



**Legislative Assembly
Province of Alberta**

No. 10

VOTES AND PROCEEDINGS

Third Session

Twenty-Fifth Legislature

Wednesday, March 5, 2003

The Speaker took the Chair at 1:30 p.m.

Recognitions

Mr. Lukaszuk, Hon. Member for Edmonton-Castle Downs: University of Alberta Golden Bears on winning a silver medal and Pandas on winning a bronze medal at the 2003 Canadian Interuniversity Sport Volleyball Championships

Mr. Griffiths, Hon. Member for Wainwright: Five recipients of the first annual Queen Elizabeth II Golden Jubilee Citizenship Medals

Mrs. Tarchuk, Hon. Member for Banff-Cochrane: 25th anniversary of Kananaskis Country

Dr. Taft, Hon. Member for Edmonton-Riverview: University of Alberta sports teams as a dominating force in Canadian university sports

Mr. Snelgrove, Hon. Member for Vermilion-Lloydminster: Jean Paré, author, on selling more than 20 million copies of her Company's Coming cookbooks

Mrs. Gordon, Hon. Member for Lacombe-Stettler: Pharmacists Awareness Week, March 3-9, 2003

Dr. Pannu, Hon. Member for Edmonton-Strathcona: Dr. Arthur Mano Bollo-Kamara who passed away on October 27, 2002

Speaker's Statement

The Speaker made a statement in recognition of the 11th anniversary of the election of Mr. McFarland, Hon. Member for Little Bow, as a Member of the Legislative Assembly on March 5, 1992.

Presenting Petitions

Mr. Tannas, Hon. Member for Highwood, presented a petition from 40 Highwood residents urging the Government to reinstate natural gas rebates.

Mr. MacDonald, Hon. Member for Edmonton-Gold Bar, presented a petition from 40 Albertans urging the Government to implement the income recommendations of the 2001 MLA Review Committee on Low Income Programs.

Tabling Returns and Reports

Hon. Dr. Oberg, Minister of Learning:

Letter dated March 5, 2003, from Hon. Dr. Oberg, Minister of Learning, to Dave Caron, Board Chairman, Greater St. Albert Catholic Schools, commenting on a letter sent to parents in the Greater St. Albert Catholic School Division regarding funding shortfalls

Sessional Paper 108/2003

Mr. Tannas, Hon. Member for Highwood:

Petition signed by 507 Nanton residents requesting the Government give priority to enforcing a regulated cost for utilities that would be affordable to all Alberta residents

Sessional Paper 109/2003

Mr. Cenaiko, Hon. Member for Calgary-Buffalo:

504 letters, undated, from North Central Edmonton residents to Mr. Cenaiko, Hon. Member for Calgary-Buffalo, expressing support for Bill 206, Traffic Safety (Seizure of Vehicles in Prostitution Related Offences) Amendment Act, 2003

Sessional Paper 110/2003

Petition signed by 261 Edmonton residents expressing support for Bill 212, Traffic Safety (Seizure of Vehicles in Prostitution Related Offences) Amendment Act, 2002

Sessional Paper 111/2003

Mr. MacDonald, Hon. Member for Edmonton-Gold Bar:

Copy of a petition signed by 605 Albertans urging the Government to reinstate natural gas rebates

Sessional Paper 112/2003

Graph entitled "Deregulation, Unplugged" prepared by the Alberta Liberal Caucus, setting out Alberta actual electricity prices versus prices based on the Liberal Caucus low-cost plan from 2000 to 2003

Sessional Paper 113/2003

Ms Blakeman, Hon. Member for Edmonton-Centre:

Letter, undated, from Sharon Babish of Edmonton to Ms Blakeman, Hon. Member for Edmonton-Centre, expressing concern regarding increased utility, car registration, telephone, and television cable costs

Sessional Paper 114/2003

Mr. Bonner, Hon. Member for Edmonton-Glengarry:

Letter dated November 3, 2001, from Barry Milne of Calgary to Mr. Herard, Hon. Member for Calgary-Egmont, requesting assistance in dealing with an injury claim with the Workers' Compensation Board

