

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**Tuesday, 28 April, 1981**

**Time — 8:00 p.m.**

**SUPPLY — MUNICIPAL AFFAIRS**

**MR. CHAIRMAN, Morris McGregor (Virden):** I call the Committee to order. We're on Municipal Affairs, 4.(b).

The Member for Ste. Rose.

**MR. A.R. (Pete) ADAM:** Before we rose for the supper hour I was wanting to ask the Minister just what was happening. We did touch a bit upon the Northern Affairs assessment, I raised that before we rose for supper.

In the last while I have been trying to resolve some problems in regard to assessment and irregularities in some of the rolls in the Thompson area; it's not in the Thompson area but it's through he Thompson office because I think that Northern Affairs is under the Thompson office. The situations that we find there are just unbelievable in some cases. I've found in one instance where a person had lived — this is on rented land, on Crown lands — where he had lived in a log house and the house had burned down some years ago. He had moved away from that place because there was no house left and had built himself another place to stay and there was an assessment made on that building. For some reason the other residence was never removed from the roll, whether the department never knew about it or what, but the old fellow kept getting tax notices year after year after year and in fact he'd never paid any. All he had ever paid was the rental on the land, and being on rented land you cannot have your Property Tax Credit shown on your tax notice. You have to file it an income tax return in order to get it. The old fellow had never filed an income tax, maybe never in his life. Of course, he lost all the cost of living credits and any property credits that he could have obtained through that system.

When I looked at the assessment on that house, that I thought was completely out of — in my opinion there was no realistic assessment on that building. What I'm trying to make is that we've tried to — I've got it resolved to some extent. I've got the one tax statement removed from the roll, we've got that done. They've written it off, they've done away with it. I've got the old fellow to bring his taxes up to current, he's paid up all his arrears now. The problem is that he has to file every year. He has to file a paper in order to get his — it's somehow because it's on rented land and I don't know why it should be that way, maybe we should change that.

Now last Friday I had a similar case in the same area and in this case the fellow had moved from the previous residence for 15 years. He had left his former residence 15 years earlier. He's in a new area and I believe he's still getting — he showed me a demand for back taxes for I don't know how many years and just wanting someone to resolve this, so I'm starting to work on this situation.

I would say that the residences that these people are living in are slightly better than what you would call a shack. Just one step higher than that, a log building with some chip board siding on it. The

assessment on that building is \$1,800 and I thought it was just — I'm sorry not \$1,800, the assessment was over \$3,000, over \$3,000 on that building and I figure that's completely unrealistic for that kind — \$3,000, which is a lot higher than even on my own residence and, of course, I don't have a new residence, not a modern residence, it's an older home, but it's well established and well-fixed up, there's a basement on it. This fellow hasn't got a basement, got nothing. He's got an outhouse at the back, no plumbing, no water and the assessment on that little thing is \$3,000 and there's something wrong somewhere.

So the question that I want to raise is outside of the Court of Revision, is there any mechanism that you can have these buildings reassessed? Can you ask for a review?

**MR. CHAIRMAN:** The Honourable Minister.

**HON. DOUG GOURLAY (Swan River):** Well to answer an earlier question with respect to the Property Tax Credit, people that are on leased land, of course, do have to make application for the Property Tax Credit. It's always been that way and it seems a reasonable method to obtain this type of assistance. The question of the old shack being on the tax rolls for a number of years after it had been burnt, obviously the owner didn't report this as having been removed by way of fire or it may have been tax arrears that was being sent to the individual on a yearly basis. With respect to the individuals, or your suggestion that the assessment was unreasonably high, it's true that the individual could take this to the Court of Revision to argue that the assessment is unfair on this particular parcel, and he can request a reassessment on it if he feels that it's unreasonably high.

**MR. CHAIRMAN:** The Honourable Member for Ste. Rose.

**MR. ADAM:** Is it possible anytime during the year to ask the Assessment Office to come and take a look?

**MR. GOURLAY:** I understand that on most of the northern remote areas they make one trip in there on an annual basis and it would have to be picked up at that time if the assessor wasn't aware of the problem or the complaint, then it would not be picked up until the next visit to the area. (Interjection)— Well, some of the areas are serviced from Dauphin, some from Selkirk and others from Thompson. It depends on where the community is as to which northern community is served by what region it is in.

**MR. CHAIRMAN:** The Honourable Member for Rossmere.

**MR. VIC SCHROEDER:** Yes, I was listening with interest to the problems of Mr. Adam because just several weeks ago I had someone come to me with a somewhat similar problem. There are several subdivisions in the Beausejour area where people had cottages set up but they were never formerly

subdivided and so they are basically farmers' fields with trees on them and cottages all over the place. The cottages belong to the tenants; the land is leased from the specific farmer. The cottages are then assessed in the name of the owner of the land, not the owner of cottage. Then, where the problem comes in and I agree with the Minister that there probably is no other way of catching these people other than by having them file a return, but the problem then comes in when Revenue Canada comes along and has told these people — the ones that they audited for the year before — that because the house isn't in their name in the Assessment Branch they are not entitled to claim the tax although they've paid the tax; they've paid the tax to the owner of the land who in turn paid it to the rural municipality, so now what they are telling us is all that the owner of the house is entitled to is a rebate based on that sum being a rental payment. At first they were going to deny the whole thing and we got into a bit of an argument and at this point they've agreed to give us 20 percent, which is still unfair. It would seem to me that while we're discussing this problem it would be more than reasonable, I would think, for the branch to be assessing these personal properties in the names of their owners rather than in the name of some other owner.

The several subdivisions I'm thinking of began in the 1940s and 1950s and they're old subdivisions. Hopefully they will be cleaned up over the next few years in that I believe a lot of the owners of these properties are getting through with subdivision approvals and will formally be subdividing these properties into lots and once that has happened the whole problem will be eradicated, but until then, as Revenue Canada catches these people filing returns showing a payment, which they actually made to the landlord rather than to the municipality, we're going to have more people being inequitably dealt with, so I'm wondering whether there's something that can be done about that.

**MR. GOURLAY:** This is a problem for those individuals for sure, because in one case it's called taxes and in the other case it's called rent. And the situation exists, not only in your example but this has been a major contention with a trailer court operator in The Pas who runs into the same kind of problem, in the situation where the Federal Government calls it rent and in the provincial case it's called taxes. It's spelled out in the Act, there's no other way to really — the people that own the cottages or the trailers set them on land that's owned by someone else, and I don't really know of any other way that this can be handled.

**MR. SCHROEDER:** The other way is to handle it the same way as people who lease land from the Crown and build a building on that land. The Crown doesn't have any difficulty figuring out whom to bill for the taxes on that piece of property. If you go into the LGDs or other municipalities around the lakefronts, you will find that the tax bill finds its way very quickly directly into the name of the tenant, who is also the owner of the house, and that is exactly what I would hope that we could do for other tenants who own their own homes. If it takes a change in legislation, then it would seem that shouldn't be all that difficult to do. If you can do it for tenants in Crown lands, you can surely do it for tenants in non-Crown land.

**MR. GOURLAY:** Well in the case of the situation where you use the example of the cottages, this is a private individual who can be taxed, or the revenue can be obtained through the owner of the land. This is the way that it's been set up for many years I presume and it's been looked at on many occasions and it hasn't been changed to date.

**MR. SCHROEDER:** If it changed to date, I wouldn't be here talking about it. The problem is that up until the time of the tax credits, there was never any concern. The owner of the house would simply get the tax bill passed on to him from the owner of the land and he would pay it to the owner of the land, in addition to his rental and that was the end of it. They forgot about it. There was nothing that he could do about it.

Then, since the tax credits, many of these people and again, it's only those who are living there year-round, to whom this applies, because it doesn't apply to the so-called cottager because he's got a principal residence somewhere else. But it does apply to the people who over the years have possibly retired there and they are now in a position where, I don't know whether it has been looked at. If the Minister says it has been looked at, I'm wondering why it is that no change was made because it seems to me that it wouldn't be that difficult and he mentions the trailer court. It seems to me if I were the owner of a house trailer and I was paying personal property taxes on that, in a way similar to the Minister paying real property taxes on his house, on his own property, then I would feel as entitled to a credit in fairness, maybe not in law, but in fairness, as what the Minister should be entitled to if he pays taxes on a house on his own land and if we have to change the law to accomplish that, then I would suggest that we consider it.

