



**Legislative Assembly
Province of Alberta**

No. 48

VOTES AND PROCEEDINGS

Second Session

Twenty-Seventh Legislature

Wednesday, June 3, 2009

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

Point of Privilege

The Chair is prepared to rule on the purported question of privilege raised by the Honourable Member for Edmonton-Riverview yesterday, June 2, 2009. To summarize, the Member's purported question of privilege was that the Ethics Commissioner interfered with the Member's ability to perform his functions by providing conflicting advice as to whether the Member could participate in debate on Bill 43, Marketing of Agricultural Products Amendment Act, 2009 (No. 2). In documents provided to the Speaker in support of his purported question of privilege, the Member included letters from the Ethics Commissioner dated May 26, 2009, advising him that as a result of the holdings of the Member's father-in-law, he had to recuse himself from participation in debate on the Bill and from voting, and a letter dated June 1, 2009, where the Ethics Commissioner apologized for his earlier advice and informed the Member he could participate in further debate and vote on Bill 43.

Under Standing Order 15(6) the Speaker's role in a question of privilege is to determine whether the matter was raised at the earliest opportunity and whether it constitutes a prima facie question of privilege. With respect to the formalities the Member indicated yesterday that he received the Ethics Commissioner's letter after the proceedings in the Assembly had commenced on June 1. He provided notice to the Speaker's office at 10:55 a.m. on June 2 which the Chair finds to be in compliance with Standing Order 15(2). The Chair finds that the matter was raised at the earliest opportunity.

At the outset the Chair notes that it was clear from the Member for Edmonton-Riverview's comments yesterday that he was driven by a desire to comply with the rules that Members have set for themselves in the Conflicts of Interest Act while wanting to participate in debate on a matter for which he had prepared extensively. His justified frustration was apparent. While this matter was raised by one particular Member, it reflects a sentiment that is found throughout the Assembly of Members being dedicated to observing the rules while wanting to represent their constituents.

In this case there is no doubt that the Member was prevented from participating in the debate at Committee stage on Bill 43. However, any obstruction that occurred was because of advice from an Officer of the Legislature whose mandate and functions are set out in the Conflicts of Interest Act. The Member did not suggest that there was any malicious intent on the part of the Commissioner or that the Commissioner was acting outside the scope of his duties.

The Ethics Commissioner occupies a unique position as the Assembly has delegated to that individual the ability to know a Member's and his or her family's most intimate financial details and to apply the Conflicts of Interest Act in a fair and even-handed manner. It is a position of ultimate trust. While the position and duties are defined by a statute, his recommendations are subject to debate and approval by the Assembly when he proposes a sanction against a Member. Just as the Commissioner must expect Members to be forthright in their disclosures, Members have the right to expect that the decisions and advice from the Commissioner are rigorous and consistent.

In this instance the Commissioner admitted to having made a mistake which deprived the Member of his ability to participate in a critical phase of the legislative process.

In conducting research on this matter the Chair discovered that on October 6, 2005, Speaker Milliken of the Canadian House of Commons found that there was a prima facie question of privilege involving the actions of the then Ethics Commissioner, Dr. Bernard Shapiro, which can be found at Commons Debates, page 8473-4. The matter was referred to the Standing Committee on Procedure and House Affairs which found that the Commissioner was in contempt of the House but did not recommend any sanctions or penalty. That report was presented in the House of Commons on November 18, 2005.

In that case the issue was that the Commissioner discussed a complaint against a Member with the media in violation of his duty of confidentiality and that the Member was not provided with written notice of the investigation and the charges against him. In this case the Ethics Commissioner was fulfilling his duty to provide advice to a Member. The essence of the complaint is that the advice was wrong, which was admitted by the Commissioner, and that the error deprived the Member of his ability to participate in debate.

The Assembly is not without recourse against Officers. For instance, under section 36 of the Conflicts of Interest Act, the Ethics Commissioner may be suspended or removed from office for cause or incapacity by the Lieutenant Governor in Council on the recommendation of the Assembly. If the Assembly is not sitting, the Standing Committee on Legislative Offices may recommend suspension but that suspension is only effective until the end of the next sitting of the Assembly.

The Conflicts of Interest Act is a code for Members. It does not provide for an appeal of advice provided by the Commissioner. The Chair is reluctant to find there is a prima facie question of privilege as that could be interpreted as providing an avenue for appeal for Members from advice from the Ethics Commissioner.

