe there's members in the backbench who also want to do that—even ministers, maybe, who are wondering, why was my department cut so drastically, but we'll leave that for another day. At the very least, I can say with certainty that members on this side of the House are—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Wiebe:** —most interested in asking those questions.

So what I would like to do, then, Mr. Deputy Speaker, is I would like to move—*[interjection]*

**Mr. Deputy Speaker:** Order. Order.

The honourable member for Concordia. *[interjection]* Order.

The honourable member for Concordia.

**Mr. Wiebe:** As I said, I mean, I know that members have concerns. They're being very vocal right now. I hope they make those concerns known around Cabinet table. I hope they make those concerns known around the caucus table. They certainly don't make it known in the public, but I do hope that they're making those concerns known behind the scenes.

But what I would like to do, Mr. Deputy Speaker—at your guidance, of course—is to move this most important matter of privilege. And this is the—and I will get specific about what that is at this point.

So, my matter of privilege is: the statement of the government's programs and its attentions obscures the actual activities of the Pallister government, and, in doing so, it undermines my ability to hold the government to account. It is a breach of my privilege.

And so, I move, seconded by the member for St. Johns (Ms. Fontaine)—I'd be very happy to have the member for St. Johns second my motion—that this matter be referred to a committee of this House.

**Mr. Deputy Speaker:** Before I'll be recognizing any other members to speak, I would remind the House that remarks at this time by honourable members are limited to strictly relevant comments by whether are the alleged matter of 'plivilege' has been raised at the earliest opportunity and whether the prima facie case has been established.

**Ms. Cindy Lamoureux (Tyndall Park):** As deputy House leader, I'm responding to the member for Concordia's (Mr. Wiebe) matter of privilege.

This is not the first opportunity this member could have brought forward this matter, and this member has not demonstrated that this is a prima facie case.

Mr. Deputy Speaker, it's frustrating and 'quitey' it's—and, frankly, it's quite disgusting how much the NDP are choosing to obstruct the House proceedings during a pandemic, not to mention the amount of money, the amount of time, the amount of resources all of our staff here at the Legislature coming into the building every single day—these are thousands and thousands of dollars being spent every day here in the province of Manitoba to literally listen to the NDP waste time. This money, in a time of pandemic, could be going towards, for example, our daycares, where we know the money should be going.

And, you know, the newer NDP members, they have this wonderful opportunity—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Ms. Lamoureux:** —right now. They could come forward and band together and be a good NDP party, Mr. Deputy Speaker. But they're choosing not to, and it is disgusting. It is disgraceful.

We as representatives need to be debating COVID-19—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Ms. Lamoureux:** —immediately. We need to be sharing information with Manitobans. We need to be gaining and spreading education about the virus and we need to be debating what to do here in our

province, and, Mr. Deputy Speaker, the only way we can do this is if the NDP stopped obstructing the House proceedings here in the Chamber.

\* (14:40)

**Hon. Kelvin Goertzen (Government House Leader):** I would only say, Mr. Deputy Speaker, that is one of the finest speeches I've ever heard a member deliver in this House.

**Mr. Deputy Speaker:** A matter of privilege is a serious concern. I will—I'm going to take this matter under advisement to consult with the authorities and will return to the House with a ruling.

#### House Business

**Mr. Deputy Speaker:** The honourable Government House Leader, on House business?

**Mr. Goertzen:** Mr. Deputy Speaker, on House business.

I'd like to announce that the Standing Committee on Public Accounts scheduled to meet in camera tomorrow, March 18th, 2020, at 6 p.m., is cancelled.

**Mr. Deputy Speaker:** On House business, it was announced that—by the honourable Government House Leader, that the Standing Committee on Public Accounts scheduled to meet at in camera tomorrow, March 18th, 2020, at 6 p.m., is now cancelled.

#### MATTER OF PRIVILEGE

**Mr. Deputy Speaker:** The honourable member for Flin Flon.

**Mr. Tom Lindsey (Flin Flon):** We've heard a lot of—

**Mr. Deputy Speaker:** On a—?

**Mr. Lindsey:** On a matter of privilege.

**Mr. Deputy Speaker:** The honourable member for Flin Flon, on a matter of privilege.

**Mr. Lindsey:** Thank you, Mr. Deputy Speaker, and sorry for that little mix-up.

I think we've heard a lot, you know, from this government about how bad we are for doing this, but, really, what—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Lindsey:** —we have to take into account, Mr. Deputy Speaker, is really how bad the government is and how bad they want to be.

You know, we know we're in the middle of a coronavirus outbreak, and yet we know that this

government's cuts to health care have been detrimental to the well-being of Manitobans on a good day, never mind while this outbreak is on. And perhaps if they hadn't have mistreated so many public-sector workers, they wouldn't find that the nursing staff is burnt out and nurses retired because they couldn't take what this government was doing to them anymore.

You know, it's a sad commentary when this government won't admit that some of their own laws that they passed are part of the problem with what's going on today, Mr. Deputy Speaker. Part of their whole concept of cutting, cutting spending at any cost, that's really what they've been about and the only thing that they've been about is about money.

Well, all of a sudden, it seems that maybe they should've been focused on the care of Manitobans as we witness Manitobans scramble for supplies—and good for all of us in this Chamber that we all banded together to do the right thing to make sure that the government ordered those emergency supplies that they needed.

Now, imagine, Mr. Deputy Speaker, if you will, if they hadn't had cut back so much, maybe some of those supplies would already be here, would already be in the system.

**Some Honourable Members:** Oh, oh.

**Mr. Deputy Speaker:** Order.

**Mr. Lindsey:** My goodness, that got them going. *[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Lindsey:** So, Mr. Deputy Speaker, we—we've seen the cuts—and, you know, for so long we've listened to nurses say that they're burnt out, that they can't take much more, and then all of a sudden we throw this COVID virus at them and say, well, please take more.

And you know what, Mr. Deputy Speaker, a lot of those nurses that retired before they really wanted to, a lot of them that just quit, went away, have agreed to come back because they actually do something that this government doesn't: they actually care about people and they care about people's well-being and they care about people getting the care that they need.

It's too bad that members opposite that form this government don't share that same care and compassion, that our front-line workers—and I'm not going to talk just about the nurses, although they

certainly are front and centre—but, Mr. Deputy Speaker, it's all those front-line workers that we need to focus on at this point in time, and it's all of them that we need to hope that they can get through this with the cuts that have taken place, and with the restrictions that have been put on them.

You know, whether it's somebody phoning for an answer, but there's nobody at the end of the line to answer—

**Mr. Deputy Speaker:** Order.

I just want to remind the member that he asked to identify what the matter of 'privilege' is. He's going into debating, and if he would continue going on to his point of 'privilege'.

**Mr. Lindsey:** That, Mr. Deputy Speaker, and I am getting to the meat of the matter, if you will, on what the matter of privilege is. But what I have learned from previous rulings from the Speaker when it came to things like matters of privileges, is that she rightfully ruled that the way the case was presented at the time didn't supply enough detail for the Speaker to be able to rule sufficiently on why the matter of privilege was, in fact, a matter of privilege.

So, if you'll bear with me, Mr. Deputy Speaker, on why I'm laying out—and sometimes it takes more time than perhaps we'd like to lay out that case, but we need to make sure that we get the facts on the record so that you, Mr. Deputy Speaker, can actually make a ruling based on those facts.

So all of the things that I've talked about so far are part of the facts related to how this matter of privilege and what the government has done affects my ability in this Chamber, and then really and truly affects every one of us and our ability in this Chamber.

And so, really, I'm going to get into more of the crux of the matter here. We've really—what we're talking about is their unconstitutional Bill 28—probably illegal Bill 28. So that's really the issue at hand, Mr. Deputy Speaker, and it really is the importance of how it affects my ability as a member of the opposition, how it affects each and every one of us in our ability to do our jobs.

So, you know, there's great debate, and we'll spend a little bit of time now and probably more a little later on talking about the earliest opportunity to present this matter of privilege. So I believe the phrase earliest opportunity must be understood in the more reasonable sense than sometimes what we take to

mean, you have to bring it up right lickety-split, right now.

The earliest opportunity cannot simply mean the next moment in time in which a member has the ability to speak. This, Mr. Deputy Speaker, is really much too simple of a definition of earliest opportunity, and it's one which I'm sure you'd agree, we cannot just ascribe to; that we really need to look at more of what the definition of earliest opportunity really means.

So, rather—must—this earliest opportunity must be understood in a holistic and, excuse me, contextual manner. This holism and contextualism will allow for members to consult the relevant authorities, speak with or study various experts on the matter, as the case may well—may be as well a review of the evidence that has been compiled on the matter at hand.

So we need to really understand that whole concept, Mr. Acting Deputy Speaker, to really get the concept of what earliest opportunity, in fact, means in the realm of reality, as opposed to sometimes just the very stilted view that we tend to think of earliest opportunity to mean. So hopefully we can expound on that a little more.

\* (14:50)

As to the test of privilege, really, if you'll bear with me, this is really where some of the time has been spent to really research, to make sure that the facts get put on the record as to how it has impacted my privilege as a member of this Chamber.

So, you know, that gets to the earliest comment and earliest opportunity because, Mr. Deputy Speaker, there is a lot of factual background information. Particularly in this particular matter of privilege, there's possibly more background information that needs to be explored than what we've seen in some other cases that have been presented. So I'll attempt to go through that in as clear and a concise manner as possible, but it does take some time to lay those facts out.