The only difficulty I can see is that obviously if you're taxing the landowner, then eventually if the taxes aren't paid, you have a land sale as opposed to a house sale, but I don't really see that as being too much a problem, because the houses that we're talking about that would be claiming this Property Tax Credit in general, would be the principal residences of individuals and probably would be worth sufficient sums for the municipality to go through the same procedures as they go through with real property.

**MR. CHAIRMAN:** 4.(b) — pass — the Member for St. George.

**MR. BILLE URUSKI:** Mr. Chairman, the matter of assessment in Northern Affairs areas has been raised by my colleague, the Member for Rossmere.

Could the Minister indicate as to when the areas of Northern Affairs began being subject to properties having been put on the assessment rolls in terms of remote communities? I recall that the Crown lands were brought into the assessment rolls in the middle 1970s when the changes in rental rates and Crown lands were brought in. I'd like to ask when the areas in Northern Affairs, in terms of remote communities, were put on the assessment rolls, or are all areas in Northern Affairs area not yet included on the rolls?

**MR. GOURLAY:** Many of the Northern Affairs communities have been assessed for many years.

Staff advise me that they're not specifically sure exactly when this started but it's going back a number of years, and not all of the Northern Affairs communities are included, but those that have requested and wanted to have some local autonomy have requested that assessment take place, so most of the northern communities are being assessed and have been for some time. We can get that information if you want the exact date as to when this started, but it was at the request of the Department of Northern Affairs to Municipal Affairs to include this assessment.

**MR. URUSKI:** Mr. Chairman, now to understand the Minister, is he indicating that communities in Northern Affairs area, community committees, would have passed resolutions through the Northern Affairs Department which was passed on through the Municipal Affairs Department prior to any assessments being made on properties in those communities? Would that be the standard procedure that the community committees would pass resolutions and ask that lands would be placed on their rolls so that certain taxes could be collected and certain projects could be undertaken within the communities? Is this the procedure?

**MR. GOURLAY:** Mr. Chairman, I believe your comments are accurate. I would suspect that the request would come through the various community councils. However, I can clarify that situation for you through the Northern Affairs staff.

**MR. URUSKI:** The Member for Ste. Rose raised, I believe, a specific area, and the Minister should be aware that I, as well, raised a matter with officials in your department coming from the community of Pine Dock; that I had received correspondence and requests from the community of Pine Dock, wherein the homes may have been assessed at some time previously, however, what the nature of the complaints were, were that garages built by the residents of the community, and some of those garages, I presume, would have been used wholly or partially for the storage of some of their fishing equipment, were subject to commercial assessment, that they were being treated, I guess as Other Property, and, as it was explained to me, in areas where residents who made their livelihood from fishing had retired, their situation was reassessed and in cases where people had retired from their livelihood of fishing, their reassessment was reviewed on the garages per se, on the commercial end of the assessment, and these had been removed. That's the specifics of the matter that have been raised with myself as to how does one determine, if you are in any other community and you have a garage, you may keep equipment as part of your trade. If you are a mechanic you may have some tools stored in the garage, but yet the garage would be assessed as part and parcel of the residence, and yet in cases of Northern Affairs communities this has not been the case, or at least in this community it may not be a wide practice and I ask the Minister for some guidance and some comments that I can give back some answers to these residents who legitimately say, "Look, we're no different than anybody else in the community; we have a home and we may keep some equipment in the garages," which is in many

instances part of their livelihood but not any different than I guess a farmer keeping some equipment in his garage that would be used for farm work but yet the garage on the residence, of course, although farm buildings are exempt but in cases where the residence is taxable, the garage would be in the same position as regular property and not as commercial property. Has there been a distinct difference applied throughout the north in terms of these kinds of situations or is this something new, Mr. Chairman?

**MR. GOURLAY:** I understand that this practice has gone on for some time and it's very difficult for the assessors to make the determination whether the garage should be assessed as commercial or not. In those cases there may be some discrepancy but for the most part they are commercial fishermen that do use the garage facilities to store their equipment. When these fishermen retire and no longer become active commercial fishermen, the assessment is removed from the garages and it is changed to residential.

**MR. URUSKI:** That's basically the point. They're not objecting, I believe, to the garages being assessed as regular residential property but what they are objecting to is the assessment of those garages as commercial property as other properties because they have and I guess now do have assessment and taxes that they pay on their residences and they consider the garages as a normal garage that you and I would normally consider. If a mechanic in the City of Winnipeg put his tools in a garage and kept some jacks and other equipment in the garage, there's no way that someone would establish that this garage would be commercial. He would even do repairs. No doubt there are many that do some after-hour repairs or even some full-time repairs out of their home workshop or garages but yet they would not be assessed as commercial property, and that is basically the dispute that they have with the Assessment Branch, Mr. Chairman.

**MR. GOURLAY:** Well, Mr. Chairman, the fishermen have a license to indicate that they are commercial fishermen and if they in fact are using their garages for storage of equipment used in the fishing operations then the assessor makes that determination that they are assessed as commercial buildings.

**MR. URUSKI:** Just to follow up on that, I have one question. If that is the case then they would also be liable to a business tax if you're going to assess commercial property, then he could be liable to a business tax as well. Is that not correct, because, you have a business tax? I've been in business all my life, as well as farming, and I know that I've paid business taxes on my commercial property and on our store businesses and grocery stores and trading posts and so on. It seems that if you're going to tax a fisherman that hangs some nets in his shed during the summertime so that they don't rot in the rain; in the fall he puts them in boxes and puts floats and sinkers on them and puts them in the lake . . . actually it's a storage shed, it's not a commercial enterprise where other people come in and deal in there or bring in fish that he buys or they come in

and buy nets from him or floats or sinkers or he's selling floats or selling sinkers or jiggers or ice chisels and so on. You know, it seems to me there that we should be looking at that. I don't think those people are really legitimate operators. Sure, they have commercial fishing licenses, just like a trapper has a license to go out and trap in a marsh and he brings the muskrats and puts them into the shed in the back of his house on stretchers; is that a commercial? You would tax that as a commercial, Mr. Chairman?

**MR. GOURLAY:** Your question with respect to business taxes on the fishermen that have a commercial operation, a business tax would be assessed if the fisherman is doing business with the public out of that particular facility but in most cases it's just used for storage and storage of equipment and so on and it's not considered a business operation.

**MR. URUSKI:** Mr. Chairman, the Minister should be aware and I guess it's a difficult thing for the assessors to look at the livelihood of these people because there will be many of them who will not be, unfortunately, full-time fisherman. They will have maybe a license, maybe two licenses, but yet they will not fish the whole year in terms of having the Spring, the Fall and the Winter fishery, yet they will have a license in one part of the year and basically the income they will receive from the fishery will be below sustenance for their family because it'll be maybe one season, maybe if they're lucky, there will be several in the community that will have all three licences and will be able to make a fairly decent livelihood if they are able to have a good year. But the fact of the matter is, it is such a difficult situation to really, when you look at the whole area of assessments, we're not saying at all that the buildings shouldn't be assessed as a storage building, but to be assessed as a commercial building makes it very, very — not only onerous but very subjective as to how one interprets a commercial establishment. Mr. Chairman, we urge the Minister to look at this situation and to look at those communities that this has happened, and correct those anomalies, because it's very difficult, Mr. Chairman, for the branch, I'm sure for the staff in the field, they will see a couple of nets hanging on the garage or some equipment inside, and they will say, that's commercial. The individual may have one licence. He may have \$3,000 worth of income, or \$4,000 worth of income from one licence that he happens to fish for a period of two months of the year. He has a licence, grant it. He has a commercial fishing licence, but he may have the one licence and he has it in operation for two months of the year; the rest of the time he's either in the bush on the pulp lines or employed in other employment trying to make ends meet.

We submit, Mr. Chairman, that this certainly is a situation, while it may be clear in terms of the equity of the law, it's clear that it is inequitable, it's not equitable, and it really requires some rethinking of the whole process as to how one establishes a commercial building in the sense of the remote communities. You see, they happen to be caught, because there's no one else around. I mean, they are there. And what is their livelihood there? Fishing. So

they're fishing, there's some nets, they may fish one season, they may fish two, some of them may fish the whole year round. Some of them may have the three licences.