However, the Chair would like to take exception to something said by another Member during his participation in the debate on this purported question of privilege. It is this Chair's view, and one supported by the Conflicts of Interest Act, that Members must act in accordance with advice from the Ethics Commissioner. Under section 43(5) of the Act, no proceeding can be taken against a Member "by reason only of the facts so communicated and the compliance of the Member, former Minister or former staff member with the recommendation." In short, Members should not engage in opinion shopping as they are only protected if they comply with the Ethics Commissioner's advice.

At this time the Chair is of the view that there is no prima facie question of privilege but does not want to end the matter there.

In the Chair's view the Member was most gracious in speaking to the issue of remedy. He was not seeking a proverbial "pound of flesh" but wanted to ensure that there were measures undertaken to review what constitutes a conflict of interest so that Members could perform their functions while not furthering their private interests.

In the Chair's view there is much merit to this suggestion. Even prior to this question of privilege, discussions were underway to ensure that caucuses and officials could provide their views to the Ethics Commissioner so that there was harmony between the intent of Members in enacting the legislation and the Commissioner in interpreting it.

Toward that end there are some actions that the Chair would like to advise Members of that will or, in the Chair's view, should occur:

The Ethics Commissioner has agreed to meet with caucuses to discuss and receive input on the application of the Conflicts of Interest Act;

That Parliamentary Counsel and counsel from the Department of Justice and Attorney General meet with the Ethics Commissioner to discuss the background to the Act, previous reviews of the Act, and approaches to interpretation;

That the Speaker and Minister of Justice and Attorney General be available to discuss any issues that the Ethics Commissioner might have concerning the application of the Act; and

That the Ethics Commissioner provide, prior to the commencement of the Fall sitting, a general overview on the interpretation of the Act with respect to what might constitute a private interest of such a nature to require a Member to absent himself or herself from the proceedings in the Assembly, committee, or other forum.

The Chair reminds Members that a Select Special Committee of the Assembly under the chairmanship of the Member for Calgary-Nose Hill, reviewed the Conflicts of Interest Act a few years ago. The Committee issued its report in May of 2006. The Bill resulting from that review was introduced in the Assembly on April 18, 2007, considered by a Policy Field Committee, and given Royal Assent on December 7, 2007. It came into effect on April 1, 2008. The Chair points this out as there is a great deal of background material on this subject found in the report and the proceedings of the Committees.

While it is hoped that any consultations are productive, the Chair would like to offer a comment as he is not a disinterested observer in the proceedings in this Assembly. In fact, it is the Chair who witnesses and deals directly with the impact that the Ethics Commissioner's rulings and advice have on the deliberations in this Assembly. As the discussions move forward the Chair hopes that all are mindful that constituents often expect that their elected representative's experience will play a part in the decision-making process. Of course, no one is disputing that if, for example, a Member or a direct associate would derive a real and tangible benefit from a contract or such that the Member should recuse him or herself from the deliberations. The issue is where to draw the line between private interest and public duty.

One of the recommendations of the Select Special Committee that reviewed the Act in 2005-06 was that the preamble be expanded to include provisions such as:

"The Assembly as a whole can represent the people of Alberta most effectively if its Members have experience and knowledge in relation to many aspects of life of Alberta and if they can continue to be active in their own communities, whether in business, in the practice of a profession, or otherwise.

A Member's duty to represent his or her constituents includes broadly representing his or her constituents' interests in the Assembly and to the Government of Alberta."

Bill 2 amended the Conflicts of Interest Act to add a new recital to the preamble which reads:

"Whereas Members of the Legislative Assembly can serve Albertans most effectively if they come from a spectrum of occupations and continue to participate actively in the community;"

In the Chair's view these principles are a good basis on which to guide discussion on the interpretation of the Act.

Deputy Speaker's Statement - Pages of the Assembly

On behalf of the Speaker and Members, Mr. Cao, Deputy Speaker, made a statement recognizing the Pages who would not be returning for the next sitting of the Legislature, and the Deputy Chair of Committees presented the departing Pages with a gift.

Members' Statements

Mr. VanderBurg, Hon. Member for Whitecourt-Ste. Anne, made a statement congratulating the recipients of the 12th annual Minister's Seniors' Service Awards.

Mr. Xiao, Hon. Member for Edmonton-McClung, made a statement recognizing June 1-7, 2009, as Seniors' Week.

Mrs. Sarich, Hon. Member for Edmonton-Decore, made a statement recognizing June 15, 2009, as World Elder Abuse Awareness Day.

