



**LEGISLATIVE ASSEMBLY OF MANITOBA**

**VOTES AND PROCEEDINGS** No. 22

**FIRST SESSION, THIRTY-SEVENTH LEGISLATURE**

**PRAYERS**

**1:30 O'CLOCK P.M.**

Hon. Mr. SALE, the Minister of Family Services and Housing made a statement regarding the commitment between the Province of Manitoba and the City of Winnipeg to jointly coordinate housing initiatives,

Mr. REIMER commented on the statement.

By leave, Hon. Mr. MACKINTOSH introduced Bill (No. 27) – The Correctional Services Amendment Act/Loi modifiant la Loi sur les services correctionnels, and outlined the purposes thereof, it was read a First Time.

Following Oral Questions, Mr. Speaker made the following ruling:

During Oral Questions on Thursday, April 27, 2000, I took under advisement a point of order raised by the Honourable Government House Leader concerning a question addressed to the Honourable First Minister by the Honourable Member for Southdale. The question was asked in reference to pending civil litigation, and asked the Honourable First Minister to give assurances about his actions, in connection with the trial. The Honourable Government House Leader raised a point of order, and questioned the appropriateness of discussing in the Legislature a matter before the courts. The Official Opposition House Leader also spoke to the point of order. I took the matter under advisement in order to peruse the authorities, given that in this case, we have the unique situation of a Member being personally named in a civil suit.

I thank the Honourable House Leaders for their contributions to the point of order.

The question that I, as the Speaker of the Legislative Assembly, must determine, is whether it is appropriate to permit a question on a matter pending a civil trial, or whether the sub judice convention should be applied. Even though the case in question has been settled out of court, it is important to give a ruling on this matter, so that a precedent is established for future consideration.

There are several criteria that must be examined in order to determine whether the sub judice convention should be applied.

First, is the matter before the House, in the case of civil matters, the same issue that is before the courts?

Second, will a discussion of the matter by legislators be harmful to individuals? Beauchesne citation 511 states that “freedom of speech accorded to Members ... is a fundamental right without which they would be hampered in the performance of their duties. The Speaker should interfere with that freedom of speech only in exceptional cases where it is clear that to do otherwise could be harmful to specific individuals.”

Third, is the matter at the trial stage? Beauchesne citation 507(2) makes the point that the sub judice convention does not apply to civil cases until the trial stage is reached.

Fourth, does the fact that a Member is being personally sued have an impact on whether or not the sub judice convention is applicable?

Turning to a discussion of the criteria, the question was indeed asking the First Minister to give a response about his actions in relation to the subject matter of a civil law suit, and could therefore be considered to be a similar issue to the matter that would be before the courts.

Regarding the second criteria, of whether a discussion of the matter could be harmful or prejudicial to individuals, the recently published procedural authority, “House of Commons Procedures and Practices”, by Marleau and Montpetit, advises on page 535 that the sub judice convention exists to guarantee everyone a fair trial, and to prevent any undue influence prejudicing a judicial decision. Page 534 of the same source indicates that the sub judice convention is first and foremost a voluntary restraint on the part of the House to protect an accused person or any other party to a court action or judicial inquiry, from suffering any prejudicial effect from public discussion of the issue.

The third criteria, which discusses whether a civil matter is at the trial stage, is critical. The question was asked by the Honourable Member for Southdale on April 27, but the trial start date was established as May 1. Although the question was asked close to the start of the trial date, the trial had not yet started, and as Beauchesne citation 507(2) states, the sub judice convention is not applicable to civil cases until the trial stage is reached.

The fourth criteria, the fact that a Member was personally named in a civil suit, does not have many precedents in the Canadian experience. In the Canadian House of Commons in 1976, the Member for Central Nova, Elmer MacKay, was served with a civil writ of summons and a statement of claim alleging libel. Mr. MacKay sought to ask questions in the House pertaining to his suit, and Speaker Jerome took the matter under advisement. Mr. MacKay indicated that the matter had not been set for trial, and that to deny the Member the opportunity to ask questions impinged on his freedom of speech. The Speaker ultimately ruled the following day that the sub judice convention did not apply until the trial stage was reached. This precedent is different from the current Manitoba case, in that it was the Member who was being civilly sued who sought to ask questions pertaining to the suit.

The 1977 House of Commons Special Committee on the Rights and Immunities of Members released the definitive report on the application of the sub judice convention in Canada. In the committee report, the Committee expressed the opinion that the responsibility of the Chair regarding the sub judice convention should be minimal, and that the responsibility for applying the sub judice convention should rest primarily with Members, although the Speaker is the final arbiter of the application.

