



**Legislative Assembly  
Province of Alberta**

No. 24

## **VOTES AND PROCEEDINGS**

First Session

Twenty-Eighth Legislature

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Thursday, November 29, 2012

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

### **Members' Statements**

Mrs. Sarich, Hon. Member for Edmonton-Decore, made a statement recognizing December 5, 2012, as the International Volunteer Day for Economic and Social Development and regarding a Taiwan volunteer exchange project held in July and August 2012, hosted by St. Michael's Health Group and the International Association for Volunteer Effort.

Mr. Luan, Hon. Member for Calgary-Hawkwood, made a statement regarding the Alberta Education International Languages Program.

Dr. Sherman, Hon. Member for Edmonton-Meadowlark, made a statement regarding long-term care and home care for seniors.

Dr. Starke, Hon. Member for Vermillion-Lloydminster, made a statement congratulating recipients of the 2012 Alberta Historical Resources Foundation Heritage Awards.

Mr. Anderson, Hon. Member for Airdrie, made a statement regarding comments made by Hon. Ms Redford, Premier, in the Assembly on November 28, 2012, concerning the awarding of a tobacco litigation contract.

Mr. Webber, Hon. Member for Calgary-Foothills, made a statement regarding the recent work of the Premier to create relationships, partnerships, and opportunities for Alberta.

## **Notices of Motions**

Hon. Mr. Campbell, Deputy Government House Leader, gave oral notice of Written Questions and Motions for Returns to be accepted or otherwise dealt with, pursuant to Standing Order 34(3):

### **Written Questions**

To be accepted: WQ5, WQ6, WQ11, WQ12, WQ13

To be dealt with: WQ4, WQ7, WQ8, WQ9, WQ10, WQ14, WQ15, WQ16, WQ17, WQ18

### **Motions for Returns**

To be accepted: MR1

To be dealt with: MR2

## **Notices of Motions**

Mr. Anderson, Hon. Member for Airdrie, gave oral notice of his intention to raise a purported question of privilege under Standing Order 15 that the Premier's responses during Oral Question Period regarding her role as Justice Minister in selecting the firm to represent the Government in the tobacco lawsuit deliberately misled the Assembly in such a way as to impede the ability of Members of this House to fulfil their duties, thereby committing a contempt of parliament.

## **Tabling Returns and Reports**

Ms Smith, Hon. Leader of the Official Opposition:

Page 1109 of Alberta Hansard dated November 28, 2012

Sessional Paper 365/2012

CBC News website article dated February 16, 2011, entitled "Justice minister Redford joins PC leadership race"

Sessional Paper 366/2012

Email message dated December 22, 2010, from Grant Sprague, Assistant Deputy Minister, Alberta Justice, to Lorne Merryweather and Jeff Henwood regarding a call made to Carsten Jensen

Sessional Paper 367/2012

Email message dated December 22, 2010, from Karen Christensen, Legal Services Division, Alberta Justice, to Ray Bodnarek and Jeff Henwood, with an attachment of the text of memos to be sent to unsuccessful candidates regarding tobacco litigation

Sessional Paper 368/2012

Email message dated January 6, 2011, from Carsten Jensen to Lorne Merryweather regarding working together on the health care recovery claim

Sessional Paper 369/2012

Dr. Sherman, Hon. Member for Edmonton-Meadowlark:

Open letter dated November 27, 2012, from the Grey Nuns Hospital Medical Staff Association to the Citizens of Alberta regarding the recent five-year contract imposed on Alberta doctors

Sessional Paper 370/2012

Open letter dated November 28, 2012, from 27 Edmonton-Rutherford family physicians to their patients regarding implications for patient care as a result of contract changes imposed by the Minister of Health

Sessional Paper 371/2012

Letter dated April 11, 2012, from Dr. Cathy Scrimshaw, President, Alberta College of Family Physicians, to Alberta College of Family Physicians members expressing concern regarding comments made by Hon. Ms Redford, Premier, relating to the role of the College in the family care clinic initiative