So they are there in the community and there's nowhere to go. But if you come into a large community and you have a residential area and the fellow is doing mechanical work or welding or some wrought iron work out of the backyard, out of his garage, I venture to say that will go on in many instances — I would say there are instances that if one started looking and trying to pinpoint, there are instances of many operations being carried on for a long long time before someone recognizes that there is a commercial establishment.

But by the virtue of the people having to obtain a licence from the Crown to take a natural resource from the water, they are the farmers of the sea, Mr. Chairman. Farmers in Manitoba happen to have their farm buildings exempt. These people aren't even saying, exempt us; they're saying, treat us like you would treat any other residential person in the Province of Manitoba. That's the case they have asked us to put forward.

**MR. GOURLAY:** Mr. Chairman, I think that I should clarify one point. We have been calling the assessment on these garages the commercial fishermen use for storage of equipment as assessed as commercial. The actual classification is Other. It's farm and residential, or it's assessed as Other. And the example that the honourable member uses with respect to the situation where farm buildings are exempt, they are exempt if the man is a farmer. If he is operating a blacksmith shop in the community, a seed plant, or a commercial operation on his farm, those buildings are assessed as Other. No doubt there are many of them missed throughout the province that are not maybe assessed, but if they are picked up, then they are assessed.

**MR. URUSKI:** Just so that I understand the Minister correctly, would the calculation of Other in terms of the storage sheds be the same rate that would be paid as if the building was a garage as part of the house, would it take the same rate of taxation?

**MR. GOURLAY:** Did you say if the garage was part of the house?

**MR. URUSKI:** You've indicated that they are not taking the commercial rate. I was under the impression that the buildings are being taxed under the commercial rate. They are being assessed. Is the rate for "Other" the same rate as those residents would pay on their home, on their residence, in that community in terms of the mill rate, or does the term Other take a mill rate different than the residential rate that their homes take? That's really the question.

**MR. GOURLAY:** Assessment on Other would be higher than it would be on residential and farm.

**MR. URUSKI:** Mr. Chairman, then clearly their contention is accurate in terms of their position with respect to the "Other" rate that they are paying on their storage buildings.

**MR. GOURLAY:** Mr. Chairman, that's correct. I want to just clarify, we were making reference to the term,

commercial, and farm and residential, and I just wanted to clarify that, that we should be calling it Other rather than commercial.

**MR. URUSKI:** What would be the difference in Northern Affairs area — I believe there's a standard mill rate. Would there be a substantial difference between the two mill rates of residential and Other?

**MR. GOURLAY:** Yes, it would be the school rate levy, which is 37 and 75.

**MR. URUSKI:** So then there would be a 38 mill difference between the rate on the residence versus the rate on the garages, Mr. Chairman. Am I correct in that?

Mr. Chairman, then clearly, I again, and we again urge the Minister to review that situation dealing with fishermen if that is the case, because it will be very difficult for the Minister to justify or being able to determine Other property in other areas of the province where clearly they can identify a small community where a number of people have fishing licences, whether it be one or more, and I don't think that should be the criteria. Because, are you going to say, well, with one licence we won't classify the buildings as Other because it can only be classified as part-time employment, one-third, if that, in some cases less than one-third of their income would be derived from fishing, and then if you say, well, if they have two licences in the year, are you going to then establish a rate for Other on these buildings if he's fishing two seasons of the year, which may be now four months of the year, or we will already put the rating of other if the individual has all three licences that he or she would be eligible for and at that point in time when he's fishing six months of the year, that's when we treat it commercial. I mean, you get into a real dog's breakfast, if one could put it in terms of trying to determine when you do it. If you're doing it right off the bat, clearly it is inequitable and we urge you to review your situation and your policy in this respect.

**MR. CHAIRMAN:** The Member for Rossmere.

**MR. SCHROEDER:** Thank you, Mr. Chairman. Going back to the business of these cottages, I just want to put it on the record one more time and try to explain it again and possibly come up with a suggestion.

Again, I don't think that we have all that terribly many, but we have some of those cottages and obviously we have some people who have spent a lot of money on buying house trailers, and if they are being denied the Property Tax Credit which other property owners are being given, then I think that they are being unfairly treated and I recognize that there would be a difficulty in terms of collections, if you issued a tax receipt or a tax statement strictly into the name of the owner of the house, as opposed to the owner of the land. But it would seem to me, there would be nothing wrong with assessing a home owned by Mr. Smith, in the name of Mr. Smith, and possibly even making it jointly with the owner of the land and that is, right now, the owner of the land gets a statement for each house on the land, but it's all in the name of the owner of the land, although he doesn't own the houses. Because of that the owners of the houses are not entitled to their Property Tax

Credit. If the tax statement came out in the names jointly of the owner of the house and the owner of the land, then the owner of the house could go and pay the tax bill and when those idiots from Ottawa assess the tax statements, they can see that he's got a receipt showing that he has paid the taxes to the municipality, rather than a receipt showing that he's paid the taxes to the owner of the land and that will get him or her the Property Tax Credit and will give him or her equality with the rest of the taxpayers in the province.

I think that is an important principle, which your department should always keep in mind, the principle of fairness, as between one taxpayer and another. It is certainly not fair that one taxpayer who owns a house is entitled to the Property Tax Credit and another taxpayer who also happens to own land, is entitled, and a third taxpayer who owns a house on rented Crown land, is entitled to the Property Tax Credit, but if he happens to own a house on rented private land, then he's not entitled to the Property Tax Credit.

So I would suggest that there is an area here where you should be looking at more fairness. There may be several hundreds of taxpayers involved and if the Minister has had concerns expressed to him about a trailer park, I hadn't thought of that, but I think if I owned a trailer and I had to pay the taxes on that trailer and was then not entitled to my Property Tax Credit as a result, I would think that I was being unfairly treated as compared to the owner of a different piece of residential property.

**MR. CHAIRMAN:** The Honourable Minister.

**MR. GOURLAY:** Mr. Chairman, these people that have their cottage on land they don't own are not really considered taxpayers, but they would be entitled to the rental, 20 percent I believe it is, of their rent, which the federal people refer to as rent, rather than taxes, if it's your principal residence and I presume it is, if they would be otherwise eligible for the Property Tax Credit.

**MR. SCHROEDER:** Mr. Chairman, these people, many of them are paying just several hundreds of dollars a year in rent. The rent is a minimal portion of what they are paying out. Twenty percent of that is peanuts. They're paying \$500 or \$600 and more for property taxes. Other taxpayers are entitled to \$275 or \$325 or \$425 right off the top, regardless of income.

I know what is happening now. They theoretically might be entitled to take 20 percent of this off, but it's not a rental payment; it's a tax payment. It is a tax payment which the Assessment Branch taxes, assesses, against their house, not against the owner of the land's house, against their house, and their payment is not a rental payment. It is a payment specifically of that amount of taxes in addition to rent and so, if the Minister isn't prepared to look at it, they are certainly being treated differently from other taxpayers and I've pointed out another example of taxpayers who aren't treated that way. That is, taxpayers who don't own the land on which they reside but happen to live on Crown land. They are assessed in their own name and they can take that tax bill; they may have to pay \$200 to the Crown and another \$500 to the local municipality. When

they calculate their payments out at the end of the year they've got \$200 in rental payments and they've got \$500 in property tax payments and they're entitled to the Property Tax Credit. But if they happen to be living on privately-owned land and it may be that this government has some ideological hangup about people not being entitled to live on private land, I don't know, if that's your problem tell us, but if it's not your problem, then I think that you should recognize that there is an unfairness between those taxpayers and the ones I'm talking of.

**MR. GOURLAY:** I wonder if I could ask the member, is this just an isolated case or are there a number of situations like that?

**MR. SCHROEDER:** Well, I should explain to the Minister that I don't think you're going to find any more new ones because since The Planning Act came into effect and since building permits have been required in the municipalities, you don't have any of these new ones popping up and some of the older ones are already being put into subdivisions, so once they are put into subdivisions, that's the end of that, because the owners of the cottages are buying the land. But there are, and I'm talking not about those who have summer cottages because they are not entitled to the rebate — that's not their principal residence — I'm just talking about the ones who live there year round. I don't know; I would say that just in the Beausejour area there would be probably 15 or 20 families to whom it would apply, just for instance and I don't know, the Member for Ste. Rose indicated that there were a number of people in similar circumstances but I really don't know and the Minister would know as well as I do about the number with house trailers. I think that most of them are getting their income tax returns, they're probably getting by claiming them as a Property Tax Credit and it's only the odd one that's being audited, where the problem is coming up, but each year you get more of them audited apparently and each year there's going to be more people angry and if it happened to me, I'd be angry too.