Sessional Paper 115/2003

Document, undated, entitled "WCB (Workers' Compensation Board) Benefit Payments Listing, Subject: MILNE Barry/claim #365 2906"

Sessional Paper 116/2003

Fax dated January 2, 2002, from Debbie Shenkarek, Program Analyst, Public Security Division, Department of the Solicitor General, to Wayne Rhyason, Fraud Investigations, Workers' Compensation Board, regarding an alleged Workers' Compensation Board bribe claim made by Barry Milne

Sessional Paper 117/2003

Dr. Pannu, Hon. Member for Edmonton-Strathcona:

Report of the Standing Committee on Procedure and House Affairs, House of Commons, regarding a prima facie case of privilege in the House of Commons dated March 19, 2001

Sessional Paper 118/2003

Letter dated January 21, 2003, from Mark Asbell, Chair, Alberta Labour Relations Board, unaddressed, providing an update on the Labour Relations Board review of standard bargaining units in health care

Sessional Paper 119/2003

Mr. Mason, Hon. Member for Edmonton-Highlands:

Letter, undated, unaddressed, with writer's name blanked out, expressing concern regarding increased natural gas and electricity rates

Sessional Paper 120/2003

Mr. Horner, Hon. Member for Spruce Grove-Sturgeon-St. Albert:

Letter dated February 28, 2003, from Dave Caron, Chairman, Board of Trustees, Greater St. Albert Catholic Schools, to parents in the Greater St. Albert Catholic School Division regarding funding shortfalls

Sessional Paper 121/2003

Hon. Mr. Kowalski, Speaker of the Legislative Assembly:

E-mail message dated March 4, 2003, from Jack Janssen, Special Advisor, Department of Justice and Attorney General, to Bev Alenius, Executive Assistant to the Speaker, providing a chronology of events surrounding the March 3, 2003 media briefing on Bill 19, Gas Utilities Statutes Amendment Act, 2003

Sessional Paper 122/2003

Letter dated March 4, 2003, from Dr. Pannu, Hon. Member for Edmonton-Strathcona, to Hon. Mr. Kowalski, Speaker of the Legislative Assembly, regarding the question of privilege raised by Dr. Pannu on March 4, 2003, attaching a copy of the March 19, 2001 privilege ruling of the Speaker of the House of Commons and the Report of the Standing Committee on Procedure and House Affairs concerning the same matter

Sessional Paper 123/2003

E-mail message dated March 5, 2003, from Charlotte Moran, Executive Assistant, Department of Energy, to Bev Alenius, Executive Assistant to the Speaker, attaching a copy of the overhead presentation used during the March 3, 2003 media briefing on Bill 19, Gas Utilities Statutes Amendment Act, 2003

Sessional Paper 124/2003

Letter dated March 5, 2003, from Hon. Mr. Hancock, Government House Leader, to Hon. Mr. Kowalski, Speaker of the Legislative Assembly, providing observations concerning the question of privilege raised on March 4, 2003 by Dr. Pannu, Hon. Member for Edmonton-Strathcona, and attaching a copy of the PowerPoint presentation used during the March 3, 2003 media briefing on Bill 19, Gas Utilities Statutes Amendment Act, 2003

Sessional Paper 125/2003

Speaker's Ruling - Point of Privilege

The Chair is now prepared to rule on the purported question of privilege that was raised by the Leader of the Third Party yesterday.

The Chair would like to note that in addition to the submissions that were put forward on this matter yesterday in the House, both the Leader of the Third Party and the Government House Leader have taken advantage of my invitation and submitted supplementary material to my office prior to 10 a.m. this morning. In addition, the Department of Energy submitted some information to my office about what transpired at the briefing all of which I have already tabled for the benefit of Members.

As a preliminary matter, the Chair notes that the Leader of the Third Party provided written notice of his question of privilege to my office yesterday at 10:25 a.m., thereby fulfilling the two hour notice requirement under Standing Order 15(2). There was no dispute by the Government House Leader yesterday about this question being raised at the earliest possible opportunity.