So, to start with, Mr. Deputy Speaker, I refer to House of Commons Procedure and Practice, second edition, commonly known as O'Brien and Bosc, for guidance on this difficult question. Now, I know the members opposite and yourself, Mr. Deputy Speaker, have heard some references to this with other matters of privilege, but we need to, with each matter of privilege, in order for them to be taken by themselves, which—in order for you to do your job as Speaker, they



have to be taken by themselves and the facts of that individual matter of privilege.

They can't just be taken as a whole, so just saying it once with a matter of privilege once upon a time doesn't count for entering those facts for this specific matter of privilege. So, again if you'll bear with me I'll get into some more of that.

So, on page 11 of this House of Commons Procedure and Practice, second edition—on page 111, O'Brien and Bosc write, and I quote here: A member may also be obstructed or interfered with in the performance of his or her parliamentary functions by non-physical means. Ruling on such matters, the Speaker examines the effect of the incident or event had on the member's ability to fulfill their—excuse me, to directly quote here: Had on the member's ability, fulfill his or her parliamentary responsibility. And just a momentary end quote.

That's a direct quote. It's not necessarily the language that we would use today to refer to people, but, unfortunately, that is the language that I'm forced to quote here, Mr. Deputy Speaker. So we have to look at the effect the incident or event had on the member's ability to fulfill his or her parliamentary duty.

So, now, to get back to quoting what was said again in the House of Commons Procedure and Practice, second edition, page 111: If, in the Speaker's view, the member was not obstructed in the performance of his or her parliamentary duties and functions, then a prima facie breach of privilege cannot be found. That is from page 11, O'Brien and Bosc, which is the undisputed source of information regarding the appropriate way in which we ought to understand parliamentary privilege in this House, as well as in Houses across this country.

So, Mr. Deputy Speaker, several comments regarding the comments are in order. The Speaker's view of the matter is clearly of the utmost importance, and I think we all recognize that, that we understand the importance of the role that you fulfill as Deputy Speaker and we understand the importance of your role in ruling on these type of matters, and it can only assist you in making those very important rulings if we enter all the facts that we believe are pertinent to the particular matter at hand into the records, which is what I'm attempting to do here now, again, Mr. Speaker.

So, now, where was I? Let's see, several comments regarding the comment—the Speaker's view on the matter's clearly the utmost importance, but

more importantly—now, this is interesting—more importantly, recognizing the importance of the Speaker's view of the matter but, more importantly, to quote, interference should not be construed in narrow—narrowly physical terms; interference as understood in a discussion of privilege or contempt, will go beyond the mere interference, say, of a member's ability to enter this House.

Just to be clear, to quote: interference as understood in a discussion of privilege or contempt will go beyond the mere interference, say, of a member's ability to enter this House. Rather, it will extend to any matter which impedes a member's ability to do their job, and this type of interference is one that cannot be fully enumerated in advance.

As O'Brien and Bosch [*phonetic*] note, and I quote here: It is impossible to codify all incidents which might be interpreted as matters of obstruction, interference or intimidation and, as such, constitute prima facie cases of privilege. However, some matters found to be prima facie include the damaging of a member's reputation, the usurpation of the title of a member of Parliament, the intimidation of members and their staff and of witnesses before committee and the provision of misleading information.

Well, Mr. Deputy Speaker, that's really quite an important point, the provision of misleading information. We see that so often with—when we ask questions in the House, that the answers we get don't necessarily fit with the reality of the question that was asked.

So I want to emphasize that last point again—the most important authorities, arguably, apart from the Supreme Court of Canada, hold that the provision of misleading information constitutes a breach of privileges of the members of this House. And it is clear that this government, its Premier (Mr. Pallister) and its ministers are guilty of the provision of such misleading information.

It must be noted that information which is misleading is not the same as false information, and that's a critical point that I want you to take into account as we proceed, Mr. Deputy Speaker, is misleading information is not the same as false information.

So the standard definition of misleading is that a statement or assertion gives the wrong idea or impression. However, it is clear that the partial presentation of information which, on its own, is not incorrect, but nonetheless give the wrong idea to a

reasonable observer, and that this really bears repeating. The standard of the interference of a member's ability to do her job, his job, their job, does not require them to show that the government provided false information. It only requires them to show that they provided misleading information.

So those are critical points of this matter of privilege, Mr. Deputy Speaker, is we're not talking about out-and-out falsehoods. We're merely talking about how the information has been presented that leads to the false impression, the false sense of what's really taking place. And, you know, we've talked about this any number of times, that—with different items that have come up, that really the information that the government provides seems to be somewhat twisted and backwards.

\* (15:00)

And we've talked about the book 1984 in the past, Mr. Deputy Speaker, and we seem to live in that kind of world sometimes when this government speaks, that really say something that we could accuse them of falsehood. But, wait a minute, what exactly is it that they did say? Where did that lead us? Where did the thought process take us that—and that's the crux of the matter, right, is—for this part, is how the information is given.

And so, when we get to the point of deciding false information verse only misleading information, this is a weaker test. It's a weaker test than out-and-out falsehood, but, nonetheless—nonetheless—it infringes on the ability of a member such as myself to do my job and, really, that's the meat and potatoes, right? Is the matter of privilege is about how it impinges my rights as a member and, really, that's where we're getting to—is not false information, merely misleading information.

So thus it follows, then, that if it is established that false information has been put on the record in this House, then this will impede a member in their duty. So in this instance the failure of the government to update producers of this—and this House as they promised with regards—Crown—oh, apparently my note writers need to get their cut and paste skills down a little better, Deputy Speaker. So, really, where we're going is what this government has done with Bill 28 and how it impacts my ability as a member.

So what evidence is there, Mr. Deputy Speaker? Well, I will attempt to lay out that evidence now. Is—we've gotten through some of the drier passages of what—passages of—well, O'Brien and Bosc, for

example, need to be reviewed in this case. So now we'll get more to the actual evidence of what the matter at hand really is.

So the Premier (Mr. Pallister) of Manitoba, the Premier of this House, the supposed leader of Manitoba, has attempted to pass legislation, but not proclaim it. At the same time that he's done this—that this government really has done this, is they've attempted to enforce legislation that has not been passed—that has not been proclaimed, sorry—it has been passed, but it's never been proclaimed. So they've attempted to enforce legislation without the proper, due authorization of this House.

And I refer to Bill 28 again, which is unconstitutional and which freezes the wages of over 100,000 working people in this province and, really, Mr. Deputy Speaker, that's 100,000 of people on the front lines that are there to work for Manitobans. And it's become even more critical now as we see what's happening with COVID-19, that those front-line workers need to be in place and they need to be respected. And, really, that's what's missing with this government's treatment of them by not passing this bill.

**Mr. Deputy Speaker:** Order.

I just want to remind the member that respect—that focusing on the privilege of this House is the breach of—there was a breach of privilege here. And I just want to remind the member that we should be concentrating on, if there's a breach here of privilege, should be on freedom of speech; the freedom of arrest of a civil action; exemption of jury duty; freedom of obstruction or intimidation; or dealing with the rights of the House of collective, including the regulation of internal affairs of the House; the authority the maintain the attendance of service of its members; the power to discipline; the right to institute inquiries, and to call witnesses or demand papers; the right for an administrator of oaths to witnesses; and the right to publish papers.

These are the—examples of matter of privileges, and I just want to remind the member if he can keep on the issue of the matter of privilege and not go into debate.

**Mr. Lindsey:** Thank you for your guidance on that, Mr. Deputy Speaker, and I certainly will attempt to do that. Sometimes, as we've seen numerous times on both sides of the House, it's hard to not vector off back into that debate because it's something that we're so passionately bought into, that, really, that is how it

affects our ability in this Chamber. That's how it impacts our ability as legislators.

So, by the Premier (Mr. Pallister) trying to enforce this legislation without allowing the democratic rights of working people to be respected. So, what is the object of this legislation? And I think it's very instructive to refer to the recent decision of the Court of Queen's Bench that—of Manitoba that dealt with the question of the constitutional status of the right to collectively bargain.

The court wrote, and I quote here: The Ontario Court of Appeal and Professional Institute of Public Service of Canada upheld the constitutionality of the ERA. The court dealt with the substantial interference tests, stating at paragraphs 44, 45, 52, 54, and 56–44, under the substantial interference tests, the question is whether the process of voluntarily good-faith collective bargaining between employees and employer has been or is likely to be significantly and adversely impacted. BC Health Services at paragraph 92: In each case, the inquiry is contextual and fact-specific—BC Health Services at paragraph 92.

So 45: The court explained in paragraph 93 of the BC Health Services that, generally speaking, determining whether a government measure affecting the protected process of collective bargaining amounts to substantial interference involves two inquiries.

The first inquiry is into the importance of the matter affected to process of collective bargaining and, more specifically, to the capacity of union members to come together and pursue collective goals in concert. The second inquiry is to the manner in which the measure impacts on the collective right and good-faith negotiations and consultation.

So paragraph 52: The purpose of collective bargaining, as the Supreme Court observed in BC Health Services at paragraph 19, is to permit members of labour unions to engage in association and collective bargaining on fundamental workplace issues. And again, at paragraph 87, to associate for the purposes of advancing workplace goals; emphasis added there. So, the protections include, the court noted at paragraph 90, the ability of a union to exert meaningful influence over working conditions.