**MR. GOURLAY:** Well, I brought up the question of the trailer parks and this situation is the decision of the municipality to tax these people in that fashion. There is other alternatives they could use that would get around this problem, but there is this one situation that we are aware of in the province which does create a similar problem to these cottage owners. I understand this problem is not something that's just happened in the last three years, it's been around for some time.

**MR. SCHROEDER:** I'm sorry, I missed part of the Minister's remarks. This was a question I was going to ask anyway, he might have just answered it. Would a municipality under present legislation be entitled to issue a tax statement to the owner of the cottage jointly with the owner of the land?

**MR. GOURLAY:** Mr. Chairman, apparently the Act spells this out quite clearly that it is not possible to do this. The registered owner has to be assessed, so it's not possible to have a joint tax statement.

**MR. SCHROEDER:** Could the Minister indicate what complications there would be — and I would

recognize that this would require a legislative change, but would it be that difficult to make a change which states that in the cases where there are houses on privately owned land, which are not owned by the owner of the land, that the tax statement could go out jointly to the owner of the house and the owner of the land, thus keeping the right of the municipality to do whatever is necessary if taxes aren't paid in terms of tax sales and that sort of thing against the land itself, but at the same time relieving the homeowner of the difficulty you have right now?

**MR. DEPUTY CHAIRMAN, Henry J. Einerson (Rock Lake):** The Honourable Minister.

**MR. GOURLAY:** Well, Mr. Chairman, a plan of subdivision would be required as well as the legal description of the property in order to achieve this.

**MR. SCHROEDER:** At the present time there is a tax statement that goes out, say for the quarter section he might have 20 houses on it, it doesn't show any specific legal description for any one of those 20 houses, it then refers to the 20 houses, each individually. Why would there have to be a change? We're not talking about the taxation on the land, which is not the land owned by the tenant, we're talking about the taxation on the house, and the legal description of the land surely wouldn't be necessary for purposes of taxation of the house.

**MR. GOURLAY:** Well, every house or cottage is considered an improvement on that property. Are you referring to the privately owned land or are you referring to Crown land now?

**MR. SCHROEDER:** Privately owned land.

Certainly every privately owned house is an improvement, but every one of those privately owned houses also is providing funds to the municipality, and it is specifically, anyone who thinks about it for a second, can see that it is the owner of the house who's going to wind up paying the taxes. Now, he is not being taxed for the land, he's just being taxed for the house. The owner of the land itself is being taxed for the land. It's not a question of who is now responsible for it, it's a question of who should be responsible for it. You know, I have all kinds of property, little things, big things, in between, some of them mortgaged, some not, but all of them, I am fortunate enough to be able to be paying the taxes on myself, not having my taxes on my property in the name of someone else. I think that that's something that we should be trying seriously to get away from.

**MR. CHAIRMAN:** 4.(b) — pass — the Member for Ste. Rose.

**MR. ADAM:** I have a very similar situation to what the Member for Rossmere has raised in my area as well, where the landowner has his house on his property and he also had a number of cottages as well, which he used to rent out on a daily basis, or on a weekly basis. Eventually they were all sold. He sold them all to people who wanted to have them all year round or have them there whenever they wanted them, and so in addition to that, he had other people coming in and establishing themselves,

and I think now — I'm not sure, I would say there would be between 40 and maybe 60 houses on that property. The tax, if I remember correctly, each house is assessed for taxation, and the owner is responsible for the entire tax assessment on all the houses, but the list comes out with each individual name, a list comes out to the landowner with all the names of the people who have cottages on there, and each one is assessed differently because some are fantastic cottages with fireplaces, and stone walls and everything else, and others are very ordinary. So he gets a list; Joe Blow owes so much and John Jones owes this, and this is his tax and so on and so forth, and he has to go around — he's a tax collector. He happens to be a tax collector for the Department of Northern Affairs. He doesn't get paid for that, to be a tax collector. If anybody doesn't pay, well, I guess he's left to argue with the cottage owner and, of course he can always, I suppose, put a lien on the cottage. I think he's had to do that from time to time in order to protect his own interests, but it is a lot of trouble for that particular party. I know that I was involved looking at that particular situation here a year or so ago and it's a bit difficult to handle that.

I don't think the Minister wants to respond to that because he has covered it already, but the Minister awhile ago, when I was raising those two other points about the high assessments on these poor buildings, the Minister mentioned that in Northern Affairs it was done on an annual basis. Now, I thought that before supper we were discussing here that the situation in Northern Affairs was not that good and that there was a lot of communities that hadn't been assessed, and some were, and I think the Minister's reaffirmed that after supper, but he also said that we're looking at them on an annual base, and I just wanted to give him a chance to correct that if that is not correct.

**MR. GOURLAY:** Well, in the case of Northern Affairs communities, the assessor goes in there once a year to pick up any additional changes — it's not a complete assessment every year. As I read out the number of communities that would be done on a complete assessment, there were a number of Northern Affairs communities as well as municipalities. But you had mentioned that an owner of property may want to have his property reassessed, and he could have that done when the assessor came in on his regular annual inspection of picking up new buildings or whatever.

**MR. ADAM:** If a fellow comes in, the assessor comes in, he's able to get him at that time to reassess his property?

**MR. GOURLAY:** The owner of the property should notify the clerk of the community that he is unsatisfied with his assessment and then the clerk in turn would notify the assessor so that that would be picked up when he visits the community.

**MR. CHAIRMAN, Morris McGregor:** 4.(b) — pass. Be it resolved that there be granted to Her Majesty a sum not exceeding \$3,630,700 for Municipal Affairs — pass.

6.(a) — pass; 6.(b) — pass — the Member for St. George.

**MR. URUSKI:** Mr. Chairman, there's been, as I understand it, changes in the entire process of

relationships between the department and the municipalities. I wonder if the Minister could explain for us what the change and how the process is carried on at the present time.

**MR. GOURLAY:** Well, the municipal planner works along with the municipality in an advisory role and fulfils that function continuously with the municipality. Previously the municipal planner would advise the municipality to a point and then would perform a different function and part of the Provincial Planning Board as well and so this rose to considerable distrust I guess, is the right word to use, of the planner by the municipality where he would be advising him to a point and then would put on a different hat and sort of, in some cases, maybe have to reject the proposal that he had worked with and so this change was made in defining the role of the municipal planners and the provincial planners and I think generally this has worked out quite favourably.

**MR. URUSKI:** Mr. Chairman, can the Minister indicate, have there been any surprises in terms of new communities created in the province in the last year or two that he may have not been aware of in the past, Mr. Chairman? Mr. Chairman, I would have to share something with the Minister, when during my term I happened to take a trip into Northern Manitoba and at that point in time, little did I realize that there was a new community called Sundance that had been created and well established at the time, with very little, to my knowledge, I'm sure some of the staff were aware of it, but very few of the staff within the immediate department were until someone decided to go and have a look and to see the new communities.

But what I'm referring to is in Southern Manitoba, in agricultural areas; are there developments that have potential of being communities in the making as a result of developments and subdivisions that were approved, even before The Planning Act and that's probably the greatest dilemma that the government faces with municipalities, because I recall seeing many quarter sections of land which were subdivided by people under the old legislation. They would chop up a few subdivisions, allow it to go through and several months later they would come back and subdivide it again and before you knew it, in a year or two years, the entire quarter section of land. I think the Member for Emerson and the Member for . . . not Emerson, I noted your name, but the Member for La Verendrye; those areas are full of those kinds of examples and the Member for Springfield, I believe, in those areas there are many such examples where these plans do exist. These subdivisions are there and just waiting for their owners to sell those lots and begin development and in many instances, on prime agricultural land. I assume that it's probably a fait accompli and I'd like to hear the Minister's comments whether there is any thoughts that the government is giving how they propose to handle this kind of situation, because obviously the subdivisions are there; there hasn't been clearance from the various departments as to the possibility of flooding. You still could have the building of residences in areas where there is severe spring flooding from time to time, but these all have titles, have separate titles, and are registered in the Land Titles Office, under old legislation, prior to the

legislation that is here now and have been there. How is the department treating those kinds of subdivisions?

