



LEGISLATIVE ASSEMBLY OF MANITOBA

VOTES AND PROCEEDINGS No. 69

THIRD SESSION, FORTY-SECOND LEGISLATURE

PRAYER

1:30 O'CLOCK P.M.

The Clerk formally advised the Assembly that the Speaker was unavoidably absent and called upon the Deputy Speaker to take the Chair pursuant to the Statutes. The Deputy Speaker took the Chair at 1:30 p.m.

The following Bills were read a First Time and had their purposes outlined:

(No. 236) – The Protecting Communications on Public Interest Matters Act (Court of Queen's Bench Act and Defamation Act Amended)/Loi sur la protection des communications portant sur des questions d'intérêt public (Loi modifiant la Loi sur la Cour du Banc de la Reine et la Loi sur la diffamation)
(Ms. FONTAINE)

(No. 234) – The Consumer Protection Amendment Act (Right to Repair)/Loi modifiant la Loi sur la protection du consommateur (droit de réparer les produits électroniques)
(Mr. MALOWAY)

Mr. TEITSMA, Chairperson of the Standing Committee on Legislative Affairs, presented its Eighth Report, which was read as follows:

Meetings

Your Committee met on May 25, 2021 at 6:00 p.m. in Room 255 of the Legislative Building.

Matters under Consideration

- **Bill (No. 217)** – The Legislative Assembly Amendment and Legislative Assembly Management Commission Amendment Act/Loi modifiant la Loi sur l'Assemblée législative et la Loi sur la Commission de régie de l'Assemblée législative

Committee Membership

As per the Sessional Order passed by the House on October 7, 2020, amended on November 19, 2020, December 3, 2020, and further amended on May 18, 2021, Rule 83(2) was waived for the May 25, 2021 meeting, reducing the membership to six Members (4 Government and 2 Official Opposition).

- Hon. Mr. EWASKO
- Ms. FONTAINE
- Mr. MICHALESKI
- Hon. Mr. PEDERSEN
- Mr. TEITSMA
- Mr. WIEBE

Your Committee elected Mr. TEITSMA as the Chairperson.

Your Committee elected Mr. MICHALESKI as the Vice-Chairperson.

Non-Committee Members Speaking on Record

- Hon. Mr. GERRARD

Public Presentations

Your Committee heard the following three presentations on **Bill (No. 217)** – The Legislative Assembly Amendment and Legislative Assembly Management Commission Amendment Act/Loi modifiant la Loi sur l'Assemblée législative et la Loi sur la Commission de régie de l'Assemblée législative:

Patrick Falconer	Private citizen
Lloyd Talbot	Private citizen
Lloyd Axworthy	Private citizen

Written Submissions

Your Committee received the following written submission on **Bill (No. 217)** – The Legislative Assembly Amendment and Legislative Assembly Management Commission Amendment Act/Loi modifiant la Loi sur l'Assemblée législative et la Loi sur la Commission de régie de l'Assemblée législative:

Paul Thomas	Private citizen
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Bills Considered and Reported

- **Bill (No. 217)** – The Legislative Assembly Amendment and Legislative Assembly Management Commission Amendment Act/Loi modifiant la Loi sur l'Assemblée législative et la Loi sur la Commission de régie de l'Assemblée législative

Your Committee agreed to report this Bill without amendment

On motion of Mr. TEITSMA, the Report of the Committee was received.

Pursuant to Rule 27(1), Hon. Mr. FIELDING, Ms. NAYLOR, Messrs. MICHALESKI and BRAR and Hon. Mr. PEDERSEN made Members' Statements.

Following Oral Questions, the Deputy Speaker made the following ruling:

Following Oral Questions on May 10, 2021 the Honourable Official Opposition House Leader raised a Matter of Privilege regarding the Government's failure to table reports in the House, in contravention of statutory tabling provisions. In raising the Matter, the Member alleged that the Government's failure to table reports required under *The Fatalities Inquiries Act* impeded her ability to do her job as an MLA and to hold the Government accountable. She concluded her remarks by moving:

That the House censure the Minister and this Government for their failure to respect the laws of this province and to put forward information to this Assembly required by statute and to require the Government to publish all reports of the Chief Medical Examiner by no later than May 15, 2021.

The Honourable Government House Leader and the Honourable Member for River Heights also spoke to the Matter of Privilege before I took it under advisement.

I thank the Honourable Members for their advice to the Chair.

As Members know, there are two conditions that must be satisfied in order for a Matter raised to be ruled in order as a *prima facie* case of privilege:

1. Was the issue raised at the earliest available opportunity; and
2. Was sufficient evidence provided to support the Member's claim that their privileges, or the privileges of the House, were breached.