These statements recognize that unions aim at outcomes, at results. Collective bargaining is a means to an end, Mr. Deputy Speaker, apart from having its own virtues, of course. Paragraph 53, as I read the case law, while protection is not afforded to the fruits of

bargaining, but only to the process by which they are to be negotiated. Employer actions unilaterally undermining the ability of the unions to bargain about significant matters are constitutionally suspect.

\* (15:10)

Certain matters are, by nature of their importance to the unionized employment relationship, matters central to the freedom of association. BC Health Services at paragraph 25; adversely affecting these in a material way may be constitutionally suspect, depending on the context. These matters include salary. Meredith at paragraph 27, 28; Alberta reference at page 335; hours of work, Alberta reference at page 335; job security and seniority, BC Health Services at paragraph 130; equitable and humane working conditions, Alberta reference at page 368; and health and safety protections, Alberta reference, page 368.

So paragraph 54: The Supreme Court has also identified the number of employer actions as being constitutionally suspect for the purposes of subsection 2, subsection D. Again, depending on the context, including the following: taking important matters off the table or restricting the matters that may be discussed, BC Health Services, at paragraphs 111 and 113.

MPAO, at paragraph 72: Posing arbitrary outcomes. MPAO at paragraph 72: unilaterally nullifying the negotiated terms. Removing the right just—no. Wait on it—arbitrary outcomes unilaterally nullifying negotiated terms, BC Health Services, at paragraphs 11 and 113; removing the right to strike, SFL, at paragraph 54; and imposing limits on future bargaining, BC Health Services, at paragraph 113.

So paragraph 56: In conclusion, in applying this substantial interference test which involves a contextual, fact-specific inquiry, the court must consider the significance of the matter in issue to the collective bargaining process and the degree of interference with collective bargaining process while pardoning outcomes are not determinative. They may be indicative of whether there has been substantial interference with the collective bargaining process.

So it's quite a learning experience, Mr. Deputy Speaker.

So the Ontario Court of Appeal included at paragraphs 175, 76, and paragraph 175 is noted: not every law or action limiting collective bargaining will result in a limit on collecting 2(d) Charter rights. The Charter only prevents the government from doing

something that would compromise the essential integrity of the process of collective bargaining—and that's quite important—compromise the essential integrity of the process of collective bargaining—protected by 2(d), BC Health Services, at paragraph 129. Even if government action or legislation substantially touch on collective bargaining, they will not violate section 2(d) if they preserve a process of consultation and good-faith negotiation, 176—oh, excuse me, that was BC Health Services at paragraph 94.

So paragraph 196: The government engaged in permissible, hard bargaining during a period of economic crisis and government austerity, and by enacting the ERA, the government capped wage increases for a limited period. The ERA did not completely prohibit any wage increase. The cap was in place for a limited period of time and the limit imposed was in line with the wage increases obtained through free, collective bargaining.

Moreover, the appellant unions were able to make progress on matters of interest to some of the bargaining units they represented. They were still able to participate in a process of consultation and good-faith negotiations. As such, neither the ERA nor the government's conduct before or after the enactment of the ERA limited the appellants to section 2(d) rights.

So this is the background of the important issue before this House: Whether the attempt by the government to enforce a law that has not been proclaimed infringes on the rights of members to hold the government to account insofar as brings this House into disrepute.

Now, that's really worth repeating, there. This information that I've just entered into the record is really the important part of whether the attempt by the government—this government—this Pallister government, by their attempts to enforce a law that has not been proclaimed, does that infringe on the rights of members, specifically myself but also all members? Does that infringe on the right of members to hold the government to account so far as it brings the House into disrepute? It is contemptuous behaviour, Madam Speaker, and it—excuse me, it is contemptuous behaviour, Mr. Deputy Speaker, that must be called out as such.

And, really, that's how it impacts my rights as a member, is how do we go about questioning the government? How do we go about holding the government to account on specifically Bill 28 when

it's just kind of hanging out there in space somewhere? How do we say, the—wait a minute, you're not complying with the legislation that you introduced and that you got passed because how do you comply or not comply with something that, in reality, doesn't exist?

And, really, that's how this government is really—the basis of how it's impacted my rights is, in today's day and age, Mr. Deputy Speaker, sometimes politicians aren't held in that higher regard, and certainly its instances—*[interjection]*

**An Honourable Member:** Not getting better with what you're doing.

**Mr. Lindsey:** No, I agree with the Government House Leader (Mr. Goertzen), it's not getting better with what they're doing. It certainly is getting worse with what they're doing.

You know what, Mr. Deputy Speaker? It's really—what this government and what the Government House Leader has allowed to happen while he's been a minister—a minister of the Crown, a minister of this government—is really—shame on him for sitting there and allowing this—well, in fact, shame on all of them for—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Mr. Lindsey:** —sitting there and allowing this to happen—*[interjection]*

**Mr. Deputy Speaker:** Order, order, order.

I'd just again—there's getting a little bit of heckling going on here, but I do want to remind the member for making sure that he is going for prima facie here. There's a—there was a possibly a lack of prima facie happening here. I will—but, actually a prima facie issue here. And so he's going on to debating all that—the last few minutes here, so I would remind the member to go back to the prima facie that he wants to talk about on the matter of 'plivorage'.

**Mr. Lindsey:** And again, I apologize if sometimes the heckling opposite gets my blood boiling when we look at what this government has done.

And, really, that's the crux of the matter here today, isn't it, Mr. Deputy Speaker, is how have my rights as an MLA in this Chamber been impacted by the actions of this government, and it's very specific to what they've done with their Bill 28, the bill that so many people disagreed with right from the start.

But how do we—how do I question the government on their following that bill when that bill

has never been proclaimed, because it really doesn't exist? It exists somewhere in some realm that we don't have the ability to ask in question period, well, how did you comply with this particular section—  
[interjection]

**Mr. Deputy Speaker:** Order. Order.

With respect to the member, I would remind the member if he—at this—to make their case on this matter, and I would encourage them to conclude their comments and move their motion on now.

\* (15:20)

**Mr. Lindsey:** I'm speedily moving towards the conclusion of my comments, but it really is my duty to make sure that, as Deputy Speaker, you understand that the actions that this government has taken or not taken have impacted my abilities. And that's really why I've raised this matter of privilege, is because by their actions of not proclaiming a bill, it impacts my ability to question them on that bill, whether it's in the Chamber or somewhere else. It really impacts how do I go about holding them to account for a bill that, in essence, doesn't exist, right?

So it's a very complicated question. It's really very important, Mr. Deputy Speaker, and perhaps maybe if some of them listened instead of chirping, they might actually learn something about how their government has impacted my rights and theirs, for that matter.

So how can we help enforce a law, how can we question the enforcement of a law, how can we hold the government to account on the actual enforcement of that law if they don't proclaim it? And that's really the crux of the matter of how it impacts my ability as the MLA to carry out my duties.

So the history of authority of the House is very clear, Mr. Deputy Speaker. Laws that have been duly passed by this House can be enforced, but not before they're duly authorized. So this law in particular, this Bill 28, it—the way the government has handled it impacts my ability to do my job.

I've entered some of the factual references, Mr. Deputy Speaker, from various sources of legalities and sources of reference that we've used throughout our dealings in this House, but it really comes down to, like, the complicated question of the relationship between statutes, the Canadian constitution and privileges.

And it's not an easy, quick, snap answer, Mr. Deputy Speaker, and I'm sure the government ministers and government members opposite don't

have an answer to this because it is very complicated. And I look forward to you taking time to really come to the inevitable, if you will, conclusion that the actions of this government when it came to Bill 28, impacted my abilities to do my job.

So, while we've entered that sometimes dry and boring information, it's really information that I'm—there may be more information out there that will help you in making that determination, Mr. Deputy Speaker. In fact, I'm sure there is and probably could have put a lot more on the record that supports the prima facie case that, really, there can't be any question, just based on the information that has been provided, that the way they've handled this Bill 28, the way they haven't proclaimed it, the way this government has misled the House.

And I remember back when I first started talking about the difference between a falsehood and a misleading statement. So, really, it's not that the government has put false information on the record in this case. It's that their actions led a person to believe that the law was going to be proclaimed when, in fact, the reality of the situation, Mr. Deputy Speaker, is that the law never was proclaimed. In fact, it's still hanging out there not proclaimed, so that—

**Mr. Deputy Speaker:** Order.

I just want to remind the member he's going to—again, you're talking on how you were violated on a prima facie case here. You're going into debate over and over. You're repeating yourself, so I would encourage the member to conclude and put forward the motion.

**Mr. Lindsey:** Mr. Deputy Speaker, I just wanted to really make sure that if it was clear and not misleading on my part of how my rights as a member were impacted by this government's actions. So I will very quickly now move towards wrapping up my remarks on this. It would be easier without all the chirping in the background that interrupts one's train of thought, if you will.

So let me just wrap up by saying this law is an egregious attack on working people. It's an attack on the democratic rights of workers. It's one that has not been authorized by this House, and that's really the important part, Mr. Deputy Speaker.

We, as members on this side—we, as members in opposition and, certainly, that includes members of the Liberal Party, even though they choose not to engage in this democratic action. They seem to want

to support the government's bullying tactics in this case.

