



**Legislative Assembly  
Province of Alberta**

No. 45

**VOTES AND PROCEEDINGS**

First Session

Twenty-Sixth Legislature

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Thursday, November 17, 2005

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

**Members' Statements**

Mr. Ducharme, Hon. Member for Bonnyville-Cold Lake, made a statement regarding Alberta Centennial celebrations held in Bonnyville.

Mr. Hinman, Hon. Member for Cardston-Taber-Warner, made a statement regarding federal-provincial relations.

Mr. Danyluk, Hon. Member for Lac La Biche-St. Paul, made a statement regarding National Child Day, November 20, 2005.

Mr. Eggen, Hon. Member for Edmonton-Calder, made a statement regarding the recently announced Mineable Oil Sands Strategy for northern Alberta.

Mr. Lindsay, Hon. Member for Stony Plain, made a statement regarding Bullying Awareness Week, November 14-22, 2005.

Mrs. Mather, Hon. Member for Edmonton-Mill Woods, made a statement regarding the value of foster parents.

## **Presenting Petitions**

Mr. Elsalhy, Hon. Member for Edmonton-McClung, presented a petition from 33 Albertans requesting the Government introduce legislation requiring schools to eliminate fees charged for textbooks, locker rentals, field trips, physical fitness programs, and music classes.

Mr. Bonko, Hon. Member for Edmonton-Decore, presented a petition from 80 Albertans requesting the Government introduce legislation declaring a moratorium on any future expansion of confined feeding operations with a view to phasing out existing operations within the next three years.

Mr. Backs, Hon. Member for Edmonton-Manning, presented a petition from 100 Albertans urging the Government to prohibit the importation of temporary foreign workers in oil sands facilities and on pipelines until several Albertan and Canadian groups have been accessed.

## **Notices of Motions**

Ms Pastoor, Hon. Member for Lethbridge-East, gave oral notice of her intention to move, pursuant to Standing Order 30, that the Assembly adjourn the ordinary business of the Assembly to discuss a matter of urgent importance, namely the failure of the Government to provide the additional resources necessary to reduce the grave and immediate risks to the health and well-being of Alberta's seniors, as identified in the May 2005 Report of the Auditor General on Seniors Care and Programs.

Pursuant to Standing Order 34(2)(a), Hon. Mr. Zwozdesky, Deputy Government House Leader, gave oral notice of the following Written Questions and Motions for Returns to be dealt with Monday, November 21, 2005:

Written Questions: WQ33, WQ34, WQ35, WQ36, WQ37, WQ38, WQ39,  
WQ40, WQ41, WQ42.

Motions for Returns: MR44, MR45, MR46, MR47, MR48.

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

Notice having been given:

Bill 50 Workers' Compensation Amendment Act, 2005 (No. 2) — Mr. Magnus

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

Bill 50 Workers' Compensation Amendment Act, 2005 (No. 2) — Mr. Magnus

## Tabling Returns and Reports

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

E-mail message dated November 15, 2005, from Dale and Anne Watson of Westeros to Mr. Mason, Hon. Leader of the New Democrat Opposition, attaching a copy of an e-mail message to Hon. Ms Evans, Minister of Health and Wellness, expressing opposition to the Government doing business with an American company that promotes private health insurance

Sessional Paper 598/2005

E-mail message dated November 15, 2005, from Rod E. McConnell to Hon. Mr. Klein, Premier, expressing concern over the inaccessibility to information regarding the process used to redesign the health care system

Sessional Paper 599/2005

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

Letter dated November 7, 2005, from Shirley R. Howe, Public Service Commissioner, to Mr. MacDonald, Hon. Member for Edmonton-Gold Bar, regarding Mr. Murray Smith's appointment to the board of directors of TUSK Energy Corporation

Sessional Paper 600/2005

Mr. Eggen, Hon. Member for Edmonton-Calder:

2 Pollution Watch fact sheets, undated, entitled "Alberta Pollution Highlights" and "National Pollution Highlights"

Sessional Paper 601/2005

Pembina Institute news release dated October 26, 2005, entitled "The Government of Alberta's Mineable Oil Sands Strategy Would Write Off 2800 km<sup>2</sup> of Alberta's Boreal Forest"

Sessional Paper 602/2005

Dr. Miller, Hon. Member for Edmonton-Glenora:

E-mail message dated November 8, 2005, from Tracy Foster of Edmonton to Dr. Miller, Hon. Member for Edmonton-Glenora, expressing concern regarding the unfunded liability for teachers' pensions

Sessional Paper 603/2005

Letter dated October 6, 2005, from Carol Anne Inglis to Hon. Mr. Klein, Premier, commenting on prosperity cheques

Sessional Paper 604/2005

Mr. Martin, Hon. Member for Edmonton-Beverly-Clareview:

Edmonton Public Schools memorandum dated September 27, 2005, from A. McBeath, Superintendent of Schools, to the Board of Trustees, providing information on a comparison of library technicians, learning resource personnel, and counsellors in adjoining school districts

Sessional Paper 605/2005

Document, undated, entitled "Labour Legislation Provisions for Settlement of a First Collective Agreement by Arbitration or by the Labour Board"

Sessional Paper 606/2005

Mr. Agnihotri, Hon. Member for Edmonton-Ellerslie:

E-mail message dated October 20, 2005, from Bev Kelso of Edmonton to Mr. Agnihotri, Hon. Member for Edmonton-Ellerslie, expressing disappointment with the lack of drug treatment facilities available to assist her son and suggesting the Government create a ministry to address mental health and addiction issues

Sessional Paper 607/2005

## **Tablings to the Clerk**

Clerk of the Assembly on behalf of Hon. Ms Evans, Minister of Health and Wellness:

Pursuant to the Mental Health Act, cM-13, s 47(2), Alberta Mental Health Patient Advocate Office, 2003-2004 Annual Report

Sessional Paper 608/2005

Pursuant to the Nursing Profession Act, cN-8, s11(2), Alberta Association of Registered Nurses, 2003-2004 Annual Report, with attached Financial Statements for the Year Ended September 30, 2004

Sessional Paper 609/2005

Pursuant to the Opticians Act, cO-9, s9(2), Alberta Opticians Association, Annual Report 2004

Sessional Paper 610/2005

Pursuant to the Dental Disciplines Act, cD-8, s8(4), Alberta Dental Hygienists' Association, 2004 Annual Report

Sessional Paper 611/2005

Pursuant to the Pharmaceutical Profession Act, cP-12, s7(4), Alberta College of Pharmacists, Annual Report 2004-2005

Sessional Paper 612/2005

Pursuant to the Health Professions Act, cH-7, s4(2):

College of Alberta Denturists, Annual Report 2004

Sessional Paper 613/2005

Alberta College of Speech-Language Pathologists and Audiologists, 2004 Annual Report

Sessional Paper 614/2005

Alberta College of Optometrists, Annual Report 2004  
 Sessional Paper 615/2005

Pursuant to the Regional Health Authorities Act, cR-10, s14(3), Alta.  
 Reg. 286/94, Alberta Mental Health Board, 2004/05 Annual Report  
 Sessional Paper 616/2005

Pursuant to the Regional Health Authorities Act, cR-10, s14(3):

Aspen Regional Health, 2004-2005 Annual Report  
 Sessional Paper 617/2005

Peace Country Health, Annual Report 2004-2005  
 Sessional Paper 618/2005

Calgary Health Region, 2004-2005 Annual Report  
 Sessional Paper 619/2005

Capital Health, Annual Report 2004-2005  
 Sessional Paper 620/2005

East Central Health, Annual Report 2004-2005  
 Sessional Paper 621/2005

Palliser Health Region, Annual Report 2004-2005  
 Sessional Paper 622/2005

Northern Lights Health Region, Annual Report 2004/2005  
 Sessional Paper 623/2005

David Thompson Health Region, Annual Report 2004-2005  
 Sessional Paper 624/2005

Chinook Health Region, Annual Report 2004-2005  
 Sessional Paper 625/2005

Clerk of the Assembly on behalf of Hon. Ms Evans, Minister of Health and Wellness:

Alberta Cancer Board, Annual Report 2004-05  
 Sessional Paper 626/2005

Response to Written Question WQ5, asked for by Mr. MacDonald on behalf of  
 Dr. Taft on April 11, 2005:

Which reports, consultation groups, and stakeholder reviews have indicated to the  
 Government that \$55 million is the total amount needed to fully fund the  
 provincial takeover of ground ambulance services on April 1, 2005?