**MR. GOURLAY:** First of all, I'm not aware of any Sundance situations in the southern part of the province, as a result of new subdivisions. I expect that you are referring to subdivisions that may be 40 or 50 years old; they're old subdivisions and . . .

**MR. URUSKI:** There may be, I don't know, there may be through one by one, whether there's any circumstances that will arise in the future where there is now 10 or 15 or 20 homes that are slowly going to crop up in an area, either from old ones, real old ones or even new ones that are being allowed, say in the proximity of areas of fairly poorer quality agricultural land, but yet bordering on good land and developments have taken place. Are there many subdivisions being applied for and being approved and what areas of the province is there, or has the pressure lessened over the last two or three years, in terms of subdivision applications?

**MR. GOURLAY:** If you would like to get information on the provincial planning situation with respect to figures —(Interjection)— yes, that would be in provincial planning.

**MR. URUSKI:** They're there, oh, yes, I see. Mr. Chairman, as well, this does come . . .

**MR. GOURLAY:** This does come under provincial but I would just like to comment, with respect to the older type subdivisions. Apparently if they're more than eight years old, the municipality, if they so choose, can declare those obsolete, if it's more than eight years old.

**MR. URUSKI:** Mr. Chairman, have there been any such subdivisions, but if the subdivision is registered, would there not be separate titles issued or is the subdivision just registered and titles would not be issued until the land would actually be sold from those subdivisions that have been registered? I would like to understand that a bit better.

**MR. GOURLAY:** Well, to clarify it, these would be on subdivisions that are more than eight years old and undeveloped.

**MR. URUSKI:** That I understand, Mr. Chairman. Let's say this quarter section is all done up into five-acre parcels, into strips or however the description of the property is and the type, it doesn't make any difference; there has been no housing, no development taken place on this property, but that subdivision exists; it's registered in the Land Titles Office. Are there separate titles and is it possible for a municipality if that subdivision is registered and separate titles have been issued, I think it is possible to issue, say, 20 titles in my name for 20 different parcels of land on that quarter section. How would you then declare it, or be able to declare it obsolete if separate titles were issued on the registration of those lots? Is that possible?

**MR. GOURLAY:** Mr. Chairman, it would be very difficult if there were a number of lots individually

owned and titles for those lots. If the subdivision was one owner with maybe 30 lots, the roads would remain but the lots would disappear.

**MR. URUSKI:** Can the Minister indicate whether there have been any instances that municipalities have declared, and I'm sure that a lot of these, we're getting to the point now in time that we're getting into I would say, what, the six-year range of the new legislation. I think it's about six years since — 1976, I guess, it was proclaimed — so we are in the five to six-year range. We are really getting into the area, I presume, where I guess even councils could have abandoned because there would be many subdivisions that would have been put in a year, two years, three years prior to the new legislation, or maybe beyond that. Have there been subdivisions that have been actually declared null and void by municipalities?

**MR. GOURLAY:** Yes, I understand there are a number in the R.M. of St. Andrews, St. Clements, and possibly one or two other municipalities.

**MR. URUSKI:** Just to get some clarification — where they would have been in existence for a decade or thereabouts, or beyond the limit of eight years, and they would be declared null and void; is that the usual practice that has been maintained by councils?

**MR. GOURLAY:** Where this has happened, probably the subdivisions were several years old, in the 30, 40-year range.

**MR. URUSKI:** I see. But nothing that one could say within the eight to ten-year range, where subdivisions have been put into place?

**MR. GOURLAY:** Probably not. They appear to be much older, because in the last 10 or 12 years councils have taken a more active role in many instances and so maybe perhaps not all, but the ones that have been declared obsolete certainly have been older-type subdivisions.

**MR. URUSKI:** Mr. Chairman, so basically many of those, and there have been councils — I would agree with the Minister that there have been councils who have played a much more active role in the area of land use planning within the municipalities, but by the same token, there have been and are many councils who would play, to put it mildly, a passive or a non-active role in terms of subdivisions. There are councils, or instances of councils, more so in the past and maybe today, but, you know, we spoke about a council in the Member for Rhineland's area that was elected primarily on the basis of, one could call it, letting it rip. There is just — any land use planning is Communism, Mr. Chairman — I think the Member for Rhineland can well recall some of the statements that were made by councillors in his area.

So, Mr. Chairman, there are many of those kinds of instances where there have been subdivisions put into place and councils. Is it mandatory under the legislation that plans not put into developmental stage be abandoned by councils, or is the legislation fairly vague and councils can decide in terms of their development plans of their area if they have one?

Obviously they would not want a subdivision — well, no matter, there may be a case that they would want to abandon one and have it redesigned, if it had been approved, even though it may be in an area now that councils have decided that they are prepared to allow development to take place, but the configuration and setup of the subdivision might be such that it would demand change but yet it had been approved prior to the legislation and councils have very little authority. This would probably be a case where good planning advice from the branch to the councils would really come into play, Mr. Chairman. Am I basically correct in my assumptions?

**MR. GOURLAY:** Mr. Chairman, the legislation is permissive for the councils if they so choose to declare the subdivision obsolete. In some cases, it may be that they want to redesign the subdivision. I'm not sure that this has happened but it's possible that it could happen, where the municipality would declare the existing subdivision obsolete and for some reason wish to have it redesigned.

**MR. URUSKI:** Mr. Chairman, the Minister in his remarks indicated that there are now 13 planning districts involving some 43 municipalities. Of those 13, have all of them passed land use plans, development plans for their areas?

**MR. GOURLAY:** Of the 13 planning districts there's a number of them in various stages of having development plans in process. There are three that have district planning statements and a number are just in the preparation stage, some are in the past first readings, so that they're in various stages of development at the present time.

**MR. URUSKI:** Mr. Chairman, because many of them are in various stages, have agreements been signed between the province and those 13 districts in terms of the costing-out of the development plans that are in process? Have all those 13 had budgets prepared in terms of the development plans?

**MR. GOURLAY:** Yes, that's true in all 13 districts.

**MR. URUSKI:** Mr. Chairman, are the funds that are shown here in the Municipal Planning Services, Other Expenditures, would those funds take into account the cost of the 13 plans within that budget or are those funds provided elsewhere?

**MR. GOURLAY:** Of the \$487,900 there's some \$216,000.00.

**MR. URUSKI:** Mr. Chairman, your statement of \$216,000 for developing plans with provisions for how many more new districts in 1981? How much more funding are we talking about?

**MR. GOURLAY:** Mr. Chairman, there's some \$46,000 carryover from Planning statements from last year and there are provision for eight new planning districts in the current year.

**MR. CHAIRMAN:** 6.(b) — pass. Resolved that there be granted to Her Majesty a sum not exceeding \$2,357,600 for Municipal Affairs, — pass.

**MR. URUSKI:** Mr. Chairman, before we leave that item . . .

**MR. CHAIRMAN:** The Honourable Member for St. George.

**MR. URUSKI:** Mr. Chairman, I'd like to ask the Minister whether all the positions that are to be supplied with respect to planning advice within that department, are they filled or are there many vacancies in that area of assistance to municipalities?

**MR. GOURLAY:** At the present time, we have three vacancies.

**MR. URUSKI:** In what type of capacity if I might become quite specific? In the planner range and . . . ?

**MR. GOURLAY:** Two planning technicians and one administrative secretary.

**MR. URUSKI:** Mr. Chairman, the Branch has opened three new offices that were slated to move a number of years ago and now have moved into the Stonewall, Morden, and Portage areas. In terms of the Municipal Planning Branch, are there many staff remaining in the Municipal Planning Branch within the City of Winnipeg at the present time?

**MR. GOURLAY:** We have a total 75 staff in the Branch and 23 of those are in the Winnipeg office.

**MR. URUSKI:** Mr. Chairman, still one-third of the staff within the Winnipeg office in the Municipal Planning Services. Would these all be specialist staff? Would all the 23 be specialists and clerical that would assist them or are there other functions that can be logically decentralized to other areas of the province?

**MR. GOURLAY:** They are all resource staff and administrative personnel.

**MR. URUSKI:** That would be assisting primarily the central planning mechanism of the Branch; is that correct?

**MR. GOURLAY:** Yes, that's true.

**MR. CHAIRMAN:** 6.(b) — pass; Resolved that there be granted to Her Majesty a sum not exceeding \$2,357,600 for Municipal Affairs — pass

7.(a) — pass; 7.(b) — the Honourable Member for Rossmere.