I would also like to draw to the House's attention, Manitoba's precedents regarding sub judice. On June 6, 1983, Mr. Speaker Walding ruled that the responsibility for application of the sub judice convention is with the Member asking the question, and with the Minister who answers the question. Mr. Speaker Rocan similarly ruled on April 8, 1992 and on May 10, 1993, that the responsibility rests with the Member asking and the Member answering the question. This finding was reiterated in a ruling given by Madam Speaker Dacquay on October 11, 1995.

I am therefore ruling that there was no point of order, because in this instance, the matter in question was a civil case that had not yet commenced trial proceedings. I would rule that it would be appropriate for the Member asking the question, and the Minister answering the question to determine the appropriateness of discussing the matter in the House, but I would offer the caution that Members should be cognizant that discussion of the matter in the House could impact on the outcome of the trial. Such questions should be very carefully asked. In addition, the Minister could choose to not answer the question.

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Pursuant to Rule 23(1), Ms. ALLAN, Messrs. SCHULER, JENNISSON, LAURENDEAU and NEVAKSHONOFF made Members' Statements.

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Hon. Mr. MACKINTOSH moved:

THAT Bill (No. 22) – The Court of Queen's Bench Surrogate Practice Amendment Act/Loi modifiant la Loi sur la pratique relative aux successions devant la Cour du Banc de la Reine, be now read a Second Time and be referred to a Committee of this House.

And a debate arising,

And Hon. Mr. MACKINTOSH having spoken,

The debate was, on motion of Mr. LAURENDEAU, adjourned.

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Hon. Mr. MACKINTOSH moved:

THAT Bill (No. 23) – The Jury Amendment Act/Loi modifiant la Loi sur les jurés, be now read a Second Time and be referred to a Committee of this House.

And a debate arising,

And Hon. Mr. MACKINTOSH having spoken,

The debate was, on motion of Mr. LAURENDEAU, adjourned.

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Hon. Mr. MACKINTOSH moved:

THAT Bill (No. 25) – The Interpretation and Consequential Amendments Act/Loi d'interprétation et modifications corrélatives, be now read a Second Time and be referred to a Committee of this House.

And a debate arising,

And Hon. Mr. MACKINTOSH having spoken,

The debate was, on motion of Mrs. DACQUAY, adjourned.

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Hon. Mr. LEMIEUX moved:

THAT Bill (No. 24) – The Personal Property Security Amendment and Various Acts Amendment Act/Loi modifiant la Loi sur les sûretés relatives aux biens personnels et d'autres dispositions législatives, be now read a Second Time and be referred to a Committee of this House.

And a debate arising,

And Hon. Mr. LEMIEUX having spoken,

The debate was, on motion of Mrs. DACQUAY, adjourned.

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Hon. Mr. MACKINTOSH moved:

THAT Bill (No. 26) – The Court of Queen's Bench Amendment Act/Loi modifiant la Loi sur la Cour du Banc de la Reine, be now read a Second Time and be referred to a Committee of this House.

And a debate arising,

And Hon. Mr. MACKINTOSH having spoken,

The debate was, on motion of Mr. ROCAN, adjourned.

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The House resumed the Interrupted Debate on the Proposed Motion of Hon. Ms. WOWCHUK:

WHEREAS excess rainfall in the fall of 1998 and spring of 1999 resulted in over one million acres of land going unseeded, primarily in the southwest, but also in other areas of the province; and

WHEREAS the federal government has recognized the disaster situation and is compensating people for mould and other property damage under the Disaster Financial Assistance Arrangements (DFAA); and

WHEREAS farmers lost chemical and fertilizer inputs and incurred extra costs to restore their land and for weed control, at the same time as they had no 1999 crop to sell; and

WHEREAS the Manitoba Government has repeatedly requested support from the federal government, which has the lead responsibility for disaster financing, for farmers who sustained damage to their land; and

WHEREAS the Manitoba Government pursued support for compensation under Section 25 of the DFAA, which specifies loss of applied fertilizer and land restoration and was turned down by the federal government; and

WHEREAS the Manitoba Government requested a Canada/Manitoba agreement for the provision of assistance similar to the levels provided in the 1996 Saguenay River Flood, the 1997 Red River Valley Flood and the 1998 Eastern Canada Ice storm, and the federal government has refused; and

WHEREAS there has been all-party cooperation on lobbying the federal government for assistance for Manitoba farmers.