Sessional Paper 627/2005

Return to Order of the Assembly MR4, asked for by Dr. Pannu on behalf of Mr. Mason on April 4, 2005:

For each of the fiscal years 2001-2002, 2002-2003, and 2003-2004, an itemized list of all groups and individuals representing either specific tobacco-related companies, or any association, group, or organization representing the interests of the tobacco industry who have met with the Premier, the Minister of Health and Wellness, the Deputy Minister of Health and Wellness, the Assistant Deputy Minister of Health and Wellness, or any Alberta Standing Policy Committee.

Sessional Paper 628/2005

## **Projected Government Business**

Pursuant to Standing Order 7(5), Dr. Taft, Hon. Leader of the Official Opposition, asked a question pertaining to the order of Government Business to be brought before the Assembly for the following week.

Hon. Mr. Hancock, Government House Leader, gave notice of projected Government Business for the week of November 21 to November 24, 2005:

Monday, November 21                      9:00 p.m.   - **Government Bills and Orders**

**Second Reading**

Bill 43, 45, 49

And as per the Order Paper

Tuesday, November 22                      Aft.                      - **Government Bills and Orders**

**Committee of Supply**

Supplementary Estimates  
(Day 2 of 3)

Advanced Education, Gaming,  
Infrastructure and Transportation,  
Seniors and Community Supports,  
Municipal Affairs

**Second Reading**

Bill 44

**Third Reading**

Bill 9

And as per the Order Paper

Eve.    - **Government Bills and Orders**

**Second Reading**

Bill 43, 44, 50

			<p><b>Third Reading</b>  Bill 9, 15</p> <p><b>Committee of the Whole</b>  Bill 43, 47, 48  And as per the Order Paper</p>
Wednesday, November 23	Aft.	-	<p><b>Government Bills and Orders</b></p> <p><b>Committee of Supply</b>  Supplementary Estimates  (Day 3 of 3)</p> <p>Health and Wellness, Sustainable  Resource Development,  Agriculture, Food and Rural  Development, Community  Development, Environment</p> <p><b>Second Reading</b>  Bill 43, 46</p> <p><b>Revert to Introduction of Bills</b>  Bill 51  And as per the Order Paper</p>
	Eve.	-	<p><b>Government Bills and Orders</b></p> <p><b>Second Reading</b>  Bill 43, 46</p> <p><b>Committee of the Whole</b>  Bill 43, 50</p> <p><b>Third Reading</b>  Bill 43, 47, 48  And as per the Order Paper</p>
Thursday, November 24	Aft.	-	<p><b>Introduction of Bills</b>  Bill 52</p> <p><b>Government Bills and Orders</b></p> <p><b>Committee of the Whole</b>  Bill 45, 46, 49  And as per the Order Paper</p>

## **Motion for Adjournment for an Emergency Debate**

Ms Pastoor, Hon. Member for Lethbridge-East, requested leave to move, pursuant to Standing Order 30, that the Assembly adjourn the ordinary business of the Assembly to discuss a matter of urgent importance, namely the failure of the Government to provide the additional resources necessary to reduce the grave and immediate risks to the health and well-being of Alberta's seniors, as identified in the May 2005 Report of the Auditor General on Seniors Care and Programs.

A debate followed on urgency.

The Speaker ruled that the request for leave was not in order.

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

The Chair is now prepared to rule on the purported questions of privilege raised on Tuesday, November 15, 2005, by the Official Opposition House Leader and the Leader of the New Democrats. Although there are some distinguishing factors between the two matters that have been raised, the general subject of the early release of reports by Officers of the Legislature is the same. Therefore, the Chair will be addressing the matter in one ruling.

To be clear, the matter raised by the Official Opposition House Leader deals with the early release of the Auditor General's report on the Alberta Securities Commission, and the one by the Leader of the Third Party in the House deals with the premature disclosure of an Auditor General's report on the Alberta Social Housing Corporation and the disclosure of the results of the Ethics Commissioner's report on the Minister of Environment. These are the allegations that will be dealt with together.

As a preliminary matter, the Chair confirms that both parties fulfilled the two-hour notice requirement under Standing Order 15(2). The Chair received written notice of the Official Opposition House Leader's purported question of privilege last Thursday, November 10. The Leader of the Third Party provided his written notice this week on Monday, November 14. Given that Tuesday was the first day of the Fall Sitting, both parties have raised their respective questions of privilege at the earliest possible opportunity.