The Leader of the Third Party has submitted that there has been a contempt of this Assembly. The Chair would like to remind Members that breaches of privilege and contempts of the Assembly are treated in the same manner and therefore, the process outlined in Standing Order 15 applies.

The Chair quotes from page 108 of the 22nd edition of Erskine May:

“Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.”

The Chair has carefully reviewed the discussion in yesterday’s Hansard and the material provided this morning. The material facts in this matter are as follows:

There was a media briefing on Bill 19, Gas Utilities Statutes Amendment Act, 2003, that took place in this building on Monday, March 3 at 11 a.m. The media advisory for this briefing confirms that only media were invited and that Department officials were available to provide information and answer questions regarding Bill 19. The material provided to my office this morning from the Government indicates that there were no documents distributed to the media at the briefing but information about the contents of the Bill was provided.

Bill 19 appeared on notice for the first time on the Order Paper for Thursday, February 27. This Bill was introduced and received First Reading yesterday, March 4.

The Chair notes that the sponsor of this Bill is the Member from Innisfail-Sylvan Lake. However, this Bill is clearly a Government Bill and was moved to Government Bills and Orders on the Order Paper by resolution of this Assembly yesterday during the routine. Moreover, the February 26 direction to the Clerk’s Office to place this Bill on notice in the Order Paper came from an official at Executive Council, not a Private Member.

The Leader of the Third Party advised this House yesterday that on Monday at noon, the media questioned him on information relating to Bill 19. To summarize his argument, the Leader of the Third Party asserts that his rights as a Member of this Assembly were interfered with in a serious way as he was not privy to the same information as the members of the media who had attended the briefing.

Honourable Members, it is the Speaker's role to find whether a case brought by a Member constitutes a prima facie question of privilege. This is a threshold role. The Speaker does not determine whether there is actually a breach of privilege or contempt as that is up to the Assembly. As Joseph Maingot states at page 221 in his work *Parliamentary Privilege in Canada* (2nd edition):

“While the Speaker may find that a prima facie case of privilege exists and give the matter precedence in debate, it is the House alone that decides whether a breach of privilege or a contempt has occurred, for only the House has the power to commit or punish for contempt.”

In his presentation yesterday, the Leader of the Third Party referred extensively to the March 19, 2001 ruling by Speaker Milliken of the Canadian House of Commons at pages 1840-1 of Commons Debates for that day, that there had been a prima facie contempt of the House when the Federal Minister of Justice provided a technical briefing to the media about a Bill that was on notice and introduced following the briefing. That case is very, very similar to the case presented by the Honourable Third Party Leader yesterday. The only differences seem to be that in the House of Commons case, the briefing was the same day as the Bill was introduced and in the Bill 19 situation, the briefing was the day before introduction, and that the Bill here was introduced by a Private Member rather than a Minister.

In essence, Speaker Milliken found that once a Bill is on notice, media briefings are not allowed. To quote briefly from his ruling:

“The convention of the confidentiality of Bills on notice is necessary, not only so that Members themselves may be well informed, but also because of the pre-eminent role which the House plays and must play in the legislative affairs of the nation.”

Following his ruling, a motion was passed referring the matter to the House Standing Committee on Procedure and House Affairs which found that there had been a contempt of the House. The matter was effectively resolved in the Committee when the Minister apologized and indicated that she had instructed the Department not to provide advance copies of Bills, other materials or technical briefings until after a Bill was introduced.

As the Chair indicated yesterday, and as the Government House Leader pointed out in his written submission this morning, there is a March 7, 2000 ruling by this Speaker where a similar issue was raised about a media briefing on what was then Bill 11 prior to the introduction of the Bill. Based on the precedents that existed at that time, the Chair found that there was not a prima facie question of privilege.

