



**Legislative Assembly
Province of Alberta**

No. 19

VOTES AND PROCEEDINGS

Second Session

Twenty-Seventh Legislature

Monday, April 6, 2009

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

Ministerial Statements

Hon. Mr. Danyluk, Minister of Municipal Affairs, made a statement regarding the Capital Region Growth Plan.

Mr. MacDonald, Hon. Member for Edmonton-Gold Bar, commented on the statement.

The Speaker requested and received the unanimous consent of the Assembly to allow Ms. Notley, Hon. Member for Edmonton-Strathcona, to comment on the Ministerial Statement.

Members' Statements

Mrs. Sarich, Hon. Member for Edmonton-Decore, made a statement recognizing the 134 semi-finalists of the 2009 Excellence in Teaching Awards.

Mr. MacDonald, Hon. Member for Edmonton-Gold Bar, made a statement regarding the need to extend prescription drug coverage in Alberta to all citizens.

Mr. Rodney, Hon. Member for Calgary-Lougheed, made a statement regarding \$3.2 million being provided to the South Fish Creek Recreation Association and \$750,000 to the Hull Child and Family Services under the Major Community Facilities Program.

Mr. Drysdale, Hon. Member for Grande Prairie-Wapiti, made a statement regarding the Pete Eager Fire Hall Wind Energy Project in Grande Prairie.

Mrs. McQueen, Hon. Member for Drayton Valley-Calmar, made a statement regarding BLAST (Building Leadership for Action in Schools Today), a joint initiative of the Lung Association and the Alberta Alcohol and Drug Abuse Commission.

Mr. Denis, Hon. Member for Calgary-Egmont, made a statement regarding the 783 Air Force Wing.

The Speaker requested and received the unanimous consent of the Assembly to waive Standing Order 7(7) to allow Orders of the Day to begin later than 3:00 p.m.

Tabling Returns and Reports

Mr. Chase, Hon. Member for Calgary-Varsity:

Program from the 15th Alberta East Coulee Spring Festival held on April 4, 2009
Sessional Paper 147/2009

Program from the Alberta Ballet presentation of Alice in Wonderland held at the Northern Alberta Jubilee Auditorium from March 27-28, 2009, and at the Southern Alberta Jubilee Auditorium from April 2-4, 2009
Sessional Paper 148/2009

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

Document, undated, entitled "Hosting Expenses over \$600 by Ministry for the Government of Alberta as publicly disclosed in the Alberta Gazette, 2004-2008"
Sessional Paper 149/2009

Letter dated May 27, 2008, from Mr. MacDonald, Hon. Member for Edmonton-Gold Bar, to Lorne R. Gibson, Chief Electoral Officer, outlining questions regarding Poll 075, with attached response from Mr. Gibson to Mr. MacDonald dated June 2, 2008

Sessional Paper 150/2009

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

Responses from Ms Notley, Hon. Member for Edmonton-Strathcona, and Hon. Mr. Hancock, Government House Leader, both dated March 26, 2009, to the Speaker's invitation to Members of the Legislative Assembly to provide comments regarding Ms Notley's purported point of privilege raised in the Assembly on March 19, 2009

Sessional Paper 151/2009

Tablings to the Clerk

Clerk of the Assembly on behalf of Hon. Mr. Horner, Minister of Advanced Education and Technology:

Advanced Education and Technology, Public Post-Secondary Institutions Audited Financial Statements, Universities and Banff Centre for Continuing Education for the year ended March 31, 2008

Sessional Paper 152/2009

Advanced Education and Technology, Public Post-Secondary Institutions Audited Financial Statements, Public Colleges and Technical Institutes for the year ended June 30, 2008

Sessional Paper 153/2009

Point of Privilege

On the last day before the spring break, the Member for Edmonton-Strathcona raised a purported question of privilege concerning the regulation-making authority found in Bill 18, Trade, Investment and Labour Mobility Agreement Implementation Statutes Amendment Act, 2009. This Bill is currently at Committee of the Whole stage.

The Member's purported question of privilege is based on section 5 of the Bill, which would amend schedule 6.1 of the Government Organization Act by adding a subsection 7(2), which would allow the Lieutenant Governor in Council to make regulations that "may suspend the application of or modify a provision of an Act or regulation or may substitute another provision in place of a provision."

Both the Member for Edmonton-Strathcona and the Government House Leader submitted written materials on March 26, 2009, that restate and supplement their arguments made in the Assembly on March 19, 2009. The Chair has tabled those submissions.

The full exchange on this purported question of privilege is found on pages 499 to 503 of Alberta Hansard for that day.

With respect to the technical aspects of Standing Order 15, the Speaker's office received written notice from the Member for Edmonton-Strathcona on March 19, 2009, at 11:19 a.m., of her intention to raise the purported question of privilege and a brief description of the issue. Accordingly, the two-hour notice requirement of Standing Order 15(2) was met.

For the reasons that follow, the Chair will not comment on whether this matter was raised at the earliest opportunity.