The key argument underlying both purported questions of privilege is that there has been a contempt of the Assembly. As Members are well aware, breaches of privilege and contempts of the Assembly are treated in the same manner, and therefore, the procedure outlined in Standing Order 15 applies. At the outset, the Chair would also like to note for all Members that the leak of a report from an Officer of this Legislature has never before been raised in this Assembly as a matter of privilege. In fact, over the course of the past few days, the Chair and the Table Officers have undertaken a broad review consulting with parliaments from across Canada as well as the United Kingdom. To the best of the Chair's knowledge, it is unprecedented for this type of matter to come before the Assembly as a purported question of privilege. So we are in uncharted territory.



The Chair has listened attentively to the arguments raised and it appears the material facts are as follows: the contents of three reports from two Officers of the Legislature were disclosed to members of the media prior to the reports being distributed to Members of the Assembly and made available to the public. The reports in question are: one, the Report of the Auditor General on the Alberta Securities Commission's Enforcement System, dated October 2005; two, a report of the Auditor General on the Alberta Social Housing Corporation land sales systems dated October 2005; three, a report to the Speaker of the Legislative Assembly of Alberta of the investigation by the Ethics Commissioner into allegations involving the Member for Fort McMurray-Wood Buffalo dated October 20, 2005.

Although it is clear that the contents of all three reports were disclosed prematurely, it is not clear who is responsible for prematurely disclosing the two reports from the Auditor General. With respect to the third report, the one prepared by the Ethics Commissioner, the Minister of Environment indicated in the House yesterday that he referred to the contents of that report on a radio program prior to it being made available to other Members and the public. As he indicated at page 1676 of yesterday's Hansard he was unaware of anything that prohibited him from doing so.

As the Chair indicated on Tuesday when these matters were raised, it is a very serious matter when reports of Officers of the Legislature are released or the contents are prematurely disclosed. While these disclosures may be contemptuous behaviour, the Chair's view is that they do not amount to contempts of the Assembly.

Accordingly, the Chair does not find that there are any prima facie questions of privilege. The lack of both parliamentary and statutory authority concerning early disclosure of Officers' reports leads the Chair to this view. This conclusion does not diminish the fact that the leaks of these reports should be taken very seriously and that this type of conduct shows disrespect for the Assembly and demonstrates a blatant disregard for the statutory provisions that entitle Members of the Assembly to view such a report before it is made public.

Because this is a matter that has never been raised before, the Chair wants to provide some explanation for this finding. First, it is important to note that the two Officers whose reports are in question operate under specific statutory regimes, as do the Chief Electoral Officer, the Information and Privacy Commissioner, and the Ombudsman. Both Members raising purported questions of privilege want the Chair to find that the statutes do not form complete codes and that certain elements of parliamentary privilege must be, and I quote, "read in" to them. The Chair wants to be very clear that this ruling is on the issue of whether an early or unauthorized release of an Officer's report constitutes a prima facie question of privilege. This ruling should not be taken to address the broader issue of whether and to what extent the activities of Officers of the Legislature are cloaked in privilege.

As the distribution of the reports is fundamental to the arguments of both Members' questions of privilege, the Chair wants to address the requirements. As was noted in the arguments, the procedure for distribution of a report from the Auditor General when the House is not sitting is outlined in section 20.1 of the Auditor General Act. This section provides that the report must be made available to the Members of the Assembly, upon three days' notice being given to the Speaker who shall forthwith distribute copies to the office of each Member. The report is available to the public after the distribution has occurred. To the Chair's knowledge, the only parties that are authorized under the statute to have advance copies of the report are members of the Audit Committee pursuant to section 24.

The Conflicts of Interest Act has a slightly different procedure for the distribution of reports from the Ethics Commissioner as outlined in sections 25 and 28 of that Act. Those reports are provided directly to the Speaker who, in turn, lays the report before the Assembly, or if the Assembly is not sitting, distributes the report to Members and then makes it available to the public. The Act authorizes certain persons to receive advance copies of a report, namely, the Member against whom an allegation has been made and the Leader of that Member's caucus (section 25(8)) and it is pursuant to this authority that the Honourable Minister of Environment received the Ethics Commissioner's report prior to its release to other Members.