Of course, since that time, there is the ruling by Speaker Milliken of the Canadian House of Commons. The Chair wants to make it very, very clear that the Legislative Assembly of the Province of Alberta is not bound by decisions from the Canadian House of Commons or any other Assembly in Canada. This would be contrary to the nature of Canada's federal system. However, how could this Chair hold that the Canadian House of Commons and its Members are to be accorded greater respect and dignity than the Members of this Assembly? The role of the Chair cannot be to lessen the dignity and respect of this Assembly or its Members. This Chair agrees entirely with Speaker Milliken when he states:

“To deny to Members information concerning business that is about to come before the House, while at the same time providing such information to media that will likely be questioning Members about that business, is a situation that the Chair cannot condone.”

The Chair would also like to cite from the final paragraph of the House of Commons' Standing Committee Report where it states, and I quote:

“The rights of the House and its Members in this role are central to our constitutional and democratic government. This case should serve as a warning that our House will insist on the full recognition of its constitutional function and historic privileges across the full spectrum of government.”

Accordingly, the Departmental briefing provided to the media concerning Bill 19 when the Bill was on notice but before it was introduced constitutes a prima facie question of privilege as it offends the dignity and authority of the Assembly. As the Chair has noted on many previous occasions, the principle of ministerial responsibility holds that Ministers are responsible for the actions of their officials and in turn, are responsible to the Assembly for those acts. Strictly speaking, this constitutes a prima facie contempt of the Assembly, although it is treated in the same way as a breach of privilege.

The Chair would like to also briefly comment on the next steps in this process and make some comments about what this ruling does not say.

First, the Chair is not ruling that consultations on proposed legislation are out of order. This is not in any way the intention of the Chair's ruling nor the House of Commons' ruling nor the Committee that reported to the House of Commons. The Standing Committee on Procedure and House Affairs stated at page 4 of its report that there are often extensive consultations at the policy development and legislative drafting stages of Bills which are exclusively within the purview of the Government. The Committee found that the House's interest arises when the notice of intention to introduce the Bill is given to the appropriate House officer.

Furthermore, the Committee found that the conventions concerning lock-ups for the Budget or the Auditor General's report were not affected.

Yesterday, the Government House Leader referred to a practice of the sharing of Bills with Opposition Members before introduction. The Committee addressed that issue too by saying that the adoption of a policy on briefings should not prevent the provision of courtesy copies of Government Bills on a confidential basis to Opposition critics shortly before their introduction.

Of course, these are matters that can be considered by a Committee of the Legislative Assembly of Alberta if the appropriate motion is moved and passed by the Assembly.

I would expect that the Leader of the Third Party would put on notice a motion to refer this matter to the Standing Committee on Privileges and Elections, Standing Orders and Printing.

Regardless of the disposition of that motion, the Chair wants to strongly encourage Members to find a mechanism to address the broader issue of how inclusion in this technological age can be accomplished without violating the ancient privileges and rights of the Assembly. Honourable Members should be aware that as parliamentarians we have a duty to keep our practices and procedures in step with the developments in society. Committee consideration would provide Members with an opportunity to consider these issues. Some years ago, there was a Special Select Committee on Parliamentary Reform to consider certain issues of procedure such as the sub judice rule. Perhaps that Committee could be reconstituted or the matter referred to the Standing Committee on Privileges and Elections, Standing Orders and Printing. The Chair wishes to stress that this is a matter of concern to all Members not just one caucus.

I would now refer the Leader of the Third Party to Standing Order 15(6) which provides for the next step in this process, namely, that a Member may give notice, not later than the conclusion of tomorrow's sitting, of a motion to deal with the matter further.

Notice of Motion Under Standing Order 15(6)

Mr. Mason, Hon. Member for Edmonton-Highlands, on behalf of Dr. Pannu, Hon. Member for Edmonton-Strathcona, gave oral notice of his intention to move that the matter of the question of privilege raised on March 4, 2003 by the Member for Edmonton-Strathcona regarding the Energy Ministry media briefing on Bill 19, Gas Utilities Statutes Amendment Act, 2003, prior to it being introduced in the Legislature, be referred to the Standing Committee on Privileges and Elections, Standing Orders and Printing to review the procedure to be followed in such cases, in light of the Speaker's ruling of March 7, 2000, and the ruling of Speaker Milliken of the House of Commons of March 19, 2001 and the subsequent report of the House of Commons Standing Committee on Procedure and House Affairs.