The Honourable Official Opposition House Leader asserted that she was raising the issue at the earliest opportunity, stating that she: "required time to research the relevant facts from the Legislative Library, and only received them after the House started for the day." Regarding this assertion, I must point out that the Member referenced that the most recent report in question here had been tabled in March 2020, and that was the report for the year 2017. This suggests that the Member could have raised this Matter months if not years before she did. Therefore, I would rule that the Member did not meet the test of timeliness on this Matter.

Regarding the question of whether the evidence provided sufficiently demonstrated that a *prima facie* breach of privilege had occurred, the third edition *House of Commons Procedure and Practice* provides some guidance. The footnote from page 443 of that volume describes an April 1993 ruling made by House of Commons Speaker John Fraser. This ruling involved a situation where the then Federal Government failed to table a document in a timely manner as required by statute. In ruling on that Matter of Privilege, Speaker Fraser noted that Members cannot function if they do not have access to the material that they need to do their work. In order to allow further discussion of the issue between Government and Opposition, he found that there was a *prima facie* case of Privilege.

When the current Manitoba Speaker ruled on a similar Matter on March 8, 2021, she referenced consultations with procedural staff of the House of Commons. Those consultations confirmed that the issue of timely tabling of reports and documents in compliance with statutory provisions continues to be relevant, and that a *prima facie* Matter of Privilege could be found if it was demonstrated that there was a failure to table such materials as required by law.

In order to determine whether such a *prima facie* case of Privilege exists, it is necessary to confirm the statutory tabling requirements referenced and also verify whether the reports were or were not tabled within the legally mandated period. In raising this Matter the Honourable Official Opposition House Leader noted that three reports were not tabled in a timely manner in accordance with statutory provisions. Specifically, she referenced that:

1. Section 43(1), of *The Fatality Inquiries Act* states that on or before March 31 each year, the Chief Medical Examiner shall submit a written report to the minister regarding any deaths which occurred during that year of residents in custodial facilities, psychiatric facilities, or developmental centres.
2. As of May 10, 2021, no such report had been tabled in the House since March 19th, 2020, when the report for the year 2017 was tabled.

I can confirm for the House that the Member was correct on both of these points. I can also confirm that on May 17, 2021, the Honourable Minister of Justice tabled the 2018, 2019 and 2020 reports required under Section 43(1) of *The Fatality Inquiries Act*. While I appreciate the Minister providing these reports to the House, the fact that they were tabled a week after the Honourable Official Opposition House Leader raised this Matter in no way negates her original points.

In speaking to this Matter of Privilege, the Honourable Government House Leader noted that over the last year as the province responded to the COVID-19 crisis, many Civil Servants have been called upon to do extraordinary things and to work extraordinary hours. Accordingly, he asked that all Members of this Assembly view this Matter in that context.

I am certainly sympathetic to the challenges that we have all faced this year as a society due to the COVID 19 pandemic, the Provincial Government included. However, the Speaker does not have any authority to override the statutory requirement for the tabling of these reports, even if there may be valid extenuating circumstances that caused delay in the preparation and tabling of the reports.

Given that the reports in question were not tabled in accordance with statutory requirements, and due to the precedents of the 1993 ruling by House of Commons Speaker Fraser, and the March 8, 2021 ruling of the current Manitoba Speaker, a *prima facie* case of privilege could have been established in this case. However, the issue of timeliness must be reconsidered in this Matter. Granted, the requirement of timeliness does not necessarily supersede the requirement of evidence. In this case however the Official Opposition House Leader could have raised this Matter anytime after March 31, 2019. Due to this delay of over two years, I am obliged to rule that a *prima facie* case of privilege has not been established as the Matter was clearly not raised in a timely manner.

The following petitions were presented and read to the Legislative Assembly of Manitoba:

Ms. LAMOUREUX – To urge the Minister of Health and Seniors Care to implement free access to period necessities within public schools and Manitoba’s health care system; and to acknowledge the prevalence of people within Manitoba who are unable to afford essential period items.

Mr. MALOWAY – To urge the Provincial Government to adopt Right to Repair legislation requiring manufacturers of electronic devices and appliances, including washing machines and fridges, to make information, parts and tools necessary for repairs available to consumers and independent repair shops.

By unanimous consent, the sequence for consideration of estimates, as outlined in Sessional Paper No. 71 tabled on April 20, 2021, was amended in order that the estimates of the Department of Health and Seniors Care be considered in the Chamber following the estimates of the Department of Advanced Education, Skills and Immigration.

The House resolving into Committee of Supply.

The House then adjourned at 5:00 p.m. until 10:00 a.m. Thursday, May 27, 2021.

Doyle PIWNIUK,
Deputy Speaker.