



**Legislative Assembly  
Province of Alberta**

No. 50

**VOTES AND PROCEEDINGS**

Third Session

Twenty-Fifth Legislature

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Monday, November 24, 2003

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

**Ministerial Statements**

Hon. Mr. Zwozdesky, Minister of Community Development, made a statement regarding the Molson Canadian Heritage Classic, held on November 22, 2003 in Edmonton, bringing together Edmonton Oilers and Montreal Canadiens alumni followed by the current Edmonton Oilers and Montreal Canadiens for the first ever outdoor National Hockey League game.

Mr. Bonner, Hon. Member for Edmonton-Glengarry, commented on the statement.

**Recognitions**

Mr. Goudreau, Hon. Member for Dunvegan: Mary Gervais, recipient of the Editor's Choice Award for poetry sponsored by the International Library of Poetry for her poem "River Bank Memories"

Mr. Lord, Hon. Member for Calgary-Currie: Jeth Weinrich and Braun Farnon, owners of Red Motel Pictures, a Calgary video production company, on their international success as commercial and movie producers

Mr. Tannas, Hon. Member for Highwood: Pam Irving of Millarville Community School, recipient of the Governor General's Award of Excellence for her work in teaching Canadian history to elementary students

Mr. MacDonald, Hon. Member for Edmonton-Gold Bar: Bernadette Vermaas, recipient of the Carnegie Hero Fund Commission bronze medal, honouring her for rescuing Ljiljana Samuels from being physically assaulted

Mr. Bonner, Hon. Member for Edmonton-Glengarry: Grant Fuhr, recent inductee into the Hockey Hall of Fame, whose jersey was recently retired by the Edmonton Oilers Hockey Club, and who participated in the Molson Canadian Heritage Classic on November 22, 2003 in Edmonton

Mr. Magnus, Hon. Member for Calgary-North Hill: Off-duty fire fighters Mike Hazel and Mike Tessier, and City of Edmonton Station 6 fire fighters for their efforts to free Ivan Clancy from his car which was submersed in water during a recent blizzard

Ms Kryczka, Hon. Member for Calgary-West: "Dream Keeper," an aboriginal film shot in Alberta and scheduled to appear on network television

### **Presenting Reports by Standing and Special Committees**

Mrs. Tarchuk, Chair, Select Special Ethics Commissioner and Ombudsman Search Committee, presented the following report:

Report of the Select Special Ethics Commissioner and Ombudsman Search Committee - Part Two, dated June 10, 2003, recommending the appointment of G.B. (Gord) Button as Ombudsman

Sessional Paper 677/2003

### **Presenting Petitions**

Mr. Masyk, Hon. Member for Edmonton-Norwood, presented a petition from 828 Albertans requesting the Government regulate energy corporations in order to lower the prices of natural gas and electricity.

### **Introduction of Bills (First Reading)**

Notice having been given:

Bill 53 Insurance Amendment Act, 2003 (No. 2) — Mr. Renner

Bill 218 Financial Summit Act — Mr. Cao

Bill 224 Long-Term Care Ombudsperson Act — Ms Carlson

Bill 229 Cost of Living Protection Statutes Amendment Act, 2003 — Dr. Pannu

On motion by Hon. Mr. Hancock, Government House Leader, the following Bill was placed on the Order Paper under Government Bills and Orders:

Bill 53 Insurance Amendment Act, 2003 (No. 2) — Mr. Renner

## Tabling Returns and Reports

Mrs. Ady, Hon. Member for Calgary-Shaw:

Petition signed by 165 Albertans expressing disagreement with the Government's handling of the long-term care accommodation rate increase

Sessional Paper 678/2003

Mrs. O'Neill, Hon. Member for St. Albert:

Letter dated November 7, 2003, from Sandra R. Lowe, B.Ed., to Mrs. O'Neill, Hon. Member for St. Albert, commenting on some of the Learning Commission's recommendations

Sessional Paper 679/2003

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

Letter dated July 16, 2003, from Jerry Pitts, Chairman, COSA (Coalition of Seniors Advocates), to Hon. Mr. Klein, Premier, expressing concern regarding the Government's policies surrounding seniors, homeless people, and the disabled population