So we, as members, are unable to hold the government to account and ask questions about this law because of the fact it's in limbo. It's held there because of this Premier's (Mr. Pallister) political games. This issue of attempting to enforce laws that have not been duly authorized by the Legislature is of the utmost importance and must immediately be addressed, as it really goes to the question of the privileges of members of this House to speak and to vote on bills for it.

It really speaks to democracy and this government's meandering way of interrupting democratic actions and democratic will of the people by introducing a law, not proclaiming it and yet enforcing it, stopping me, as a member of the opposition, from questioning what this government is doing and why they're doing it.

So, without further ado, I hope I've supplied you with sufficient information to rule on the prima facie case that, really, my rights have been violated, my ability to do my job as an MLA have been violated. This is a timely introduction of this matter of privilege as because this issue is still ongoing. It could be a matter of tomorrow, the next day, the day after that, because there hasn't been the resolve; they have not proclaimed the bill.

So, therefore, Mr. Deputy Speaker, I move, seconded by the member from Keewatinook, that this issue be referred to an all-party committee for resolution immediately.

Thank you.

**Mr. Deputy Speaker:** Before recognizing any other members to speak, I would remind the House that remarks of this time by honourable members are limited to strictly relevant comments about whether alleged matter of privilege has been raised at the earliest opportunity and whether a prima facie case has been established.

**Hon. Kelvin Goertzen (Government House Leader):** This matter of privilege is as faulty as all the previous ones that have been brought forward, but since the member opposite raised it in his comments, I'm sure you'll allow me to respond.

He speaks about the reputation of politicians and how he would like to see the reputation of politicians defended, as we all would, because this is a noble profession in which we all work hard. And I would

say, Mr. Deputy Speaker—and I think we all know that the work that is done is important and often not seen or not recognized and maybe not appreciated—but I would say to the member opposite that if he is looking for the stature of politicians to be lifted up, then he has a role to play in that as well, and that the—  
[interjection]

**Mr. Deputy Speaker:** Order.

**Mr. Goertzen:** —stalling—well, and a happy—I'd be happy to speak to his constituents in Flin Flon and ask them whether or not, during a pandemic, a time when—that citizens, not just in Manitoba, but around the world, were concerned and were uncertain about a number of different things—

\* (15:30)

**Some Honourable Members:** Oh, oh.

**Mr. Deputy Speaker:** Order. Order.

**Mr. Goertzen:** I'm often reminded that the more they yell, the more they realize that I'm right, Mr. Deputy Speaker, because I think that they sensitively know that their constituents are disgusted by the actions that is going on in the Legislature. And maybe they hope—and I'll wrap it up with this—[interjection]

**Mr. Deputy Speaker:** Order.

**Mr. Goertzen:** Maybe they hope that people are just going to forget—[interjection]

**Mr. Deputy Speaker:** Order.

**Mr. Goertzen:** —that they're just not going to remember. We're going to remind them every day, Mr. Deputy Speaker. [interjection]

**Mr. Deputy Speaker:** Order.

**Mr. Goertzen:** And I'll remind them about something else: that in the event that the budget and the budget speech are not able to be considered by the Legislature Assembly today, it will be the government's intention to bring it forward for consideration in the Legislature on Wednesday, March 18th.

**Hon. Jon Gerrard (River Heights):** Yes, Mr. Deputy Speaker, time will tell whether the matters being raised, this matters of privilege are, in fact, meeting the criteria because we will in due course have a ruling from the Speaker.

I have doubts whether this will be ruled to be an appropriate matter of privilege because there have been quite a number of other opportunities before this when this issue could have raised. In fact, as I recall,

that the member has indeed raised this on previous occasions in this Legislature.

The member is correct that Bill 28, and whether or not it's unconstitutional, is an extremely important issue and it's an important issue for all of us, for our province, and for many people who are working because, of course, it affects people's income. And in that, the member is quite correct that this is an important issue. But I find it a little peculiar that the MLA for Flin Flon is concerned about his ability to raise questions in question period. It is most peculiar as he is obstructing his own ability to ask questions in question period.

I also want to comment on the fact that the member for Flin Flon (Mr. Lindsey), when he talks about some of these issues, say they are very complicated. This was an excuse that members of the NDP government used very often in answering questions when they didn't have an answer. And I think that there's a better approach to this, and maybe part of the member's role is to simplify it so that everyone can understand it, instead of trying to make it more complicated.

I would also comment that we are at a critical time today. We are at a critical time in all of Manitoba, including northern Manitoba, and the potential for the coronavirus, COVID-19, to infect people in the North. And as I raised yesterday, they are concerned about what has happening at the Keeyask site where there's a lot of people gathering—I am told considerably more than 50 at a time in crowded conditions for lunch—and what will happen there.

There are issues and concerns about whether the government is actually going to screen people going to remote communities like St. Theresa Point and others, so that will reduce the likelihood of this virus, this troublesome virus from getting into northern Manitoba. I think these are questions that should be being asked to the government, and we should be demanding answers.

Mr. Speaker, there is another reason why when we look at the relative importance of matters. Matter of privilege is, of course, very important in terms of Bill 28, but the immediacy of the situation of COVID-19 and how we deal with it is made even more important by this material which I table, so all members can have access to it.

This material suggests that we may have to have measures continuing to suppress the virus, if not completely all the time, at least on and off, likely until

we have a vaccine, which is probably going to be at least one or two years away. We don't know. Although there are a lot of vaccines being worked on at the moment, we don't know what their efficacy is going to turn out. We have to find out whether there are, you know, side effects and other things.

So there is a lot of work before we will actually have a vaccine, and we may have to keep looking at measures in an ongoing way for quite some time. And, in doing that, it is important that we have that discussion. It is important that we have a view from the North as well as a view from other parts of Manitoba.

So those are my comments on this matter of privilege, which has been brought forward by the member for Flin Flon.

Thank you. Merci. Miigwech.

**Mr. Deputy Speaker:** A matter of 'privilege' is a serious concern. I am going to take this matter under advisement to consult with authorities. I will return to the House with a ruling.

#### MATTER OF PRIVILEGE

**Mr. Jamie Moses (St. Vital):** I rise on a matter of privilege.

**Mr. Deputy Speaker:** A matter of 'privilege' on—the honourable member for St. Vital.

**Mr. Moses:** Mr. Deputy Speaker, as you know, matter of privileges are serious and not to be taken lightly. And I'm here and I'm raising a matter of privilege regarding this government's abusive omnibus legislations.

And, as we know, these types of legislations are difficult for all members to fully have the time and detail to understand and to go through the details in order so that they can do their diligence and—in reviewing legislation and providing the correct—right number—or, right amount of insight not only to bring towards this Chamber and any committees, but also back to their constituents.

Matters of privilege are to be brought forward when they demonstrate that the rights and immunities of members are collectively or individually have been breached. Since the 1960s, in parliaments around the world—the UK, Australia, New Zealand—we've seen in—analyze—an attempt to reformulate parliament privilege for the nineteen—for the 20th century. And now, in the 21st century, in Australia and in New Zealand—as recently as 2014—they bolt—both

enacted legislation clarifying elements of parliamentary privilege, while in the United Kingdom that has thus far determined that it is unnecessary at this time to try to legislate parliamentary privilege.

All of these attempts to modernize law of privilege reflect the change in relationship between the public and Parliament. All three recognize that today public figures are accountable to the public. Various commentators have also observed how the British House of Commons, since the mid-nineteen–20th century, has really taken on a more narrow approach to parliamentary privilege and focused on the parliamentary proceedings.

*Mr. Greg Nesbitt, Acting Speaker, in the Chair*

An expression of this shift of thinking was expressed in the 1967 report of the UK House of Commons Select Committee on Parliamentary Privilege. That committee recommended that the legislation be introduced to extend and clarify the scope of privilege and expressed in—the conviction that the recognized rights and immunities of the House will and must—this is a quote—will and must be enforced by the courts as part of the law of the land. End quote.

\* (15:40)

The House took note of this report, but, however, you know, it was not adopted. It wasn't until about a decade later, in 1977, the UK committee of privileges looked again at the meaning of privilege and contempt, and reiterated the conclusion of that same 1967 report. Now, this time, in 1977, the report was adopted by the House, and it—in it, the committee recommended, quote: recommended that the application of privilege be limited to cases of clear necessity in order to protect the House, its members and its officers from being obstructed or interfered with in the performance of their functions.

The set recommendations not adopted by the House were those recommending the legislative changes to codify privilege. Now, it wasn't until some 20 years later, in about 1999, the Joint Committee of House of Commons and House of Lords of the UK published what has become an extremely influential report on parliamentary privilege, even though it was not adopted by the House of Commons and no legislation resulted from its recommendations.

Building on what has been undertaken some, you know, 30 years earlier, the report represented an ambitious, in-depth comprehensive study of various rights and immunities that make up parliamentary

privilege, their historic origins and their contemporary applications. Now, this is relevant because it does discuss the adequacy of current understandings of the uses of parliamentary privilege and made various recommendations on how to adapt parliamentary privilege to the modern needs and realities.

The committee's study was guided by the following fundamental questions: Do the law and practice of parliamentary privilege meet present and future needs? Do existing procedures satisfy contemporary standards of fairness and public accountability? Those two questions were fundamental in guiding the committee's study.

The committee did note that there was an important need to review parliamentary privilege given several important developments. Now these included several decisions on parliamentary privilege had been rendered by the House of Lords in the 1990s, including *Pepper v. Hart*, and *Prebble v. Television New Zealand*, both of which engaged a comprehensive analysis of parliamentary privilege.