Mr. Kang, Hon. Member for Calgary-McCall, made a statement regarding the need for a new runway and tunnel at the Calgary International Airport.

Ms DeLong, Hon. Member for Calgary-Bow, made a statement congratulating the recipients of the Canadian Association of Petroleum Producers Stewardship of Excellence Awards.

Mr. Weadick, Hon. Member for Lethbridge-West, made a statement regarding the University of Lethbridge's five-year strategic plan.

Tabling Returns and Reports

Hon. Mr. Lindsay, Solicitor General and Minister of Public Security:

E-mail message dated May 31, 2009, from Nate Gartke of Spruce Grove to Hon. Mr. Lindsay, Solicitor General and Minister of Public Security, expressing support for Bill 44, Human Rights, Citizenship and Multiculturalism Amendment Act, 2009, and in particular for section 11 of the Act

Sessional Paper 465/2009

Mr. Sandhu, Hon. Member for Edmonton-Manning:

Booklet, undated, entitled “Canada in Brief” prepared by Harpreet Singh Sandhu,
Geographical Cultural Exchange and Tourism Promotion Organization, India
Sessional Paper 466/2009

Booklet, undated, entitled “Guru’s Word” prepared by Harpreet Singh Sandhu
Sessional Paper 467/2009

The Speaker requested 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.

Unanimous consent to proceed was not granted.

ORDERS OF THE DAY

Government Bills and Orders/Private Bills

Third Reading

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

Bill 30 Traffic Safety Amendment Act, 2009 — Hon. Mr. Ouellette on behalf of
Mr. Drysdale

A debate followed.

Ms Notley, Hon. Member for Edmonton-Strathcona, moved that the motion for Third Reading of Bill 30, Traffic Safety Amendment Act, 2009, be amended by deleting all the words after “that” and substituting the following:

Bill 30, Traffic Safety Amendment Act, 2009, be not now read a Third time because the Bill limits the liability of motor vehicle rental companies to \$1,000,000 and thereby fails to protect the interests of individuals injured in motor vehicle accidents.

A debate followed on the amendment.

The question being put, the amendment was defeated.

The following Bills were read a Third time and passed:

Bill 23 Municipal Government Amendment Act, 2009 — Hon. Mr. Hancock on
behalf of Hon. Mr. Danyluk

Bill 29 Family Law Amendment Act, 2009 — Mr. Denis

Bill 30 Traffic Safety Amendment Act, 2009 — Hon. Mr. Ouellette on behalf of
Mr. Drysdale

Bill 32 Alberta Public Agencies Governance Act — Hon. Mr. Hancock on behalf
of Mr. Horne

- Bill 33 Fiscal Responsibility Act — Hon. Mr. Snelgrove on behalf of Hon. Ms Evans
- Bill 34 Drug Program Act (\$) — Hon. Mr. Hancock on behalf of Hon. Mr. Liepert
- Bill 35 Gas Utilities Amendment Act, 2009 — Mr. McFarland
- Bill 41 Protection for Persons in Care Act — Dr. Brown
- Bill 42 Gaming and Liquor Amendment Act, 2009 — Mr. Anderson
- Bill 45 Electoral Boundaries Commission Amendment Act, 2009 — Hon. Ms Redford
- Bill 52 Health Information Amendment Act, 2009 — Mr. Rogers

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 Bill was reported with some amendments:

- Bill Pr2 Caritas Health Group Statutes Amendment Act, 2009 — Mr. Elniski

Mr. Johnston, Acting Chair of Committees, tabled copies of all amendments considered by Committee of the Whole on this date for the official records of the Assembly.

Amendment to Bill Pr2 (Hon. Member for Edmonton-Calder) — Agreed to
Sessional Paper 468/2009

Amendment to Bill Pr2 (Hon. Member for Edmonton-Calder) — Agreed to
Sessional Paper 469/2009

Third Reading

The following Bills were read a Third time and passed:

- Bill Pr1 Beverly Anne Cormier Adoption Termination Act — Mr. Anderson
- Bill Pr2 Caritas Health Group Statutes Amendment Act, 2009 — Mr. Elniski
- Bill Pr3 Les Filles de la Sagesse Act Repeal Act — Mr. Dallas

Adjournment

Pursuant to Standing Order 3(4)(a) and on motion by Hon. Mr. Hancock, Government House Leader, the Assembly adjourned at 4:13 p.m. until Monday, October 26, at 1:30 p.m.

Hon. Ken Kowalski,
Speaker

Title: Wednesday, June 3, 2009