**MR. SCHROEDER:** Mr. Chairman, I think I'd mentioned the other day concern that we had expressed last year with respect to notifying the public of subdivision applications out in the countryside. I'm wondering whether the Minister has done something to determine whether there's some way of doing it without necessarily getting every single individual in a general area notified but it seems to me that posting the general land on which it is happening, or posting around the land where there is an application, wouldn't be that great a chore. There may be other methods. I would hope that the Minister has given that some consideration. I wonder whether he has any response.

**MR. GOURLAY:** Yes, we are working out details whereby it would be left in the hands of the

municipality to notify the various landowners where there would be a change of subdivision or land use.

**MR. SCHROEDER:** Have there been any additions to this department this year, to the provincial Planning Branch?

**MR. GOURLAY:** There were two transfers from the Municipal Planning Branch to the Provincial Planning Branch and one additional administrative secretary.

**MR. SCHROEDER:** Can the Minister advise as to whether the administration of the subdivision approval process is going more smoothly this year than in the past or less so? I say that because I've had several experiences in the last number of months with just minor things such as getting the actual certificate of approval; there's somebody on holidays, and it takes a few weeks or longer. One of the branches was without a secretary and they weren't getting any letters out for a period of time, and I'm just wondering whether there's something being done to make sure that those kinds of things aren't allowed to continue, because it is a bit of an annoyance when you're expecting something to be coming. Very often land sales hinge on getting these approvals. If you don't get the approvals, some party can theoretically back out and if there's no logical reason, if there's no planning reason, that is, if it's just a matter of getting a piece of paper out then people do get a little upset.

**MR. GOURLAY:** The information that I received is that subdivision approvals and processing seems to be running a little more smoothly and with the establishment of the various field offices appears to have improved the situation although we did run into some problems during the first year when these offices were getting established, but it seems to be ironed out and working much smoother at the present time.

**MR. SCHROEDER:** There's one area of planning that always fascinated me and that was the whole idea of the Branch doing some work or at least doing some assessment on marketability of lots. I've seen occasionally on subdivision applications when you see the reports from the various departments that there's somebody indicating that there's 2,000 or 3,000 empty lots in Springfield and therefore this particular subdivision won't sell and yet we know that certain subdivisions do sell and others don't. Some sell because they're in better locations, some sell because they're at better prices, some sell for various factors, while others may be sitting beside a railroad track or on a country road that nobody can travel down, etc. I'm just wondering, when the department makes those comments, do they really assess the individual application on its merits or are they just simply looking at global figures and saying, "We must get the number of lots down to so much before we allow for their subdivision?"

**MR. GOURLAY:** This information is passed along to the municipalities. It's not used as a basis for rejection a subdivision but it's information that we feel that the municipalities should have.

**MR. SCHROEDER:** Mr. Chairman, I'm just wondering, in terms of procedures for this evening,

could we agree that once we finish this, even if we finish it before 10:00 o'clock, that that's it for tonight, that is, Municipal Affairs, that we don't go into some other department? —(Interjection)— Fine, I'm through on this part.

**MR. CHAIRMAN:** The Member for Emerson I believe was next.

**MR. ALBERT DRIEDGER:** I just have a few comments that I would like to make. First of all, I think everybody around here has to accept the fact that planning is a very integral part of the municipal business and I think the ad hoc type of development that took place for many years has been adequately controlled through the Department of Municipal Affairs and we have sensible planning taking place now.

We are basically pushing, to some degree, the municipalities to adopt other planning districts or planning statements, and in order to get a planning statement adopted, I believe that it is necessary that it goes through all the various departments in terms of getting approval for a planning statement.

The concern I have is, once a municipality has adopted a planning statement and it has been approved by all the various departments, and by the Minister, and an agreement has been signed, and a certain area has been designated for, let's say, a five-acre development, then the individual whose property has been designated by council, and through various hearings and processes that have to take place, then the individual wants to subdivide his property, he makes application, and then he has to go through the whole cycle again. Am I right in this, sir?

I am going to have a little problem with that, Mr. Chairman, because once a planning statement has been adopted, it has gone through all the cycles within the various departments, and we're talking about say, a rural area where you have a five-acre subdivision, 160 acres, stuff of this nature, and then once everything is approved, then still application has to be made and then it goes through the whole cycle again, taking up months and months of time — (Interjection)— Well, I don't know, does it?

Why would there be a necessity for that, sir?

**MR. GOURLAY:** The various departments are notified of this application to make sure that it complies with the basic planning statement that has been established for that area.

**MR. DRIEDGER:** Initially though when the planning statement has been subjected to the various departments, they have given the approval when the application is made, why would it have to take months before that individual can register his plan of subdivision, providing it meets with the criteria, like the proper buffer zones, exits to highways, etc., etc. If we're still looking at a few months, two or three months before it gets to the various departments, and this is a thing, especially in the area where I represent, and coming back to the necessity for having planning, in the R.M. of Hanover, for example, or the R.M. of De Salaberry, sort of ad hoc subdivision took place for awhile. Now with the planning program that is in place and the necessity of it, it's actually a duplication to some degree.

**MR. GOURLAY:** Mr. Chairman, it does seem a bit ridiculous when it has gone through the process once for a five-acre lot. However, there are situations where there may be easements on the land that wouldn't necessarily interfere with a five-acre lot, but when it's subdivided further this may create some problems and normally we would not expect that there would be any great delay in approving a second subdivision on this five acre lot, but in the event that there is an easement, whether it be hydro or for some reason, and we could find ourselves in an embarrassing situation if this wasn't checked out.

**MR. DRIEDGER:** The reason I brought that up, because understandably when the final plan gets registered you have buffer zones, you have easements, things of this nature that have to be looked at. The only concern I have is that, first of all, when a municipality goes through the process of adopting a planning statement, it takes a year, year-and-a-half, and then we re-do it. Even a planning statement takes a year-and-a-half, or whatever time. It takes a lot of time because, you know, municipalities have to have hearings, etc. The member is sort of disconcerting me a little bit and I just wanted to raise this point here because I'm concerned about it, because the individual that is developing has to almost go through that cycle, the whole cycle again to some degree, having it cleared by the various departments. I just raise that concern, Mr. Chairman, because I have certain of those developments taking place in my area right now, and people say, well, first of all now we've got a planning statement, now we still have to go through that whole cycle again, and the time element is a concern to some degree.

**MR. GOURLAY:** Mr. Chairman, in the majority of cases there probably wouldn't be any holdup on the approval. There is a normal time factor to get the circulation done to the departments, but this normally shouldn't take an exceptionally long time. There may be only one situation that would occur where there is a problem out of many subdivision applications, but it's a necessary process that we feel that has to be done in the event that there is some problem with the particular type of easement. It seems a bit, maybe frustrating that they all have to go through this process, but if there can be a suggestion as to some simpler way to handle this, we'd be interested in knowing about it.

**MR. DRIEDGER:** The reason I raised that, Mr. Chairman, is the fact that for example, in the planning statement stages it goes through hydro, through telephone. In cases where there's easements or concerns about this type of thing, these people all registered in terms of the planning statement before it ever gets approved. This is why I brought it up because it seems almost like a duplication to some degree.

The plan itself, of course, has to meet with approval. Like I'm talking, for example, besides a P.R. you'd have a buffer zone, access onto the PTHs or P.R.'s, whatever the case may be, but we do have, in my opinion and in the opinion of the people in my area, we do have a duplication of it, and the time element that is involved initially in setting it up, and then we have to go through it again to some degree.

An individual that is finally proceeding to set up a plan of subdivision is sometimes frustrated because of the duplication that is taking place, because every department has had a shot at it before it gets to be designated as a plan of subdivision, then they have another crack at it again.

This is why I brought it up, Mr. Chairman. Thank you very much.

**MR. CHAIRMAN:** 7(b) — the Member for St. George.

**MR. URUSKI:** Could I ask the Minister as to the process of approval and appeal that an applicant must go through at the present time. Could you lead us through the stages. I understand that there has been some change in the process where an applicant goes through, as I understand, through the planning branch on the assumption, of course, that there is a development plan within the municipality, there is a development plan within the planning district and the steps that now an applicant goes through.

**MR. GOURLAY:** The individual would make application for the subdivision and then would go to the Municipal Planning Branch; then it's circulated through the various government departments; then it comes back to the local council and they can either reject it or approve it at that point; and then it goes to the Provincial Planning Board if it's rejected.