Essentially the Member's argument is that the provision in the Bill would allow the government to amend legislation that is passed by the Legislature without returning to the Assembly. The Member argues that this provision constitutes a breach of the Assembly's privileges, or alternatively a contempt of the Assembly.

The type of provision found in Bill 18 that is the subject of this purported question of privilege is often referred to as a Henry VIII clause and, as the Chair has discovered, has been the subject of much discussion not only in Canada but across the Commonwealth. The United Kingdom Parliament web site indicates that the House of Lords Select Committee on the Scrutiny of Delegated Powers, in its first report of 1992-93, defined a Henry VIII clause as the following:

“...a provision in a Bill which enables primary legislation to be amended or repealed by subordinate legislation, with or without further Parliamentary scrutiny. The clauses were so named from the Statute of Proclamations of 1539, which gave King Henry VIII power to legislate by proclamation.”

Erskine May, 23rd edition, at page 664 states:

“Power may be conferred, by what is known as a ‘Henry VIII clause’ to amend the statute itself by delegated legislation or to amend other statutes.”

In conducting research, the Chair discovered that a written question in the British House of Commons asked, “How many Henry VIII clauses were contained in primary legislation enacted in Session 2007-08?” The answer contained in the British House of Commons Hansard for March 2, 2009, was that the Government “do not routinely collect or hold information about the number of Henry VIII provisions.”

In the arguments raised by the Member for Edmonton-Strathcona, there is no reference to any instances where such clauses have been ruled a prima facie breach of privilege. Clearly, the references from the United Kingdom and the court decisions in Canada do not indicate that there is any breach of privilege involved with these clauses, although they may be perceived as objectionable.

Members should be aware that apart from decisions on money Bills, it is not the role of the Chair to rule on the legality or constitutionality of Bills. That is the role given to the courts. As noted in the Government House Leader’s brief, this principle is cited in Beauchesne’s (6th edition) at paragraph 31(9) where it is stated that, “The failure of the Government to comply with the law is not a matter for the Speaker but should be decided by the courts.” This is also clearly stated at page 21 of Parliamentary Practice in B.C. (4th edition). There have also been rulings in this Assembly on this issue, the most recent being from the Chair on March 3, 2005, as noted at page 25 of Hansard.

The ability of Parliament or a Legislature to delegate authority to amend statutory provisions was set out as long ago as 1917 in a decision by the House of Lords.

Accordingly, the Chair rules that there is no prima facie question of privilege and the matter is now concluded with the following addendum: the Chair should not be seen as endorsing the use of these types of clauses. There is no doubt that they detract from the role of the Assembly. However, the question as to whether a Henry VIII clause ought to be used is different than the question as to whether it may be used.

ORDERS OF THE DAY

Written Questions

The following Written Questions were accepted:

WQ1. Asked for by Mr. Mason:

For the fiscal years 2003/2004 to 2007/2008, what was the average cost per resident per month at a designated long-term care facility?

WQ3. Asked for by Mr. Mason:

For each of the fiscal years 2006/2007 and 2007/2008, what was the total value of psychiatric services contracted by Regional Health Authorities (RHA), broken down by RHA, and what was the total value of psychiatric services contracted by the Alberta Mental Health Board?

WQ5. Asked for by Mr. Mason:

What was the number of physicians working in Alberta towns for each of the fiscal years 2005/2006 to 2007/2008?

WQ8. Asked for by Ms Notley:

For each of the fiscal years 2005/2006 to 2007/2008, what was the average amount of time taken by Children and Youth Services to find permanent placements for children in permanent government care?

WQ10. Asked for by Mr. Mason:

What were the total government subsidies provided to long-term care facilities and what were the total operating expenditures for those same facilities for the fiscal years 2003/2004 to 2007/2008?

WQ12. Asked for by Mr. Mason:

How many long-term care facilities and their respective bed complement were operating in Alberta on March 31 for the years 2007 and 2008, broken down by Regional Health Authority and whether the facility and service providers are/were owned/operated publicly, privately, or on a voluntary basis?

WQ14. Asked for by Mr. Mason:

How much money has been spent on the "Alberta's brand campaign" in the United States in the fiscal year 2007/2008 and from April 1, 2008, to February 10, 2009?

WQ16. Asked for by Ms Notley:

For each of the fiscal years 2004/2005 to 2007/2008, on how many occasions were approved legal aid services not provided due to unavailability of counsel?

WQ17. Asked for by Ms Notley:

For each of the fiscal years 2004/2005 to 2007/2008, what was the average income of people accessing legal aid?

The following Written Questions were accepted as amended:

WQ7. Moved by Ms Notley:

For each of the fiscal years 2004/2005 to 2007/2008, for Alberta students with student loans, what was the average size of their student loan debt at the time they left their respective post-secondary institution?

Hon. Mr. Horner, Minister of Advanced Education and Technology, moved the motion be amended to read:

For each of the fiscal years 2004/2005 to 2007/2008, for Alberta students with student loans, what was the average size of their *net* student loan debt at the time of *consolidation, which is six months after they cease being enrolled as full-time students?*

WQ9. Moved by Ms Notley:

How many people have been charged under the Protection of Children Involved in Prostitution Act since its implementation?