Another area which they noted was of importance was how the UK enacted the Human Rights Act in 1998. Now, that Human Rights Act incorporated the European Convention on Human Rights into their own domestic law. The committee considered that some judgements of the European Court of Human Rights interpreting and applying the convention had a potential impact on parliamentary 'privilege'.

Now, one of the legacies of the committee its—is its re-articulation of the basic proposition that necessity is the basis of all privilege claims by Parliament. This proposition has been—has become the central feature in my analysis of parliamentary 'privilege', whether parliamentary studies or court judgements among the committee's recommendations.

Now, like I said, among the committee's recommendations were—was this statement: that legislation be enacted to enable both Houses to waive parliamentary privilege but only where to do so would not expose a member or person making a statement or doing an act to civil or criminal liability. This would enable proceedings in parliaments to be examined by a court, but not—but only where there would be no risk of liability for a parliamentarian or other person.

Their other recommendation was that the legislation be enacted to define proceedings of—in Parliament to include all words spoken and acts done



in course of or for the purpose of or necessarily to transacting the business of either House of Parliament or of a committee.

A third recommendation was that standards of procedural fairness be introduced for witnesses to parliamentary proceedings, and their other recommendation that a set of modified parliamentary privileges be codified to reflect the modern needs of Parliament.

Now, the role that the 1999 UK joint committee report played in influencing parliamentary governmental and judicial thinking on parliamentary 'privilege' was widely acknowledged. In particular, the report's recommendations have been cited in a number of leading court decisions which have articulated the scope privilege, including the Supreme Court of Canada—the judgment in *Canada*. That's *House of Commons v. Vaid and Chator* in the UK, and *Gao v. Lee* in New Zealand.

On the matter of privilege itself, the Supreme Court gives helpful guidance that we ought to consider here as to whether or not a question of privilege exists. It is important in this—it's important decision know as *Vaid*, Justice Ian Binnie, writing for the court, found that, quote: Legislative bodies created by the act of—Constitution Act in 1867 do not constitute enclaves shielded from the ordinary law of the land. The framers of the constitution and Canadian parliamentarians, in passing the parliament act thought it right to use the House of Commons at Westminster as the benchmark for parliamentary privilege in Canada.

And so, accordingly, to determine whether a privilege exists for the benefit of Senate or House of Commons, or their members, the court must decide whether the category and scope of the claimed privilege have been authoritatively established in relation to our own Parliament or to the House of Commons at Westminster. If so, the claim to privilege ought to be accepted by the court.

\* (15:50)

However, if the existence and scope of privilege have not been authoritatively established, the court will be required to test the claim against the doctrine of necessity—the foundation of all parliamentary privilege. In such a case, in order to sustain a claim of privilege, the Assembly, or member seeking its immunity, must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfillment by the Assembly or its

members of their functions as a legislative and deliberative body, including the Assembly's work in holding the government to account, that outside interference would determine the level of autonomy required to enable the Assembly and its members to do their legislative work with dignity efficiently.

Now, the House of Commons Procedure and Practice by Marleau and Montpetit defined the privilege as rights and immunities that are deemed necessary for the House of Commons as an institution, and its members as representatives of the electorate, to fulfill their functions. Reference may also be made to Parliamentary Procedure and Practice in the Dominion of Canada.

Now, it is obvious that no legislative assembly would be able to discharge its duties with efficiency or to assure its independence and dignity unless it had adequate powers to protect itself—protect itself and its members and its officials in exercise of their functions. The British Joint Committee reports adopted a similar approach that said: Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members and officers possess to enable them to carry out their parliamentary functions effectively.

Without this protection, members would be handicapped to perform their parliamentary duties, and authority in—of Parliament in—itsself in confronting the executive, as a forum for expressing the anxieties of citizens would correspondingly be diminished. While much latitude is left to each House of Parliament, such an approach to the definition of privilege implies important limits.

All of these sources point in the direction of a similar conclusion: in order to sustain a claim of parliamentary privilege, the Assembly or a member seeking its immunity must show that the sphere of activity for the privileges claimed is so and—is so closely and directly connected with the fulfillment by the Assembly or its members of their functions as a legislative deliberative body, including the Assembly's work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the Assembly and its members to do their work with dignity and efficiently.

Now, I do want to address the aspect as well—it goes directly to speaking of the timeliness of bringing this matter of privilege forward. We do know that earliest opportunity is what we strive for when bringing forward matters of privilege. And

it's understood that earliest opportunity is both understood in its common sense, but also in its sense of having the earliest under-opportunity once more contextual analysis has been done on the specific issue on a holistic sense.

Now, it is—should be allowed for members to have the opportunity to consult with relevant authorities and speak to the issue directly so that they have a full and complete understanding of the issue before they bring it to this House so that they have the opportunity to speak to it with the proper expertise.

Speaking to—on various subjects and speaking to various experts is very relevant and should be considered essential part of the term earliest opportunity.

Now, a thorough review of evidence will not only determine for a particular member whether they reasonably ought to believe a matter of privilege has indeed been raised—and that is if there is a prima facie case for believing that a member in this Chamber's privilege has been breached, but it will for—it will also form the basis of any ruling or judgment regarding that matter that the Speaker and ultimately this House make.

As a result, the acquisition of correct and accurate information by members must be taken into consideration in the determination as to whether or not a member has brought their concern in a timely fashion. Thus, the question of reasonableness is fully objective in the sense there is not—there is a fixed or proper amount of time for bringing forward a matter of privilege to this House.

The question will depend both on objective facts as whether the information is forthcoming, is available, is comprehensive. Because if a matter of privilege were brought to this House without information that was comprehensive, that was out—that was not thorough and proper, the case for that matter of privilege would be lacking. And, therefore, the phrase earliest opportunity must encompass some ability for members to have the opportunity to seek expert advice and get a full understanding to bring a case before this 'houlth'.

Now, neither is the question fully subjective, however. It cannot be a question of speed of each individual member or simply their willingness to expend time to investigate the matter to determine whether a matter of privilege has been brought to this House in a timely fashion. It is properly understood as an intersubjective standard, Mr. Deputy Speaker, a

standard that must reflect the true capabilities of members to acquire information and expertise and analyze issues, and then bring it to the House with the demands—balancing the demands that this House may reasonably make of all its members to bring forward matters at the earliest opportunity.

Now, that would—now, that question of timeliness is certainly, then, best understood as a contextual, as I stated. Now, this helps us to understand the timeliness question of the issue that I'm bringing forward today. And I do want to address that the mice—the—really, my matter comes down to the many omnibus legislations that are put forward by this government through multiple pieces of legislation simultaneously.

\* (16:00)

This has been a pattern with the government of bringing forward numerous bills, numerous pieces of legislation combined in one bill which would limit my ability and every member's ability to truly digest and comprehend and analyze the legislation before us in this House. My abilities as a member here are not simply to read and understand and legislate the bills that are being brought forward in this House, but it is also to understand them and communicate them properly with my constituents and various stakeholders around this province which I encounter.

*Mr. Doyle Pivniuk, Deputy Speaker, in the Chair*

And it is in that role which my privileges have been breached and the numerous omnibus legislations that this government has brought forward in the House over the past several years, I—and myself being in this position, I have seen, I have experienced many times when the lack of ability to digest the contents of a bill with a bill that is brought forward with so many aspects that are being changed. These bills are, quote, sometimes are known as the red tape bills, they're the omnibus bills that have a wide-ranging, changing effect on the way our government is run in Manitoba. They should be separated out so that they can properly be understood, analyzed, debated, properly brought to committee so that Manitobans can truly digest and understand the bills and the contents of each one of them so that they know what's going to happen and they can truly understand the effects of each individual bill instead of having an omnibus bill brought forward in this Chamber.

The other part that Manitobans deserve is the communication aspect. When a bill is simply called a red tape bill or a red tape reduction, it's an omnibus bill that truly doesn't give the correct information to

the Manitoban public about the impacts that the bill will have on the everyday lives of Manitobans, additionally, what long-lasting impacts the legislation might make. I do want to express that we've seen this time and time again from this government.

Now, it's clearly part of my case that this is impeding my ability to act as a member and we've seen that, clearly, it's a prima facie case, as evidenced in the joint—the British Joint Committee report that has adopted a similar approach, that their parliamentary privilege consists of rights and immunities which the two Houses of Parliament and their members and officers possess to enable them to carry out parliamentary functions efficiently.

Building on this, their reports represent an ambitious and in-depth, comprehensive study of the various rights and immunities that really make up the privilege and goes beyond just the immediate impact but also the historic origins and, additionally, their contemporary applications.

It has discussed the adequacy of current understandings and the current uses of parliamentary privilege and made various citations of how we could improve the understanding of parliamentary privilege for our modern world and that's what we're seeing in these increased omnibus legislations for which my privilege has been breached.

Do these practices meet the needs not only of our present House, but of our future needs as a Parliament and as a people and as a changing population in our province? And I argue that omnibus legislations do not serve the needs of Manitobans. And do existing procedures and laws satisfy contemporary standards of fairness and simple public accountability?

Now, this is the argument I think is the most—is the strongest part of this case: is omnibus legislations fair and is—are omnibus legislations publicly accountable? And I think on both counts, no. It doesn't give the average public member the proper opportunity to communicate with their members on the aspects of the bill because the legislations are so encompassing and their impacts might not be clear to the average Manitoban.