Sessional Paper 680/2003

Letter dated November 24, 2003, from Melanee Thomas, Executive Director, CAUS (Council of Alberta University Students), and Brett Bergie, Provincial Director, ACTISEC (Alberta College and Technical Institute Student Executive Council), to Hon. Dr. Oberg, Minister of Learning, commenting on proposed amendments to Bill 43, Post-secondary Learning Act

Sessional Paper 681/2003

Ms Carlson, Hon. Member for Edmonton-Ellerslie, on behalf of Dr. Nicol, Hon. Leader of the Official Opposition:

Letter, undated, from Doreen Purcell of Thorsby to Dr. Nicol, Hon. Leader of the Official Opposition, expressing concern regarding the current contract negotiations between the Provincial Health Authorities of Alberta and the United Nurses of Alberta

Sessional Paper 682/2003

Ms Carlson, Hon. Member for Edmonton-Ellerslie:

Letter dated October 8, 2003, from Sandra Brayer of Edmonton to Ms Carlson, Hon. Member for Edmonton-Ellerslie, expressing concern regarding the current contract negotiations between the Provincial Health Authorities of Alberta and the United Nurses of Alberta

Sessional Paper 683/2003

Dr. Massey, Hon. Member for Edmonton-Mill Woods:

4 recent letters from registered nurses Denise Joel of Fort Macleod, and Gerry Laing, Tracy Mitchell, and Linda Brown, all of Claresholm, to Hon. Mr. Coutts, Minister of Government Services, expressing concern regarding the current contract negotiations between the Provincial Health Authorities of Alberta and the United Nurses of Alberta, and in particular the recommendation granting the Provincial Health Authorities the ability to reassign nurses to different facilities

Sessional Paper 684/2003

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

E-mail message dated September 25, 2003, from Barry Wiens of Calgary to several Members of the Legislative Assembly expressing disagreement with the structure of natural gas rebates

Sessional Paper 685/2003

3 recent letters from Karen L. Wolgemuth, Don Cytko, and Sheila Coulser, all of Edmonton to Mr. MacDonald, Hon. Member for Edmonton-Gold Bar, expressing concern regarding the current contract negotiations between the Provincial Health Authorities of Alberta and the United Nurses of Alberta, and in particular the recommendation granting the Provincial Health Authorities the ability to reassign nurses to different facilities

Sessional Paper 686/2003

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

2 recent letters from registered nurses Diana Choma of Edmonton and Anita Ashmore of Thorsby to Mr. Bonner, Hon. Member for Edmonton-Glengarry, expressing concern regarding the current contract negotiations between the Provincial Health Authorities of Alberta and the United Nurses of Alberta

Sessional Paper 687/2003

Dr. Taft, Hon. Member for Edmonton-Riverview:

Letter dated October 27, 2003, from Gerald Zagrosh, President, Pain Elimination and Tissue Regeneration Clinic, to Dr. Taft, Hon. Member for Edmonton-Riverview, and attached document guaranteeing the Clinic's ability to eliminate hip and knee pain

Sessional Paper 688/2003

E-mail message dated October 9, 2003, from Karen Ferrari to Hon. Dr. Oberg, Minister of Learning, reiterating and expanding on comments made by Ms Ferrari during a meeting with Dr. Oberg on October 9, 2003, concerning the Learning Commission's Report

Sessional Paper 689/2003

E-mail message dated May 20, 2003, from Dr. Adrienne Wiebe of Edmonton to Hon. Mr. Klein, Premier, expressing concern regarding the long-term impact of the Government's policies and programs in the areas of education, health care, and social services

Sessional Paper 690/2003

E-mail message dated May 17, 2003, from Susan Hannon of Edmonton to Hon. Mr. Klein, Premier, expressing concern regarding a lack of education funding for primary and secondary schools

Sessional Paper 691/2003

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

E-mail message dated November 22, 2003, from Kevin Sommer to Hon. Mr. Smith, Minister of Energy, urging the Government to regulate the natural gas and power industries

Sessional Paper 692/2003

Mrs. Jablonski, Hon. Member for Red Deer-North:

146 recent letters from Albertans expressing support for the restoration of the Michener Administration Building which was recently damaged by fire

Sessional Paper 693/2003

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

60 letters from Edmonton residents and 86 letters from Calgary 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 694/2003

### **Speaker's Ruling - Point of Privilege**

Honourable Members, the Chair is now prepared to rule on this purported question of privilege raised by the Hon. Member for Edmonton-Riverview.