There are provisions in the Auditor General Act that require both the Auditor General and his staff to maintain confidentiality in fulfilling their duties. The Conflicts of Interest Act has similar requirements and this statute also provides for a fine of up to \$20,000, under section 40, for a Commissioner, former Commissioner, or person employed or engaged by the office who releases confidential information. However, neither of these Acts specifically address whether the premature release of a report from the Officer or discussion of their contents is an offence or a contempt of the Assembly.

The Legislative Assembly Act provides provisions dealing with the Assembly's jurisdiction and expressly deals with the matter of breaches of privilege and contempt. There is nothing in this Act that would suggest that a leak of a report from an Officer amounts to a contempt.

Finally, in comparing the leak of a report from an Officer to the leak of the other types of documents cited in both Honourable Members' arguments, there are a number of distinguishing factors. Clearly, all three types of documents referred to in the arguments of the Official Opposition House Leader - Bills, committee reports, and the budget - are more directly tied to a proceeding of this Assembly. The matter of a budget leak, which has been cited in the arguments, is not typically considered a matter of privilege, and the Chair cites Beauchesne's paragraph 31(5) for this point. The premature disclosure of Bills has been held by the Chair to be prima facie case of contempt, as was held on March 15, 2003, at pages 57-60 of the Journals, as belonging properly to Members once they appear on the Order Paper.

On the subject of leaked committee reports, the authorities are very clear that questions of privilege will not be considered unless a specific charge has been made. The Chair would like to quote from Marleau and Montpetit's House of Commons Procedure and Practice on this point:

“Speakers have ruled that questions of privilege concerning leaked reports will not be considered unless a specific charge is made against an individual, organization or group, and that the charge must be leveled not only against those outside the House who have made in camera material public, but must also identify the source of the leak within the House itself.”

Erskine May's Parliamentary Practice also supports this position in its 23rd edition at pages 140 and 141.

So even if the Chair were to treat the leak of an Officer's report the same as a leak of a committee report, this still would not meet the test for a prima facie case of contempt with respect to two out of the three reports because the source of the leak has not been identified.

With respect to the Ethics Commissioner's report, the Honourable Minister indicated that he was not aware of any prohibition on the premature disclosure of the contents of the report on the basis that he not only requested the investigation but was the subject of that investigation. In the absence of a specific statutory provision or a recognized parliamentary precedent, the Chair cannot find a prima facie question of privilege. Furthermore, if the Chair was to find a case of contempt, this could cast a cloud of suspicion on those persons who have a legislated right to receive advance copies of these reports prior to their distribution to Members, and that is definitely something that this Chair does not want to do. The Chair might have a different view if there was clear indication in the legislation on how a premature disclosure of a report was to be treated.

Finally, the Chair would like to emphasize that when a report is destined for Members of the Assembly prior to it being available to the public, the utmost care must be taken in the printing and preparation for distribution. The Auditor General has undertaken an investigation of the Office's practices and the Chair is confident that the matter will be given serious attention and that due care and attention will be given prior to the release of subsequent reports from that Office.

## **ORDERS OF THE DAY**

### **Committee of Supply** (Day 1 — Supplementary Estimates)

According to Order, the Assembly resolved itself into Committee of Supply.

(Assembly in Committee)

And after some time spent therein, the Deputy Speaker assumed the Chair and Mr. Johnston reported as follows:

Mr. Speaker:

The Committee of Supply has had under consideration certain resolutions of the 2005-06 Supplementary Estimates, General Revenue Fund and Lottery Fund, reports as follows, and requests leave to sit again:

Resolved that a sum not exceeding the following be granted to Her Majesty for the fiscal year ending March 31, 2006, for the Department and purposes indicated:

**Education**

Expense and Equipment / Inventory Purchases	\$75,133,000
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Mr. Speaker, the Committee of Supply has also had under consideration certain resolutions of the Department of Children's Services, reports progress thereon, and requests leave to sit again.

The question being put, the report and the request for leave to sit again were agreed to.

**Adjournment**

On motion by Hon. Mr. Zwozdesky, Deputy Government House Leader, the Assembly adjourned at 5:27 p.m. until Monday, November 21, 2005, at 1:30 p.m.

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Hon. Ken Kowalski,  
Speaker

Title: Thursday, November 17, 2005