Sessional Paper 372/2012

Mr. Fox, Hon. Member for Lacombe-Ponoka, on behalf of Mrs. Forsyth, Hon. Member for Calgary-Fish Creek:

News release dated November 5, 2012, entitled “Whistleblower charity’s analysis of Alberta law concludes that it is a backward step: it protects the government, not whistleblowers or the public,” prepared by the Federal Accountability Initiative for Reform, supporting comments made by Mrs. Forsyth, Hon. Member for Calgary-Fish Creek, during Committee of the Whole consideration of Bill 4, Public Interest Disclosure (Whistleblower Protection) Act, on November 28, 2012

Sessional Paper 373/2012

Hon. Mr. Hancock, Government House Leader, requested and received the unanimous consent of the Assembly to waive Standing Order 7(7) in order to complete the Daily Routine.

Hon. Mr. Lukaszuk, Deputy Premier:

Globe and Mail website article dated August 23, 2012, entitled “It’s okay for football fans to cheer. But not so loudly.”

Sessional Paper 374/2012

### **Projected Government Business**

Pursuant to Standing Order 7(6), Mr. Saskiw, Deputy Official Opposition House Leader, asked a question pertaining to the order of Government business to be brought before the Assembly for the following week.

Hon. Mr. Campbell, Deputy Government House Leader, gave notice of projected Government business for the week of December 3 to December 6, 2012:

Monday, December 3	Eve.	- <b>Government Bills and Orders</b> <b>Committee of the Whole</b> Bill 7 And as per the Order Paper
Tuesday, December 4	Aft.	- <b>Government Bills and Orders</b> <b>Committee of the Whole</b> Bill 7 And as per the Order Paper
	Eve.	- <b>Government Bills and Orders</b> <b>Committee of the Whole</b> Bill 7 <b>Third Reading</b> Bill 7 And as per the Order Paper
Wednesday, December 5	Aft.	- <b>Government Bills and Orders</b> <b>Third Reading</b> Bill 7 And as per the Order Paper
	Eve.	- <b>Government Bills and Orders</b> <b>Third Reading</b> Bill 7 And as per the Order Paper
Thursday, December 6	Aft.	- <b>Government Bills and Orders</b> <b>Third Reading</b> Bill 7 And as per the Order Paper

### **Privilege - Premier's Responses During Oral Question Period**

Mr. Anderson, Hon. Member for Airdrie, raised a purported question of privilege under Standing Order 15 that the Premier's responses during Oral Question Period regarding her role as Justice Minister in selecting the firm to represent the Government in the tobacco lawsuit deliberately misled the Assembly in such a way as to impede the ability of Members of this House to fulfil their duties, thereby committing a contempt of Parliament.

The Speaker heard from Mr. Anderson, Hon. Mr. Denis, Mr. Eggen, Hon. Mr. Olson, and Mr. Donovan.

The Speaker advised that he would rule at a later date.

### **Privilege - Chief Electoral Officer**

Now I'm going to move on with another matter, and that involves a question that was put forward by the Hon. Member for Edmonton-Strathcona, which, coincidentally, was also a purported point of privilege. Honourable Members, we'll all be reminded that the Member for Edmonton-Strathcona raised such a purported question of privilege on Monday, November 26, 2012. Essentially, in her purported question of privilege she contended that her ability to perform her functions had been interfered with by not having received a copy of the Chief Electoral Officer's proposed amendments to election statutes. In fact, the Minister of Justice and Solicitor General wrote to the Chief Electoral Officer and requested his involvement regarding amendments for a particular Bill that was under his purview.

Under Standing Order 15(6), the Speaker's role when a question of privilege is raised is to determine whether the matter was raised at the earliest opportunity and whether it constitutes a prima facie question of privilege. Now, just to be clear, Honourable Members, only the Assembly can in fact determine whether something is a question of privilege. But, to be even more clear, the Speaker's role is to determine whether the purported question meets the requirements to proceed. That is the role of the Speaker. Therefore, as for the preliminaries, the Member raising this matter did provide notice to the Speaker's office at 10:52 a.m. on Monday, November 26, and thus satisfied the requirements of Standing Order 15(2).