On November 14, 2003, the Chair received written notice from the Member for Edmonton-Riverview of his intention to raise a purported question of privilege. On November 17, 2003 at 11:15 a.m., the Chair received a signed letter from the Member indicating his intention to raise this matter. The letter indicated that it was copied to the Minister of Infrastructure in conformity with Standing Order 15(2) which provides that a Member wishing to raise a question of privilege must "give written notice containing a brief statement of the question to the Speaker, and if practicable, to a person whose conduct may be called into question at least two hours before the opening of the sitting."

Under Standing Order 15(5) a question of privilege may be raised as soon as the words are uttered or the events occur. The Chair assumes that the Member chose to review the Minister's answers and tablings and presumably did not have that opportunity to raise the matter before the end of the sitting on May 15, 2003, which ended at 4:37 p.m. that day. Neither the Member bringing forward the application nor the Minister addressed whether this matter was raised at the earliest possible opportunity which is one of the grounds under Standing Order 15(6) for the Chair to consider in ruling on a purported question of privilege. Given that there seems to be no dispute on the point, the Chair finds that it was brought forward at the earliest opportunity and that the requirements of Standing Order 15(2) were met.

Before reviewing the particulars of this application, the Chair wants to comment on the procedure for raising questions of privilege. As privilege is the most serious issue that can be raised in this Assembly, the Chair was very lenient with the time taken by both these Members. However, the Chair would like to quote from Marleau and Montpetit's book *House of Commons, Procedure and Practice* at page 125:

“A Member recognized on a question of privilege is expected to be brief and concise in explaining the event which has given rise to the question of privilege and the reasons why consideration of the event complained of should be given precedence over other House business. Generally, the Member tries to provide the Chair with relevant references to the Standing orders, precedents and citations from procedural authorities.”

The Speaker's role is to determine whether there is a *prima facie* question of privilege. It is up to the Assembly to decide whether there is an actual question of privilege. If the Chair finds there is a *prima facie* question of privilege then the usual practice is for someone to move that the matter be referred to the Standing Committee on Privileges and Elections, Standing Orders and Printing that would hear evidence on the matter. When the members of that Committee conclude their work, their report would be submitted to the Assembly and would contain recommendations on what action should be taken. In short, Honourable Members, all the evidence does not have to be presented when the question is first raised in the Assembly.

In this case, there were very few references to precedents or authorities cited by the two main participants. The Chair has ruled three times in approximately the last year and a half on the issue of deliberately misleading the Assembly. The Chair refers to rulings on March 12, and March 20, 2002 found at pages 267 and 465, 466 of *Alberta Hansard* for those days and February 19, 2003 at pages 18 and 19 of *Alberta Hansard*. None of these rulings were referred to by either the Member raising the allegation or by the Minister in his response.

The basis of the Member's purported question of privilege is that the Minister of Infrastructure deliberately misled the Assembly on May 15, 2003 and possibly before, concerning questions about testing for mold at what was formerly the Holy Cross Hospital in the City of Calgary.

In the Member's November 17 letter, he indicates that in response to his questions surrounding the test results for toxic mold at the Holy Cross Hospital, and I quote, "He [the Minister] indicated that he did not have the tests, the document he tabled proved he did."

The exchange is recorded at page 1674 of Alberta Hansard for May 15 which the Chair closely reviewed. On that day the Member asked, in his main question, what the Minister had "learned about his Department's testing for toxic mold at the Holy Cross Hospital." In his response, the Minister made certain allegations against the Member which were the subject of a point of order that day and for which the Minister apologized.

In his first supplementary question, the Member asked the Minister if the Department had "in its possession any lab results that speak of toxic mold at the former Holy Cross Hospital?"