Hon. Ms Redford, Minister of Justice and Attorney General, moved the motion be amended to read:

How many *charges have been commenced* under the Protection of Children Involved in Prostitution Act *and the Protection of Sexually Exploited Children Act* since its implementation?

WQ11. Moved by Ms Notley on behalf of Mr. Mason:

What were the total government subsidies provided to assisted living facilities and what were the total operating expenditures for those same facilities for the fiscal years 2003/2004 to 2007/2008?

Hon. Mrs. Jablonski, Minister of Seniors and Community Supports, moved the motion be amended to read:

What were the total government *operating grants* provided to *provincial lodges* and what were the total operating expenditures for those same facilities for the years *2003 to 2007?*

WQ13. Ms Notley on behalf of Mr. Mason:

For each of the fiscal years 2006/2007 and 2007/2008, what was the total number of psychiatrists contracted to provide clinical services for Regional Health Authorities (RHA), broken down by RHA, and what was the total number contracted to provide clinical services by the Alberta Mental Health Board?

Hon. Mr. Renner, Deputy Government House Leader, on behalf of Hon. Mr. Liepert, Minister of Health and Wellness, moved the motion be amended to read:

For each of the fiscal years 2006/2007 and 2007/2008, what was the total number of *in-province physicians submitting claims under the specialty of psychiatry*, broken down by *Regional Health Authority*?

WQ18. Moved by Ms Notley:

For each of the fiscal years 2004/2005 to 2007/2008, how long did the average person with Alberta student loans take to pay the loans off, and how much interest did they pay on the loans?

Hon. Mr. Horner, Minister of Advanced Education and Technology, moved the motion be amended to read:

For each of the fiscal years 2004/2005 to 2007/2008, how long did the average person with Alberta student loans take to pay the loans off?

The following Written Questions were rejected:

WQ2. Moved by Ms Notley on behalf of Mr. Mason:

For the fiscal years 2003/2004 to 2007/2008, what was the average cost per resident per month at a designated assisted living facility?

WQ19. Moved by Ms Notley:

For each of the fiscal years 2004/2005 to 2007/2008, what was the average hourly rate paid by the Government when it contracted out to the legal community for government legal services, excluding legal aid services?

The following Written Question was rejected as amended:

WQ20. Moved by Ms Notley:

How many *licensed* supportive living facilities *and seniors' lodges* were operating in Alberta for *the fiscal year 2007/2008*, and what was their *respective capacity (number of residents)*, broken down by Regional Health Authority and by whether the facility *received public funding or not*?

Motions for Returns

The following Motions for Returns were accepted:

MR1. Proposed by Mr. Mason:

That an Order of the Assembly do issue for a Return showing:
A copy of all 2007-2009 utilization plans for the Mazankowski Heart Institute and any records of how many wards and beds are currently vacant in the Institute.

MR5. Proposed by Mr. Mason:

That an Order of the Assembly do issue for a Return showing:
Copies of all current protocols surrounding the proposal and selection process for approving Ministers' foreign travel plans.

MR7. Proposed by Mr. Mason:

That an Order of the Assembly do issue for a Return showing:
A list of facilities in Alberta whose designation changed from "long-term care facility" to "assisted living facility" between April 1, 2001, and December 31, 2008.

MR8. Proposed by Mr. Mason:

That an Order of the Assembly do issue for a Return showing:
A copy of the final report and recommendation of the Coalbed Methane/Natural Gas in Coal Multi-Stakeholder Advisory Committee.

MR9. Proposed by Mr. Mason:

That an Order of the Assembly do issue for a Return showing:
A copy of the agreement signed by the Premier on January 16, 2009, at the First Ministers' Meeting regarding amendments to the Agreement on Internal Trade.

MR20. Proposed by Mr. Mason:

That an Order of the Assembly do issue for a Return showing:
Copies of all government plans to increase the number of midwives practising in Alberta between February 1, 2008, and February 10, 2009.

Debate adjourned on the following Motion for Returns:

MR2. Moved by Ms Notley on behalf of Mr. Mason:

That an Order of the Assembly do issue for a Return showing:
Copies of all reports or plans prepared between January 1, 2007, and
February 10, 2009, regarding the future creation or expansion of assisted
living facilities.

A debate followed.

Debate adjourned, Ms Notley speaking.

Motions Other Than Government Motions

504. Moved by Mr. Quest:

Be it resolved that the Legislative Assembly urge the Government to
immediately investigate the feasibility of constructing underground
transmission lines to determine if they are a safe and viable option for
transmitting high voltage power.

A debate followed.

The question being put, the motion was agreed to.

Adjournment

On motion by Hon. Ms. Redford, Acting Government House Leader, that it be called
6:00 p.m., the Assembly adjourned at 5:56 p.m. until Tuesday, April 7, 2009, at
1:30 p.m.

Hon. Ken Kowalski,
Speaker

Title: Monday, April 6, 2009