**MR. URUSKI:** Let me just understand that. If the Planning Branch, in its advice to the municipality, recommends rejection to council of the particular subdivision, the Municipal Planning Branch, who is the role of adviser to council, I believe, at the present time, recommends rejection of a particular application, council — let's take the role of council accedes to that request and rejects it there, is that the end of that application?

**MR. GOURLAY:** Yes, that's right.

**MR. URUSKI:** Okay. Let's say notwithstanding the advice from the Planning Branch, the council decides to approve the subdivision, notwithstanding the advice that the Planning Branch gives them, what happens? I am talking about in a planning district, not in a municipality that is alone, in a planning district.

**MR. GOURLAY:** Thanks for being patient here. The application is forwarded to the Municipal Planning Board, and the various government departments, and it also goes to the District Planning Board. They make their recommendation, which is passed on to council. The District Planning Board may suggest that it be rejected. It goes to council, council still wish the application to be approved, then it goes to the Provincial Planning Board to determine where the main rejection or the opposition is to this advice from the planning district as to why they were recommending rejection.

**MR. URUSKI:** Would it be in process that the district board would actually refer the matter of the subdivision to the Provincial Planning Branch based on the fact that they oppose, their recommendations have not been heeded by local council, and the

District Board has no authority of denying an application?

**MR. GOURLAY:** Not at that point.

**MR. URUSKI:** I see. It is envisaged that — I presume that in time once the process is worked out that the District Board will be able to, or will handle all applications from start to finish, or will be able to oversee applications that are handled through council and may overrule council, may concur with council or will the district board be the actual body that will handle all applications. Is that what is being envisaged?

**MR. GOURLAY:** That's what we're trying to achieve at the present time so that the district planning would have the authority to make the final decision.

**MR. URUSKI:** One way or the other.

**MR. GOURLAY:** That's right.

**MR. URUSKI:** So that all subdivisions eventually, once the district plans are in full operation, all subdivision applications will not go to the individual councils, they will go to the District Board only. Am I correct in that assumption?

**MR. GOURLAY:** They'd go to both.

**MR. URUSKI:** To both. Okay. By going to both, what role would the local council play seeing as they have representatives, elected representatives on the District Board as it stands now, because council does appoint people to the District Board now. What role is there envisaged by the individual council playing if they have their representatives on the District Board?

**MR. GOURLAY:** Well, Mr. Chairman, just to clarify this, we're eventually trying to have, rather than the Provincial Planning Board make the decision, this would be in the hands of the District Board, Planning District Board to make that decision and the council would get first crack at . . .

**MR. URUSKI:** It's then envisaged to have all applications still proceed through every council and the concurrence or non-concurrence with council's decision would then fall with the District Board. That is what is envisaged.

In the event that — let's go one step further — in the event that there is disagreement by the Municipal Planning Branch with both the decisions, and albeit it is hypothetical, but in the event that there still is a disagreement with decisions that would be made and have been made by a District Board, both contrary to recommendations received from the Planning Branch, what is the next step or role that is to be undertaken and by whom? Does it go to the Provincial Planning Branch? Do they still have the authority to step in?

**MR. GOURLAY:** Well representatives from the Provincial Planning Board, could appear at the hearing . . .

**MR. URUSKI:** At the district hearing?

**MR. GOURLAY:** At the public hearing to register their concerns and that in turn would trigger a Municipal Board hearing to hear the case.

**MR. URUSKI:** That's what I wanted to get at. So that when the District Board is in full operation, if there is a non-concurrence with advice given by the District Board and an individual, from a representative of the Minister through the Provincial Planning mechanism, appears at a hearing and objects to that, it is then mandatory that the matter be referred to the Municipal Board. Am I correct with that?

**MR. CHAIRMAN:** 7.(b) — pass — the Member for St. George.

**MR. URUSKI:** Mr. Chairman, if that's what will occur, we haven't reached that stage at the present time, but I'm sure that it won't be too long before some of the early Planning Districts would be in a position to be turned over and to handle all their planning decisions. Am I correct in that assumption?

How many districts could be turned over on their own fairly soon?

**MR. GOURLAY:** I understand there's about four that will achieve this level very soon.

**MR. URUSKI:** Where the development plans have now been approved by Cabinet and the plans have been registered and the entire process through the PLUC Committee has been those development plans, I presume is the route that they are vetted. That process has been undertaken and those four have been approved by government already, or they're still in the process of approval and which four are they?

**MR. GOURLAY:** Selkirk and MSTW are two; Brokenhead and Cypress District.

**MR. URUSKI:** Have those plans been approved already by Cabinet, by the Provincial Land Use Committee and Cabinet?

**MR. GOURLAY:** Three of them have basic planning statements adopted and are working on their development plan. The fourth one is still working on the development plan.

**MR. URUSKI:** What kind of time-frame do you see in the completion of these four or some of them? Do you see that process complete by the end of 1981 for those four?

**MR. GOURLAY:** Yes, we're looking at before the end of 1981, these four would achieve that plateau.

**MR. URUSKI:** Mr. Chairman, in terms of the inputs by various departments, how does the Provincial Planning Branch in its relationship to the various other departments, for example, the Department of Agriculture has not, as of at least a couple of weeks ago, appointed its resource person within the Interlake Region to give advice on land use planning to the department, and how is that void handled by your department in terms of the lack of advice and expertise that is not there within that region?

Obviously the branch depends heavily in a rural area on agricultural input and having little or no advice from staff that would normally be in place, what is the process that is undertaken?

**MR. GOURLAY:** Where there is a resource agronomist vacancy, then they would call in a similar individual from another region to fulfill that role until the position is filled.

**MR. URUSKI:** I see. Are there, in terms of technical expertise within government, are there many areas where vacancies occur to provide technical advice and expertise to the Provincial Planning Branch in areas of planning matters, or are all areas fairly well covered off within the province in terms of advice that is being sought on various matters.

**MR. GOURLAY:** I'm advised that most areas are pretty well covered off. There are very few vacancies.

**MR. CHAIRMAN:** 7.(b) — pass.

Resolved that there be granted to Her Majesty, a sum not exceeding \$286,300 for Municipal Affairs — pass.

8.(a) — The Member for Rossmere.

**MR. SCHROEDER:** Just one comment on that. I notice that there's only several thousand dollars of increase in total amount for the northern planning and I suppose that's consistent with the basic policy of this government of totally and abysmally ignoring the north, doing nothing to assist up there, doing nothing to try to create something up north. It is really too bad, but I suppose there's not a great deal more that we can say about this now. I'm sure the Minister can expect to hear something about his record in Northern Affairs, as the days go on.

**MR. CHAIRMAN:** 8.(a) — The Member for St. George.

**MR. URUSKI:** Yes, Mr. Chairman, the Canada-Manitoba Northern Development Agreement — is the Federal Government sharing in the costs of subdivision planning in Northern Manitoba? What is the Government of Canada's input in terms of community planning services to northern and remote communities?

**MR. GOURLAY:** Well up until March 31st, this has been the case. We do not have a new agreement signed at this point, so I can't be sure that this — hopefully it will continue.

**MR. URUSKI:** This was part of the Northlands Agreement, the old Northlands Agreements. Am I correct?

**MR. GOURLAY:** Right.

**MR. URUSKI:** I see, I see, okay.

**MR. CHAIRMAN:** 8.(a) — pass; 8.(b) — pass; 8.(c) — pass.

We turn to 1.(a) — pass. Resolved that there be granted to Her Majesty a sum not exceeding \$878,500 for Municipal Affairs — pass.

Committee rise.

## SUPPLY — ATTORNEY-GENERAL

**MR. CHAIRMAN, Abe Kovnats (Radisson):** This committee will come to order. I would direct the honourable members' attention to Page 15 of the Main Estimates, Department of Attorney-General.

Resolution No. 16. The item under discussion is I. General Administration, (b) Executive Management, (1) Salaries — the Honourable Member for Wellington.

**MR. BRIAN CORRIN:** Mr. Chairman, I would like to ask a few questions on this item. Most particularly I would like to be informed whether or not there have been any new staff persons seconded to the ministerial office. I would like to know whether there are any more executive assistants or special assistants working within the Minister's office or for that matter, Mr. Chairman, within the department.