THEREFORE BE IT RESOLVED that the Legislative Assembly of Manitoba urge the federal government to reconsider its position on funding for the 1999 flooding which occurred throughout the province, but specifically in the southwest, and include loss of applied fertilizer and land restoration as eligible costs under the DFAA; and

BE IT FURTHER RESOLVED that the Legislative Assembly of Manitoba urge the federal government to consider programs and assistance similar to that provided for disasters such as the 1996 Saguenay River Flood, the 1997 Red River Valley Flood and the 1998 Eastern Canada ice storm.

And on the Proposed Amendment of Mr. PENNER (Emerson):

*THAT the motion be amended by adding the following after the first "BE IT FURTHER RESOLVED" clause:*

BE IT FURTHER RESOLVED that the current Government of Manitoba acknowledge that, to date, the assistance it has provided to farmers affected by the 1999 flood has been insufficient, and

BE IT FURTHER RESOLVED that if the Manitoba Government is unable to secure support for 1999 Manitoba flood victims under the DFAA, that the Manitoba Government consider negotiating a 50-50 cost-shared program with the Federal Government; and

BE IT FURTHER RESOLVED that should the Manitoba Government fail to come to agreement with the Federal Government on a cost-shared disaster assistance program, that the Manitoba Government ensure all Manitobans that the monies required to alleviate the disaster will be included in the 2000/2001 Budget.

And the debate continuing on the amendment,

And leave having been denied to have the matter remain in the name of Ms. CERILLI,

And Messrs. PITURA and FAURSCHOU having spoken,

And the Question being put on the amendment,

It was negatived on the following division:

**YEA**

DACQUAY  
DRIEDGER  
DYCK  
ENNS  
FAURSCHOU  
FILMON  
GERRARD  
GILLESHAMMER  
HELWER  
LAURENDEAU  
LOEWEN  
MAGUIRE

MITCHELSON  
PENNER (Emerson)  
PENNER (Steinbach)  
PITURA  
PRAZNIK  
REIMER  
ROCAN  
SCHULER  
SMITH (Fort Garry)  
STEFANSON  
TWEED ..... 23

**NAY**

AGLUGUB  
ALLAN  
ASHTON  
ASPER  
BARRETT  
CALDWELL  
CERILLI  
CHOMIAK  
DEWAR  
DOER  
FRIESEN  
JENNISSON  
KORZENIOWSKI  
LEMIEUX

MACKINTOSH  
MALOWAY  
MARTINDALE  
MIHYCHUK  
NEVAKSHONOFF  
ROBINSON  
RONDEAU  
SALE  
SANTOS  
SCHELLENBERG  
SELINGER  
SMITH (Brandon West)  
STRUTHERS  
WOWCHUK..... 28

And the debate continuing on the main motion,

And Mr. ENNS having spoken,

And Mr. LOEWEN speaking at 5:00 p.m.

The debate was allowed to remain in his name.

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**Monday, May 8, 2000**

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Mr. DYCK moved:

Resolution No. 6: Commercialization in the Classroom

WHEREAS the New Democratic Party has removed Youth News Network from Manitoba's classrooms arguing they were against the commercialization of our schools; and

WHEREAS with this decision the NDP have removed a degree of autonomy and decision making from Manitoba's elected school boards; and

WHEREAS in the Member for Flin Flon's constituency, children from MacIsaac School are encouraged to collect Universal Product Code symbols off boxes of Kellogg products in an attempt to raise \$10,000 for technological resources; and

WHEREAS also in the Member for Flin Flon's constituency, MacIsaac School and Subway have set up a monthly classroom reward; and

WHEREAS Wal-Mart Canada has initiated the "Adopt a School Program" in which almost every Wal-Mart in the nationwide chain has chosen a local school in their community to support.

THEREFORE BE IT RESOLVED that the Legislative Assembly of Manitoba urge the Provincial Government to clarify its position on the autonomy of school boards as well as the ability of schools to enter into contracts with private sector companies; and

BE IT FURTHER RESOLVED that the Legislative Assembly of Manitoba urge the Provincial Government to consider allowing local school boards to make the decisions they were elected to make without political interference from the Provincial Government.

And a debate arising,

And Mr. DYCK, Hon. Mr. CALDWELL, Messrs. FAURSCHOU and RONDEAU having spoken,

And Mr. SCHELLENBERG speaking at 6:00 p.m.

The debate was allowed to remain in his name.

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The House then adjourned at 6:00 p.m. until 1:30 p.m. Tuesday, May 9, 2000.

Hon. George HICKES,  
Speaker.