In his response, the Minister quoted from a copy of an e-mail exchange between an official in his Department and Mr. Tang Lee on May 14, 2003. At the request of the Chair, the Minister tabled this e-mail in the House which became Sessional Paper 597/2003. The Minister quoted from part of the e-mail where Mr. Lee said he did not complete the report for the Holy Cross because the decision was made for the Court of Appeal not to move into that building. In the first part the e-mail tabled by the Minister, Mr. Lee indicates that he is enclosing "the report from the microbiological laboratory that was completed on October 24, 2001." The icons at the top of the e-mail indicate two attachments to the e-mail. These attached documents were not tabled on May 15 or in the Minister's tablings on November 19, 2003.

In his final supplementary, the Member asked "Is the Minister saying that his Department has never had possession of positive tests for toxic mold at the Holy Cross hospital? Yes or no?"

The Minister's response was, "Mr. Speaker, once again I will put on the record what has happened. The fact is that when we were looking at locations to house the Court of Appeal, the Court of Appeal asked Mr. Tang Lee to do an air quality test, and clearly, as this shows, the tests were never completed."

As the Chair has indicated in previous rulings, accusing someone of deliberately misleading the Assembly is a very serious allegation that is hardly ever made out. The test is presented well by David McGee in his book *Parliamentary Practice in New Zealand* (2nd edition) which was relied on by the House of Commons Committee that investigated the Eggleton affair and recommended that there was no breach of privilege. McGee says at page 491:

“There are two ingredients to be established when it is alleged that a Member is in contempt on this ground: the statement must, in fact, have been misleading; and it must be established that the Member making the statement knew at the time the statement was made that it was incorrect and that, in making it, the Member intended to mislead the House.”

He goes on to state, “In order to show that a misleading of the House was deliberate, there must be something in the nature of the incorrect statement that indicates an intention to mislead.”

In this case, we heard at some length about different interpretations of test results. The Minister believed he never had “final” test results while the Member insists that the Minister should have advised that he had some test results although on May 15, the Member asked in his final supplementary if the Minister had “positive test results.” The Minister had some documents as demonstrated by the e-mail exchange between an official in his Department and Mr. Lee as the e-mail shows two attachments which are referred to as “the report from the microbiological laboratory”. The Chair notes that it was the Minister himself who tabled this document that seems to be the basis of the allegations by the Member for Edmonton-Riverview. From the Minister’s statement on November 19, he did not find the results conclusive.

As it appears that the Chair is being asked to rule on the basis of what is a “test,” what is a “final test,” what is a “positive test” or what is a “final report” the Chair would like to quote from the March 20, 2002 ruling on a similar allegation involving the Solicitor General found at page 465 of Alberta Hansard for that day:

“It would be difficult for the Chair to conclude that a contempt of the House arises every time a Minister misspeaks or misstates departmental policy. Exactness in all answers to question in Question Period would also require exactness in all questions. This would seem to amount to an impossible standard of perfection that would certainly go beyond the standard expected in any Westminster-style parliament.”

After listening to the Honourable Member and the Minister it was clear to the Chair that the Minister offered responses that the Honourable Member thought did not answer his questions but it seems that there was considerable room for subjective interpretation and ambiguity. Furthermore, as the Member for Edmonton-Rutherford alluded to, these matters are usually a dispute over facts. As Marleau and Montpetit state at page 433:

“In most instances, when a point of order or a question of privilege has been raised in response to an oral question, the Speaker has ruled that the matter is a disagreement among Members over the facts surrounding the issue. As such, these matters are more a question of debate and do not constitute a breach of the rules or of privilege.”



Accordingly, the Chair cannot find that the Minister was trying to deliberately mislead the Assembly. As such, the Chair finds there is no prima facie question of privilege.

Before moving to Orders of the Day, the Chair wants to encourage any Members who bring forward questions of privilege to be succinct in their presentations and be able to advise the House of the authorities they are relying on.