While I know all members in this House endeavour to communicate the purpose of legislative changes, it sometimes can be a struggle with the demands that this Chamber would make on any member. Now, the public accountability portion: it is important for public members to understand the legislation that is being brought forward, and in doing

so, the public not only should have the opportunity to hear what the legislation is about, but also to actively participate in the making of that.

And our process here in—is to have people partake in committee by bringing forward their thoughts, their objections or support for any given piece of legislation. Now, when that legislation is an omnibus bill where there are several departments or pieces of legislation that are being changed or even dozens of pieces of legislation, departments, agencies, Crown corporations that will be affected, it is not only difficult, it is near impossible for a member of the public to truly digest how this legislation will impact not only their lives today but their family members and their communities' lives today but into the future as well.

And it is that aspect that makes it difficult for me and for the reason that I'm standing here with my privilege breached with this type of bill being put forward. We see the impacts of these bills often as part of the short-term narrative of governance, often without the long-term strategic planning being put forward.

Now, I will reference that the prima facie case of rights being breached is noted here by several other committees, and they do note that there is an important to review several important points and developments. Decisions in parliamentary privilege have been rendered in the House of Lords in the 1990s: *Pepper v. Hart*; in New Zealand, *'Pebble' v. Television*; and both of which engaged in a comprehensive analysis of parliamentary privilege.

In the United Kingdom, they enacted their Human Rights Act in 1998, which incorporated the European Convention on Human Rights into domestic law. That committee considered that some judgements of the European Court of Human Rights interpreted and applying the convention had a potential impact on parliamentary privilege.

Now, one of the legacies of the committee is its re-articulation of the basic proposition that necessity is the basis for all privileges claimed by Parliament. This proposition has since become the central feature in any analysis of parliamentary privilege, whether in-Parliament studies or court judgements.

\* (16:10)

Among the committee's recommendations were these: that legislation be enacted to enable both Houses to waive parliamentary privilege but only where to do so would not expose a member or other

person making a statement to criminal or civil liability. This will—would enable proceedings of Parliament to be examined by a court but not only where there wouldn't be no risk of liability or parliamentary—for parliamentary or any other person.

The legislation be enacted to define proceedings of Parliament to include all words spoken and acts done in the course of or for a purpose of or necessarily incidental to transacting the business of either House of Parliament or of a committee; that standard of procedural fairness be introduced for witnesses to parliamentary proceedings; and that a set of modified parliamentary privileges be included to reflect the modern needs of Parliament.

And, when we're looking at these omnibus legislations, we need to see how they can be adjusted for our modern parliamentary system. People in Manitoba are expecting that their government works for them in the way that they expect, in a modern way, since we are in 2020, and we know that it is through modernizing our parliamentary proceedings that we're able to stay relevant to the people of Manitoba.

Now, that committee in the UK, the joint committee, report has played an influential role in parliamentary, in governmental, in judicial thinking on privilege. It's widely acknowledged and, in particular, the report's recommendations have been cited in a number of leading court decisions which have articulated the scope of privilege, including the Supreme Court of Canada, also in the UK and in New Zealand.

Now, on the matter of privilege itself, the Supreme Court does give us guidance that we ought to consider here as to whether or not the question of privilege exists, and I found that legislative bodies created by the constitution do not constitute enclaves shielded from ordinary law of Canada. The framers of the constitution and Canadian parliamentarians, in passing the Parliament of Canada Act thought it right to use the House of Commons at Westminster as the—as truly the benchmark and the standard for privilege in Canada.

And so we have been using that standard for determining whether this is a matter of privilege, and I argue that it clearly demonstrates that privilege has been breached in this case.

Accordingly, to determine whether privilege exists for the benefit of Senate or House of Commons' members, they must decide whether the category and scope of the claim of privilege has been

authoritatively established in relation to our own Parliament or to the House of Commons at Westminster and, if so, that claim to privilege ought to be accepted by the court.

Now, however, the—if the existence and scope of privilege have not been authoritatively established, the court would be required to test the claim against doctrine, if necessary.

The foundation of all parliamentary privilege, in such a case, in order to sustain a claim of privilege, the Assembly or member seeking its immunity must show that the activity for which privilege is claimed is directed back to them, and I've done that by showing that I've directly had communications about what's in various bills, how do they impact my lives as citizens of Manitoba, and the composition of the bills itself make it untenable for members to properly do their due diligence in communicating these bills to average citizens. It also makes it a challenge to debate and hold proper consultation with these bills and simply object to areas where bills could be made better and to encompass more aspects which would make lives of Manitobans better. In such cases, you know, these claims of privilege that the Assembly or members seeking its immunity are there to help members find that they know that they can interpret bills, and opposition members hold members to legislation to be 'aquetta'—sorry, accurately represent the legislation to help all Manitobans.

Now, I clearly believe that this bill—that these omnibus bills—are not in the best interests of Manitobans. And I have shown an outline that these bills are not only making my life difficult, but all members' lives difficult in being able to communicate properly with how, and the impacts of, these omnibus legislations.

Now, it's obvious that no legislative assembly would be able to discharge its duties with efficiency, or to assure its independence and dignity, unless it had adequate power to protect itself. Not only to protect itself, but protect its members and officials and officers of the legislative body. And I clearly am bringing this in, not just as a prima facie case of breach of my rights, but also doing so in a timely manner that both outlines that I am bringing this at the earliest opportunity.

So, before I get to concluding my remarks and bringing forward the motion, Mr. Deputy Speaker, I will just outline that I have certainly brought this forward at the earliest opportunity. I have, you know, fully outlined that, you know, after speaking with

various authorities and experts on this topic, researching past practices and other jurisdictions about this type of legislation, how it has impacted individuals, corporations, how it's impacted people in the short term and in the long term, that course of action should be changed in our parliamentary procedures with regards to this type of legislation so that we can clearly represent the people of Manitoba better into our future.

And, having had the opportunity to make those consultations, to review some specific cases and consult with experts, it's clearly obvious that this is a breach, a prima facie breach, of privilege. As well, I am bringing forward it at the earliest opportunity, which, again, I have argued that it is being brought forward at the earliest opportunity, considering that there is a more holistic sense of the term earliest opportunity.

So, I will actually bring forward my motion. Just to clarify here, I will bring forward my motion. I just will reiterate in 'summaration' that I do believe that these omnibus legislations are impacting negatively my ability, and all members' ability, to truly do their job and legislate in this House. I am bringing forward in both and in earliest opportunity after having consulted with some experts, and proving that this is a prima facie case of breaching my privilege. I will—oh, sorry, I will just say this before I conclude, that my evidence as follows on the matter, that the Pallister government has used and continues to use the omnibus legislation to push through multiple pieces of legislation simultaneously.

\* (16:20)

For the fourth year in a row, the Pallister government has signalled its intention to put forward—to put multiple legislative changes in one omnibus bill and so-called red tape bill. It takes very little to understand that these bills contain major changes to environmental legislation, to financial regulation and to labour safety standards. These are matters that should be considered in separate bills.

By pushing dozens of legislative changes in one bill, it undermines by—my ability as a legislator to amply consider and respond to the government's proposed legislation, and it—

**Mr. Deputy Speaker:** Order. I just want to remind the member for St. Vital (Mr. Moses) that he's repeating himself. If he can go on with the motion and—

**Mr. Moses:** Thank you for understanding, Mr. Deputy Speaker. I'm on my last phrase here, so I'll just conclude that.

It's right here: that it undermines my ability as a legislator to amply consider and respond to government's proposed legislation, and that it undermines the public's ability to understand the government's activities.

And so I move, seconded by the member from Concordia, that this matter be referred to a committee of the Legislature.

Thank you.

**Mr. Deputy Speaker:** Before recognizing any other members to speak, I would remind the House that remarks at this time by honourable members are limited to strictly relevant comments about whether the alleged matter of 'plivierlage' has been raised at the earliest opportunity and whether the prima facie case has been established.

**Hon. Kelvin Goertzen (Government House Leader):** Madam Speaker, again, I—or, Mr. Deputy Speaker, I'm sorry—I acknowledge that this is a frivolous matter of privilege, as all of them have. I don't know how many times I can remind the House that, in a time of a pandemic—of a significant emergency that's happening around the world, that this is how the NDP spends their time.

A new member, a new member for St. Vital whose constituents would expect better of him, Mr. Deputy Speaker. I know that the former member for St. Vital certainly wouldn't be participating in this kind of activity, and my guess is that the former member for St. Vital, Colleen Mayer, is actually probably out there right now helping her friends and neighbours, because that's the kind of individual she is, and trying to ensure that they get assistance.

And what a stark contrast—what a stark contrast between the current member, who has nothing better to do than try to jam up the Legislature, and the former member for St. Vital, who's actually out there helping people, Mr. Deputy Speaker.

**Some Honourable Members:** Oh, oh.

**Mr. Deputy Speaker:** Order.

**Hon. Jon Gerrard (River Heights):** Mr. Deputy Speaker, a few comments on this matter of privilege.

I want to first compliment the MLA on the in-depth analysis that he's done on omnibus bills and on matters of privilege. I know that the question of

omnibus bills really started under the former Conservative government federally, with Stephen Harper. But, you know, there were occasions when we had a former NDP government which brought in a few bills which I think probably would have qualified for omnibus bills.