Now, before outlining the facts of this particular case and discussing the applicable authorities in making a determination on this application, the Speaker wants to say that there are some very serious allegations contained in this purported point of privilege that have been made against an Officer of this Alberta Legislature. Not without reservation the Speaker has allowed many statements and many comments to be made in the Assembly about the Chief Electoral Officer, known to many as Mr. Fjeldheim, because those statements and comments related directly to the question of privilege. As all Members here would know, some of those comments most likely would have been ruled out of order by the Speaker had they been raised in question period or during Members' Statements or in some other form of debate, discussion in this Assembly. As we know, Members cannot call into question the impartiality or integrity of an Officer of the Legislature per se. The Speaker will have more to say on this issue very shortly.

Meanwhile let me briefly outline some of the facts giving rise to the Member's purported question of privilege. The Minister of Justice and Solicitor General wrote to the Chief Electoral Officer on May 29, 2012, Sessional Paper 12/2012 for reference, concerning possible amendments to election statutes, and that letter was in fact tabled in this Assembly on that day, May 29, 2012. The Minister stated in his letter, "Amendments to the Elections Act would involve your Office being fully consulted to maintain the independence of your Office and avoid arbitrary amendments passed in the Legislature."

Mr. Fjeldheim, the Chief Electoral Officer, responded to the Minister of Justice with a letter on May 31, 2012, Sessional Paper 25/2012 for reference, indicating that he would be pleased to review both the Election Act and the Election Finances and Contributions Disclosure Act. This document was also tabled in the Assembly on that particular day, May 31, 2012.

Then on August 27, 2012, the Chief Electoral Officer provided the Minister of Justice with recommendations concerning election legislation. The covering letter of that date was tabled by the Hon. Member for Edmonton-Strathcona on November 26, 2012, in this Assembly as Sessional Paper 311/2012. That letter and the attached recommendations were copied to the Chair of the Standing Committee on Legislative Offices, that being the Member for Edmonton-McClung. From the submissions that were made on Monday, November 26, 2012, on this purported question of privilege, it appears that the committee chair did not circulate the Chief Electoral Officer's August 27, 2012, letter, and consequently the committee members were not aware of the contents of the recommendations until the legislation was introduced.

Now, before continuing, your Speaker has two points to make. First, the Member raising this point of privilege, that being the Member for Edmonton-Strathcona, is actually not a member of the Standing Committee on Legislative Offices. Nonetheless, the Speaker is not going to rule for or against the question on that basis alone. There are other matters that were raised with respect to what transpired in that committee referred to in this matter.

The Member who raised this matter along with the Member for Edmonton-Centre referred to what transpired during committee meetings in September 2012 and to correspondence from the Chief Electoral Officer as evidenced in Hansard on pages 997 and 1000. The Speaker is reluctant to get involved in what transpires in committees. You've heard me comment about this matter before. In this instance, however, the Assembly is not waiting for a report by or from that particular committee on this subject. Therefore, the Speaker will in fact rule on this question. Support for this process is found in Joseph Maingot's book, *Parliamentary Privilege in Canada*, second edition, where on page 222 he states:

The practice (of the Speaker not interfering in committee matters unless a report of the matter has been made) was "not an absolute one and that in very serious or special circumstances the Speaker may have to pronounce on a committee matter without the committee having reported to the House."

In reviewing this matter, your Speaker notes that there is no statutory or codified procedure for how an Officer of the Legislature is to proceed in having his or her governing statute amended.

On page 1001 of Hansard for Monday, November 26, the Government House Leader referred to the practices of some Officers going to the Legislative Offices Committee with requests for legislative change to reflect the fact that they do not report to the Government but to this Assembly. In the case before us the Chief Electoral Officer was responding to a request from the Minister of Justice and Solicitor General.

Furthermore, the Chief Electoral Officer had copied the Chair of the Standing Committee in his August 27, 2012, letter under cover of which were the recommendations. One may have thought that would result in committee members being provided with a copy of the recommendations, but that was apparently not the case. The Chief Electoral Officer, however, cannot be faulted for what was or wasn't circulated at a particular meeting.