## **ORDERS OF THE DAY**

### **Written Questions**

The following Written Question was accepted:

**WQ15.** Moved by Dr. Taft on behalf of Dr. Nicol:

Why has the number of pheasants released under a lease agreement between the Brooks Pheasant Hatchery and the Pheasants Unlimited, administered by the Department of Infrastructure, not met the 15,000 pheasant release requirement, what are the terms of the lease agreement, and what happens when the lease expires?

The following Written Questions were ordered to stand:

WQ16, WQ17, WQ18, WQ19, WQ20, WQ21, WQ22, WQ23, WQ24, WQ25, WQ26, WQ27, WQ28, WQ29, WQ30.

### **Motions for Returns**

The following Motions for Returns were ordered to stand:

MR15, MR16, MR17, MR18, MR19, MR20, MR22, MR23, MR24, MR25, MR26, MR28, MR29, MR30, MR31, MR32, MR33, MR34, MR35.

### **Public Bills and Orders Other Than Government Bills and Orders**

#### **Third Reading**

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

Bill 206 Traffic Safety (Seizure of Vehicles in Prostitution Related Offences) Amendment Act, 2003 — Mr. Cenaiko

A debate followed.

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

For the motion: 46

Amery	Herard	Melchin
Bonner	Horner	O'Neill
Broda	Jablonski	Ouellette
Cao	Jonson	Pham
Cenaiko	Klapstein	Renner
Coutts	Kryczka	Shariff
Danyluk	Lord	Smith
Dunford	Lukaszuk	Stevens
Forsyth	MacDonald	Strang
Friedel	Mar	Taft
Fritz	Marz	Tannas
Goudreau	Maskell	Tarchuk
Graham	Mason	VanderBurg
Graydon	Masyk	Vandermeer
Haley	McFarland	Zwozdesky
Hancock		

Against the motion: 0

### **Second Reading**

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

Bill 208 Occupiers' Liability (Recreational Users) Amendment Act, 2003 —  
Mr. Danyluk

### **Adjournment**

On motion by Hon. Mr. Zwozdesky, Deputy Government House Leader, that it be called 5:30 p.m., the Assembly adjourned at 5:19 p.m. until 8:00 p.m.

MONDAY, NOVEMBER 24, 2003 — 8:00 P.M.

### **Motions Other Than Government Motions**

**511.** Moved by Mr. Johnson:

Be it resolved that the Legislative Assembly institute an all-party Former Members' Association of the Legislative Assembly to focus on the interests of the membership and the good of parliamentary precinct, history, and process.

A debate followed.

The question being put, the motion was agreed to.

**512.** Moved by Mr. MacDonald:

Be it resolved that the Legislative Assembly urge the Government to strike an all-party committee to study the rising premium rates for automobile insurance, insurance companies hand-picking clients, and increasing insurance claims in the Province.

A debate followed.

Pursuant to Standing Order 8(3), debate adjourned, Dr. Pannu speaking.

## **Government Bills and Orders**

### **Second Reading**

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

Bill 47 Tobacco Tax Amendment Act, 2003 (No. 2) — Hon. Mr. Melchin

A debate followed.

The question being put, the motion was agreed to. With Mr. Tannas in the Chair, the names being called for were taken as follows:

For the motion: 30

Cao	Jonson	Renner
Cardinal	Kryczka	Smith
Coutts	Lord	Snelgrove
Danyluk	Lukaszuk	Stelmach
Ducharme	Maskell	Strang
Friedel	Masyk	Tarchuk
Fritz	McFarland	VanderBurg
Graham	Melchin	Vandermeer
Graydon	Ouellette	Yankowsky
Jacobs	Pham	Zwozdesky

Against the motion: 4

Blakeman	Pannu	Taft
MacDonald		

### **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 47 Tobacco Tax Amendment Act, 2003 (No. 2) — Hon. Mr. Melchin

Bill 49 Public Lands Amendment Act, 2003 — Mr. Ducharme

### **Adjournment**

On motion by Hon. Mr. Zwozdesky, Deputy Government House Leader, the Assembly adjourned at 10:37 p.m. until Tuesday, November 25, 2003, at 1:30 p.m.

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Hon. Ken Kowalski,  
Speaker

Title: Monday, November 24, 2003