I was looking through the bills that we have now, and Bill 26, The Credit Unions and Caisses Populaires Amendment Act, is one of the longer ones, at something like 47 pages. But it's really focused on the credit unions and caisses populaires, and I'm not sure that it really qualifies as an omnibus bill at this juncture.

So I hope in the—you know, the future, the member can be a little clearer as to which bill he's so concerned about. It's possible that he's concerned about bills which are on the Order Paper but haven't been tabled yet, so it's very hard to judge whether they are omnibus bills or not at this time.

I share the member's concern about deceptively titled legislation, but I would point out that it certainly happened just as often with the former NDP government as it is with government. It seems to be a problem we have in this Legislature.

I suggest that the MLA consider bringing in a bill to modernize the concept of privilege. He's done a lot of work on this, and perhaps he would consider bringing in a private member's bill to see what could be done, and what a modern privilege would actually look like. I think that could be quite helpful.

That being said, Mr. Deputy Speaker, because of the concerns about, you know, exactly what an omnibus bill is, and the uncertainty about whether this really was brought up at the earliest possible time, I'm not sure that it qualifies as a matter of urgent public importance.

But I would give the member an example of a matter which I think could qualify as a matter of urgent public importance. And that is the economic needs of Manitoba at the time of this COVID-19 virus pandemic. I suggest that the government should be considering things like enhanced temporary support for precarious 'worfers' and people who are self-employed and who don't have access to EI.

I suggest that the government should be considering the possibility of a moratorium for—on evictions for renters. I suggest that the government should consider the possibility of allowing businesses to stretch their payments, or particularly tax payments. I suggest the government should be considering things

like emergency financial support for people who are quarantined or self-isolated and can't work from home.

I think that these are all important measures. If they are in the budget, we'll be happy to see them. But we wait because a lot of the concern about COVID-19 came up before, or after, or since the government had prepared its budget, which we are still waiting for.

So, with those few remarks, Mr. Deputy Speaker, thank you. Miigwech. Merci.

**Mr. Deputy Speaker:** A matter of 'plivilege' is a serious concern. I am going to take this matter under advisement, to consult with the authorities. I will return to the House with a ruling.

#### MATTER OF PRIVILEGE

**Ms. Nahanni Fontaine (St. Johns):** Miigwech, Deputy Speaker, on a matter of privilege.

**Mr. Deputy Speaker:** The honourable member for St. Johns, on a matter of privilege.

**Ms. Fontaine:** Miigwech, Deputy Speaker. I rise on a matter of privilege this afternoon in respect of the government, more specifically the Pallister government, misleading Manitobans. And, certainly, Deputy Speaker, misleading in a very thoughtful, methodical way the constituents of Dauphin, Deputy Speaker. Dauphin Parkland Region and their plan for the future of the Dauphin Correctional Centre and certainly the Pallister government's failure to consult with stakeholders, Deputy Speaker.

I would have thought, Deputy Speaker, that the member for Dauphin (Mr. Michaleski) would have gotten up on a matter of privilege to highlight his own government and his own party's failure to take into account the over 80 families in Dauphin that his government's decision, his boss' decision, had a detrimental impact on.

Deputy Speaker, I would have thought that the member for Dauphin would have gotten up with his own matter of privilege to put on the record and to issue complaint to this House in respect of his boss' plan to move folks who are in conflict with the law further and further away from their communities, their family and the various support systems that they have in place.

\* (16:30)

I would have thought that the member for Dauphin (Mr. Michaleski) would have gotten up at any time since the announcement—the surprising,

quick announcement was made to folks in the Dauphin Parkland region in respect of the decision to close the Dauphin correctional centre. I would have thought that he would have gotten up in this House to speak on behalf of those constituents that he represents.

However, I am obviously quite mistaken, Deputy Speaker, so I will stand this afternoon and I will do his job for him in raising this matter of privilege in this House this afternoon in respect of his party, his caucus, his boss, his government's failure to consult with stakeholders on such a serious, serious matter.

The background to this, Deputy Speaker, in respect of my matter of privilege today is that we know a decision was surprisingly made to announce the closure of the Dauphin correctional centre. We know that the Minister of Justice (Mr. Cullen) and the—some other of his cohorts, his get-along gang, traveled to Dauphin and, at the very last minute, had indicated that there would be a meeting.

We know that the minister was not courageous enough, I would suppose, if we want to construct it like that—the Minister of Justice wasn't courageous enough to face the very workers that he was impacting on with the decision to close the Dauphin correctional centre.

Again, as backdrop, I—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Ms. Fontaine:** —would think that the member for Dauphin would want to get up on that, but, surprisingly—and maybe not so surprisingly, Deputy Speaker, the member for Dauphin has not got up. In fact, the only time the member for Dauphin has gotten up in this House is actually to applaud the decision of his boss, of his Premier (Mr. Pallister), of his government and his colleagues.

So I would suggest to you, Deputy Speaker, as the critic for Justice, it was incredibly shocking and disheartening to see that such a decision was made with no consultation, not even a heads-up for anybody that was involved in this announcement, and that it would affect on this announcement.

Deputy Speaker, as I've shared in this House, it just so happened that our NDP caucus was in Dauphin when that announcement was made, and I'm very proud to say that we were able to—we had already had so much outreach that was set up to be able to meet with Dauphin citizens. And so, we actually did the government's job that day by comforting and trying to

give as much security to and ensure that we could—*[interjection]*—sorry, Deputy Speaker—

**Mr. Deputy Speaker:** Order.

**Ms. Fontaine:** —the member for Southdale (Ms. Gordon) keeps chirping on, and I just can't hear—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Ms. Fontaine:** —properly, Madam Speaker.

So as I was saying, Deputy Speaker—*[interjection]*

**Mr. Deputy Speaker:** Order.

I just want to remind everyone for heckling, I do need to hear the person speaking.

**Ms. Fontaine:** Miigwech, Deputy Speaker. That's very kind of you. I appreciate that.

As I was saying, Deputy Speaker, our caucus, our entire NDP caucus was in Dauphin when this very shocking announcement was made to employees that had absolutely no clue. They had no clue, they had no time to prepare themselves. They were invited to a meeting at 11 o'clock and just—*[interjection]*

**Mr. Deputy Speaker:** Order.

**Ms. Fontaine:** —dropped the bomb on them, Deputy Speaker.

We spent the next couple of days, as I indicated, meeting with Dauphin Manitobans to hear their concerns, and since then, have attempted in the way that we are able to, as opposition members, to be able to support families, to support workers, but also to support Manitobans who are in conflict with the law and find themselves in a tug-of-war with the Premier in his plan for austerity and every cut that he has made thus far, and they are now being forced to go further and further away from their community supports and their family supports.

So, Deputy Speaker, as the critic for Justice, it's important that we should have had some information to be able to share with constituents that have reached out to us in respect of this decision. I would be—I would suggest that it's fair to suggest that the government failing to consult with stakeholders is—*[interjection]* Sorry, again, I know that members opposite are anxious, and I think the reason why that they're anxious is because they're wanting me to speak up on behalf of them, because I know that they do not believe in the decision that was made in respect of Dauphin and the impact that it has had on Dauphin

families and, again, Manitobans who are in conflict with the law.

We know that, certainly, families of those that are in conflict with the law are concerned about their loved ones' ability to access program and rehabilitation services to be able to fully reintegrate into their communities and into Manitoba as a result of being moved further away.

I think at this point, Deputy Speaker, it would be important to note that those folks that certainly were not consulted by this government—I mean, again, I want to put it on the record that the Premier (Mr. Pallister) and the Minister of Justice (Mr. Cullen) failed to do any consultations or give any heads-up to workers. They certainly did not—

**Mr. Deputy Speaker:** Order. I just want to remind the member that, with the greatest respect, that the member should be focusing on the privilege—their privilege House has been breached, privileges such as freedom of speech; freedom of—from arrest of civil action; exception to jury duty; freedom of obstruction or intimidation or dealing with the rights of the House as a collective, including the regulation of internal affairs of the House; the authority to maintain or attendance of service of its members; or the power of—to discipline, the right to institute inquiries and to call witnesses and demand papers; the right to administrate oaths of witnesses and the rights to publish papers.

These are some of the—that should be raised when trying to prove a prima facie breach of privilege has occurred, rather than debating the policy issues.

The honourable member for St. Johns (Ms. Fontaine).

**Ms. Fontaine:** Miigwech, Deputy Speaker, for your excellent counsel. I would offer, for your submission, that this is a prima facie case of privilege because of the Pallister government's conduct and that it interfered with my ability to advocate for the people of Dauphin and provide a meaningful solution to the closure of the Dauphin correctional facility.

Deputy Speaker, further to that, the Pallister government's conduct also interfered with the people of Dauphin's ability to judge the merit of this Pallister government and certainly judge the merit of the decision to close the Dauphin Correctional Centre.

Deputy Speaker, in laying out my case in respect of this matter of privilege, I would also suggest that the lack of information and the lack of communication

prior to the announcement, as I have previously stated in my preamble, therefore 'intervened'—interfered with my ability to fulfill my parliamentary duties, and that is, quite simply, to present the people of Manitoba the information relevant to said closure and certainly to hold the Pallister government to account.