Mr. Mason indicated he was prepared to deal with the motion either today or the following day. At Mr. Speaker's request, Hon. Mr. Hancock indicated he would prefer to deal with the issue the following day.

The Speaker recognized Hon. Mr. Smith who apologized to Dr. Pannu indicating he had absolutely not intended to obstruct or impede the work of the Assembly or that of the Member.

The Speaker recognized Dr. Pannu who agreed to deal with the motion the following day.

ORDERS OF THE DAY

Government Bills and Orders

Third Reading

The following Bill was read a Third time and passed:

Bill 17 Appropriation (Supplementary Supply) Act, 2003 (\$) — Hon. Mrs. Nelson

Second Reading

On the motion that the following Bill be now read a Second time:

Bill 3 Electric Utilities Act — Mr. Knight

Debate continued on the amendment introduced by Dr. Pannu, Hon. Member for Edmonton-Strathcona, on March 4, 2003, that the motion be amended by deleting all the words after "that" and substituting the following:

Bill 3, Electric Utilities Act, be not now read a Second time because the Legislative Assembly believes that it will cause inefficiency and confusion in the electricity production and delivery system, and increase costs for Alberta consumers.

The question being put, the amendment was defeated. With Hon. Mr. Kowalski in the Chair, the names being called for were taken as follows:

For the amendment: 5

Blakeman
Bonner

Mason
Massey

Pannu

Against the amendment: 46

Abbott	Haley	Nelson
Amery	Hancock	Oberg
Calahasen	Hlady	Pham
Cao	Hutton	Rathgeber
Cardinal	Jablonski	Renner
Coutts	Jacobs	Shariff
Danyluk	Klapstein	Smith
DeLong	Knight	Stelmach
Doerksen	Kryczka	Strang
Ducharme	Magnus	Tannas
Dunford	Mar	Taylor
Gordon	Marz	VanderBurg
Goudreau	Maskell	Vandermeer
Graham	McClellan	Woloshyn
Graydon	McFarland	Yankowsky
Griffiths		

The question for Second Reading of Bill 3 being immediately put, the motion was agreed to.

The following Bill was read a Second time and referred to Committee of the Whole:

Bill 3 Electric Utilities Act — Mr. Knight

Committee of the Whole

According to Order, the Assembly resolved itself into Committee of the Whole, and the Speaker left the Chair.

(Assembly in Committee)

And after some time spent therein, the Acting Speaker assumed the Chair.

The following Bills were reported:

Bill 4 Alberta Personal Income Tax Amendment Act, 2003 — Mr. Renner

Bill 5 Line Fence Amendment Act, 2003 — Mr. Goudreau

Bill 7 Real Estate Amendment Act, 2003 — Mr. Graydon

Bill 8 Health Foundations Act Repeal Act — Hon. Mr. Mar

Bill 9 Mines and Minerals Amendment Act, 2003 — Hon. Mr. Cardinal

Adjournment

On motion by Hon. Mr. Hancock, Government House Leader, the Assembly adjourned at 5:15 p.m. until 8:00 p.m.

WEDNESDAY, MARCH 5, 2003 — 8:00 P.M.

Government Bills and Orders

Committee of the Whole

According to Order, the Assembly resolved itself into Committee of the Whole, and the Deputy Speaker left the Chair.

(Assembly in Committee)

And after some time spent therein, the Deputy Speaker resumed the Chair.

The following Bills were reported:

Bill 11 Auditor General Amendment Act, 2003 — Mr. Yankowsky

Bill 13 Government Organization Amendment Act, 2003 — Ms DeLong

Progress was reported on the following Bill:

Bill 3 Electric Utilities Act — Mr. Knight

Adjournment

On motion by Hon. Mr. Hancock, Government House Leader, the Assembly adjourned at 9:39 p.m. until Thursday, March 6, 2003, at 1:30 p.m.

Hon. Ken Kowalski,
Speaker

Title: Wednesday, March 5, 2003