Now, the Member for Airdrie referred to several examples in his argument from other instances where contempt of the Assembly such as deliberately publishing a false or misleading report and refusing to answer a question or refusing to produce a report and so on – but here, in this particular case, there was no demand by the committee. Therefore, the Chief Electoral Officer is not in violation of any committee order. He was responding to a request made by the Minister of Justice and Solicitor General.

The Member for Edmonton-Strathcona indicates in her arguments that her parliamentary work was interfered with by not having received a copy of the recommendations that were made by the Chief Electoral Officer. Now, while the Speaker sympathizes with the Honourable Member in that regard, this non-receipt of information by members of the committee does not in the Chair's view reach the standard of a Member having been obstructed or interfered with in the performance of his or her duties.

I would refer members to Chapter 3 of House of Commons Procedure and Practice, second edition, and in particular pages 111 through 116, wherein obstruction and interference are discussed. To recast the question: has this Member been prevented from carrying out her parliamentary duties? In the Chair's opinion the answer is no. The document is now publicly available on the Department of Justice's website. The Chair understands that it was actually distributed to all members of the Standing Committee on Legislative Offices on Thursday, November 22, 2012, one week ago.

No Member speaking to this question of privilege was able to provide an example or precedent from any jurisdiction where a prima facie question of privilege has been found with identical or highly similar facts. For the benefit of Members unaccustomed to the nuances of parliamentary privilege, the Speaker would point out the subtle distinction between questions of privilege and contempt. To use the definitions from House of Commons Procedure and Practice, at page 82 it states:

Any disregard of or attack on the rights, powers and immunities of the House and its Members, either by an outside person or body, or by a Member of the House, is referred to as a "breach of privilege."

On the same page this particular authority offers an explanation of contempt as follows:

. . . any action which, though not a breach of a specific privilege, tends to obstruct or impede the House in the performance of its functions; obstructs or impedes any Member . . . in the discharge of their duties; or is an offence against the authority or dignity of the House, such as disobedience of its legitimate commands or libels upon itself, its Members, or its officers.

That is the explanation of contempt.

Contempts are treated in the same manner as questions of privilege under our Standing Order 15. While undoubtedly it would have been in everyone's best interest if the documents had been provided to the members of the Standing Committee on Legislative Offices when they went to the Minister of Justice and Attorney General and the Chair, the fact that they weren't does not elevate this matter to a prima facie question of privilege.

The Speaker is also struck by the fact that there is an absolute absence of any intention to withhold information from Members deliberately. The Speaker is of the view that some remedial action could certainly be undertaken. In fact, former Speaker Kowalski directed some action following his ruling that there was no prima facie question of privilege against the Ethics Commissioner in his ruling of June 3, 2009. You can reference pages 1512 and 1513 of Hansard for that day for more information in that regard. In the case before us today, however, the Standing Committee could establish guidelines or a protocol for Officers of the Legislature that want to pursue changes to their governing statutes or are asked to do so by a member of the Executive Council.

To be clear and in summary, the Speaker finds that there is no prima facie question of privilege, which now concludes this matter.

However, the Speaker would like to add that Mr. Fjeldheim is a respected public servant who has provided great service to the province of Alberta in his terms as Chief Electoral Officer. While this question of privilege may be concerning, in my view as your Chair and Speaker it deals with one particular incident and should not be seen as damaging or tarnishing the fine reputation that Mr. Fjeldheim has and continues to have in providing services to all Members and to all Albertans.

## **ORDERS OF THE DAY**

### **Government Bills and Orders**

#### **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 Deputy Speaker assumed the Chair.

Progress was reported on the following Bill:

Bill 7 Election Accountability Amendment Act, 2012 — Hon. Mr. Denis

### **Adjournment**

On motion by Hon. Mr. Campbell, Deputy Government House Leader, the Assembly adjourned at 4:25 p.m. until Monday, December 3, 2012, at 1:30 p.m.

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Hon. Gene Zwozdesky,  
Speaker

Title: Thursday, November 29, 2012