\* (16:40)

Deputy Speaker, it's important to note that in respect of this lack of information and lack of communication it is a fact that there was no consultation—no consultation or discussion with Manitobans who are currently, or who at the time were housed in the Dauphin correctional facility and how that would impact on their own lives as folks that are incarcerated in the Dauphin correctional facility. There was no consultation. There was no discussion with folks who are at the mercy, who are really, really at the mercy of the Premier's whims, and at the mercy of the Minister of Justice's ability to carry out the whims of his boss.

So, Deputy Speaker, it does not allow for me to be able to do my job as the critic for Justice in respect of particularly those Manitobans who are in conflict with the law and were housed at the Dauphin Correctional Centre. There was no information. There was no communication.

Deputy Speaker, before I go on without—with laying the facts of this matter of privilege, I want to point out that the Supreme Court gives helpful guidance that we ought to consider here as to whether or not a question of privilege exists. In its important decision known as *Vaid* [*phonetic*]-*Vaid*—I've been corrected. Thank you. Thank you to the Clerk.

Justice Ian Binnie wrote for the Court and found that, and I quote, Deputy Speaker: legislative bodies created by the Constitution Act of 1867 do not constitute enclaves shielded from the ordinary law of the land. End quote.

Deputy Speaker, the framers of the constitution and Canadian parliamentarians in passing the Parliament of Canada Act thought it right—thought it was right to use the House of Commons at 'Westminster' as the benchmark for parliamentary privilege in Canada.

So, therefore, Deputy Speaker, accordingly, to determine whether a privilege exists for the benefit of the Senate or House of Commons, or their members, a court must decide whether the category or scope of the claimed privilege has been 'authoritatively' established in relation to our own Parliament and to



the House of Commons at 'Westminster'. If so, the claim to privilege ought to be accepted by the court. However, if the existence and the scope of the privilege have not been authoritatively established, the court will be required to test the claim against the doctrine of necessity which, as I'm sure you are well aware, and as the House is well aware, this is the foundation of all parliamentary privilege.

In such a case, in order to sustain a claim of privilege, the Assembly or members seeking its immunity must show that the sphere of activity for which privilege is claimed, it's so closely and directly connected with the fulfillment of the—by the Assembly or its members, of their functions as a legislative or deliberative body, including the Assembly's work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the Assembly and its members to do their legislative work with dignity and efficiency.

Once a claim to privilege is made out, the Court will not inquire into the merits of its exercise of any particular incident—instance. Pardon me, Deputy Speaker.

Certainly, Deputy Speaker, it could be argued that this is helpful, but it clearly raises the question: what is the doctrine of necessity? And I know that that is something that every member in this House contemplates late at night. I understand that that's correct and so let's continue with that.

The court continued, and I quote: Parliamentary privilege is defined by the decree of autonomy necessary to perform Parliament's constitutional function. Sir Erdstein [*phonetic*] May's leading text on the subject defines parliamentary privilege as the sum of the particular rights enjoyed by each House collectively as a constituent part of the High Court of Parliament and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals, end quote.

So, Deputy Speaker, let me just provide a bit of evidence for your deliberations in this matter of privilege to explain the breaches of my privileged.

On May 5th, 2020, documents were tabled in the House which showed that the government, the Pallister government, the Premier (Mr. Pallister) or the minister did no consultations as of September 2019 with, to name a couple of stakeholders, the mayor and council of Dauphin, indigenous communities, indigenous leadership, indigenous

citizens of Manitoba affected by the decision, employees of Dauphin correctional facility or families of Manitobans in conflict of—with the law who were currently residing at the Dauphin Correctional Centre.

Perhaps, Deputy Speaker, the only folks who were consulted in the closure of the Dauphin correctional facility was actually the member for Dauphin (Mr. Michaleski) himself, as probably a means of heads-up and I perhaps would suggest to the House that it also too could probably not be constructed as consultation. I would suggest and one could only imagine that it was a mere dictate from the Premier to the member for Dauphin that this was about to happen.

Deputy Speaker, the closure of Dauphin Correctional Centre is a huge, massive decision and change for the city and the Parkland Region as a whole. That is why it is quite concerning and problematic that there was no consultation done regarding the decision to close the Dauphin correctional facility.

At no—nor was there any indication that such a decision was coming down the pipe and certainly the decision to close the Dauphin correctional facility was not anywhere noted or spoken during the 2019–September 2019 provincial election.

Deputy Speaker, in my role as critic for Justice, I have scoured all the information that came out from the PC Party in respect of their platform and in respect of any documents, media scrums, media releases, anything like that and I could not find one single mention in the September 2019 information or discourse that was disseminated to Manitobans about the closure of the Dauphin correctional facility; nowhere. I think that that is important to note in laying out the evidence and the arguments in the breach of my matter of privilege.

\* (16:50)

Simply stated, Deputy Speaker, Manitobans did not know that this was coming. Citizens of Dauphin did not know that this was coming. And I think that this is the clearest example of the Premier's (Mr. Pallister) willingness to mislead Manitobans on decisions that are being made.

And so, Deputy Speaker, you may be asking why this is concerning. The government—the Pallister government, to be clear—is beginning to establish a very real pattern of failing to adequately consult with Manitobans on major changes that have lasting impacts on the very lives of Manitobans, and

repeatedly, this continues to mislead members of this Manitoba Legislative Assembly and Manitobans.

And, Deputy Speaker, it therefore interferes with my ability to hold this government, to hold the Premier, to hold the Pallister government to account and ensure that decisions are being made for the betterment of all.

Deputy Speaker, I will continue with relevant expert authorities. Maingot defines privilege in part as, and I quote, the necessary immunity that the law provides for Members of Parliament and for members of the legislatures of each of the 10 provinces and two territories in order for these legislators to do their legislative work, end quote. That was on page 12.

So to the question of—and, again, this was derived in the quote that I just noted—necessary in relation to what. Therefore, the answer of necessary to protect legislators in the discharge of their legislative and deliberative functions and the Legislative Assembly's work in holding the Pallister government to account for the conduct of the country's business—to the same effort, Marleau and Montpetit, House of Commons Procedure and Practice, 2000, where privilege is defined as, and I quote, the rights and immunities that are deemed necessary for the House of Commons as an institution, and its members as representatives of the electorate, to fulfill their functions. Deputy Speaker, that quote can be—end quote. And, Deputy Speaker, that quote can be found on page 50. *[interjection]* The member from Concordia loves page 50.

Deputy Speaker, reference may also be made to Bourinot, parliamentary procedure and practice in the domain of Canada, the fourth edition, from 1916. For your information, found on page 37, and I quote: it is obvious that no Legislative Assembly would be able to discharge its duties with efficiency or to assure its independence and dignity unless it had adequate powers to protect itself and its members and officials in the exercise of their functions.

Further, Deputy Speaker, the British Joint Committee report adopted a similar approach when it noted, and I quote, parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members and officers possess to enable them to carry out their parliamentary functions effectively.

Without this protection, members would be handicapped in performing their parliamentary duties and the authority of Parliament itself in confronting

the Executive, and as a forum for expressing the anxieties of citizens would be correspondingly diminished.

And, Deputy Speaker, while the latitude is left to each House of Parliament, such approach to the definition of privilege implies important limits. There is general recognition, for example, that privilege attaches to, and I quote, proceedings in Parliament, end quote.

Nonetheless, Deputy Speaker, as stated in May, the 19th edition from 1976, at page 89, not, and I quote, everything that is done or said within the Chamber during the transaction of business forms part of the proceedings in Parliament. Particular words or acts may be entirely unrelated to any business, which is in course of transaction or is in a more general sense before the House as having been ordered to come before it in due course, end quote, Deputy Speaker.

Thus, in *R. v. Bunting*, in 1885, on page 524, I believe, for example, Deputy Speaker, the Queen's Bench division held that a conspiracy to bring about change in the government by bribing members of the provincial legislature was not in any way connected with a proceeding in Parliament. And, therefore, the court had jurisdiction to try that very offence.

Further, again, Deputy Speaker, in laying out my argument in my breach of privilege in this House, and the ability for me to do my job as the MLA for St. Johns, further May, the 23rd edition—Erskine May, the 23rd edition, refers to an opinion of, and I quote: The Privileges Committee in 1815, that the re-arrest of Lord Cochrane—Lord Cochrane was arrested, apparently—a member of the Commons, in the Chamber—and this is in brackets, the House was not sitting—was not in breach of privilege.

It goes on to state particular words or acts may be—*[interjection]*

**Mr. Deputy Speaker:** Order. Order.

**Ms. Fontaine:** —entirely unrelated to any business being transacted or ordered to come before the House in due course, end quote.

That whole quote about Lord Cochrane can be found on page 116.

The connection, Deputy Speaker, between necessity and the legislative function is also emphasized in the British Joint Committee report.

And, Deputy Speaker, the notes in the British Joint Committee report that the dividing line between

privileged and non-privileged activities of each House is not easy to define. You're going to have a very difficult time in this decision.

But I will suggest that the arguments that I am laying out will move towards our favour. Perhaps the nearest approach to a definition that is the areas in which the courts ought not to intervene extend beyond

proceedings in Parliament, but the privileged areas must be closely and directly connected with proceedings in Parliament. That intervention by the courts could be—

**Mr. Deputy Speaker:** Order.

The hour being 5 p.m., the House is now adjourned and stands adjourned until 1:30 tomorrow.

LEGISLATIVE ASSEMBLY OF MANITOBA

Tuesday, March 17, 2020

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