**MR. CHAIRMAN:** The Honourable Minister.

**HON. GERALD W.J. MERCIER (Osborne):** Mr. Chairman, I believe this is an area where there would be one additional person added as a special assistant in the area of constitutional law on contract beginning last June.

**MR. CORRIN:** Mr. Chairman, I would be interested to know whether that individual is working on contract or whether he has any form of tenure. I would also like to be apprised as to the status of Professor Schmeiser (phonetic) from, I believe, the University of Saskatchewan, whether he is on contract or has over the past year been on contract to the Government of Manitoba.

**MR. MERCIER:** Mr. Chairman, in clarifying the previous answer, I should indicate that the person who was hired on contract as of last June replaced a person on contract who left, and that person had been connected with my office for some two years.

With respect to Professor Schmeiser, I believe, Mr. Chairman, he is paid out of Executive Council.

**MR. CORRIN:** I was wondering whether, as well, we could be informed of the costs associated with the constitutional reference and the fees that have been paid to Mr. Kerr Twaddle, who has been acting as legal counsel to the Honourable Attorney-General and the government with respect to that case. Could we be advised what sort of fees have been paid to Mr. Twaddle and, as well, it would be of some interest to note and find out what fees were paid to this additional constitutional assistant. We were advised that there was a special assistant retained last June and working on constitutional matters, presumably with Professor Schmeiser for some time, Mr. Chairman. I was wondering what sort of costs were being incurred as a result of the retention of this staff.

**MR. MERCIER:** Mr. Chairman, with respect to the special assistant, I believe the contract calls for an annual rate of pay of \$24,000.00. Professor Schmeiser is retained on an hourly rate, again, the exact details of which I suggest should be placed to the First Minister in considering his Estimates.

With respect to Mr. Twaddle, the amounts that he has received, recorded in the Public Accounts, the

most recent Public Accounts for the most recent period of time — we could endeavour to ascertain the amount of fees paid to date and perhaps during the course of the Estimates, we'll be in a position to give that information to the Member for Wellington.

**MR. CHAIRMAN:** To the Honourable Minister, is this the department that it should be discussed under, Executive Management? I require some guidance in this regard.

The Honourable Minister.

**MR. MERCIER:** Mr. Chairman, actually the amount with respect to retaining outside lawyers is included under Civil Litigation.

**MR. CHAIRMAN:** The Honourable Member for Wellington.

**MR. CORRIN:** I have several questions which I'll serve notice on now with respect to the costs of civil litigation in CFI in the attempts to bring Mr. Kasser to justice. Perhaps the Minister could ask his assistants to prepare information as to the costs associated with that particular prosecution.

As well, dealing with Item (b), Executive Management, Mr. Chairman, I would be interested to know then precisely what number of personal assistants now work under the Attorney-General. I presume that the original executive assistant, Mr. Allen, is still involved in the department. Then there is this gentleman who is paid \$24,000 to give special assistance with respect to the constitutional matter. I am wondering whether there are any other special assistants working for the Minister.

**MR. MERCIER:** There are no others, Mr. Chairman, and for the record, perhaps I should note that Mr. Allen, I expect, will be going to law school this fall and will be leaving me and will be very much missed.

**MR. CORRIN:** Could you please give us a breakdown of the total staff man years then, of the department in your personal office? I presume that information would be available.

**MR. MERCIER:** Mr. Chairman, there are two secretaries, an executive assistant and a special assistant on contract relative to constitutional matters.

**MR. CORRIN:** So any other people, such as Professor Schmeiser, are retained through the Executive Council I take it, and are the responsibility of the First Minister; is that correct? The other people associated with special matters such as the Constitution are in that Branch?

**MR. MERCIER:** Mr. Chairman, the advice I am getting is that my department would like to check exactly where Professor Schmeiser is getting paid out of. It may be — there's a possibility that he may be paid out of funds included under Civil Litigation with respect to retaining outside lawyers, or he is paid out of Executive Council, but we'll check that and confirm that item later on.

**MR. CHAIRMAN:** The Honourable Member for Kildonan.

**MR. PETER FOX:** Mr. Chairman, the question is we would like to determine the staff complement and we

don't want to be ping-ponged from one department to the other. Now if the Attorney-General could give us a breakdown of what he has got under his jurisdiction, then we know that whatever else is attached will belong to somewhere else and we can try and determine that. But if he keeps saying that he's not certain, that some may be under the Executive Council, and when we get to the Executive Council Estimates we find out that, no, they were not, they were only attached for paying purposes but they were really under someplace else, then we're in the quandary of trying to get what the staff complement is, at what level. So if the Attorney-General could give us a breakdown, then we could proceed from there.

**MR. MERCIER:** Mr. Chairman, I appreciate the comments of the Member for Kildonan and my department will check that matter first thing in the morning so that I can advise members opposite as to which department Professor Schmeiser is paid out of.

With respect to general administration, the question was with respect to the Minister's office and I have indicated the four staff members — two secretaries, one executive assistant, and one special assistant with respect to constitutional matters.

**MR. CHAIRMAN:** The Honourable Member for Wellington.

**MR. CORRIN:** Mr. Chairman, I would like to have some explanation from the Minister as to why the government and this department sees fit to have so many lawyers associated with the constitutional matter. We have Professor Schmeiser, who is a Saskatchewan lawyer and law professor and certainly a pre-eminent authority on constitutional law, although certainly a partisan pre-eminent authority in the sense that his positions are well-defined and well-known to academics across the country. I don't think Professor Schmeiser has ever held himself out to be objective in terms of his position on constitutional matters. We have Mr. Twaddle, who is again very senior and knowledgeable, a very able gentleman, I am sure, a second senior counsel working with the department and with the government. We have a special assistant who is paid \$24,000 a year and who, I believe, is a lawyer as well. So that's three people who seem to be working full-time on the constitution, presumably on the references. I should ask the Minister if he can advise whether there are any other people who are working either part or full-time on the same subject. But why does the government have so many people involved in this one matter, so many special assistants working in this one area?

**MR. MERCIER:** Mr. Chairman, firstly with respect to Professor Schmeiser, I believe I had occasion to provide the Member for Wellington with a copy of an article that Professor Schmeiser had written with respect to an entrenched Charter of Rights. I want to indicate through you, Mr. Chairman, to the honourable member that Professor Schmeiser has been involved in the Canadian Human Rights Foundation, I believe it is, for an extensive period of time, has studied the matter in depth, and I believe is regarded as somewhat of an expert in that area

and in constitutional law and is extremely well-qualified. I can indicate to him that after the Province of Manitoba retained him, a number of other provinces, not knowing that, have subsequently attempted to retain him to deal with constitutional matters.

The Member for Wellington has referred to retaining Mr. Twaddle and a special assistant. In addition, Mr. Chairman, I could advise him that Mr. Squair in the Department of Civil Litigation Branch, has been very involved in the constitutional matters and is appearing with Mr. Twaddle and Professor Schmeiser in the Supreme Court hearing which started today.

That, Mr. Chairman, is virtually the extent of the most active people involved in the constitutional matters and I suggest to him, if he had an opportunity to compare the amount or the quantity of resources, not the quality of resources because I'm satisfied we have an extremely high calibre of people involved in the Province of Manitoba with respect to this matter. But if he had an opportunity to look at the numbers of people involved in this issue, from other provinces or from the Federal Government, Mr. Chairman, he would find that Manitoba probably has utilized the least number of people of any province, or of any government, including the Federal Government, on this particular issue.

I am prepared, Mr. Chairman, to give a great deal of credit to Professor Schmeiser, to Mr. Twaddle, to Mr. Yost, our special assistant in this regard, and to Mr. Squair, who worked under very extreme time constraints to deal with this matter, throughout last summer, through the First Ministers' Conference, through the court proceedings, which have taken place, as we all know, in Manitoba, in Newfoundland, in Quebec and in a relatively, extremely short period of time, Mr. Chairman, to prepare the case which is being heard in the Supreme Court of Canada today. I believe they are to be commended for the effort that has been made under very difficult conditions and very extreme time constraints.

**MR. CHAIRMAN:** The Honourable Member for Inkster.

**MR. SIDNEY GREEN:** Mr. Chairman, I would like to make some general observations with respect to this department and I would like to, in doing so, Mr. Chairman, indicate that I believe the most important area which this department is now involved in is that of protecting the right of this Legislature to pass laws and to protect my right as a citizen of Canada to continue to pass laws in this country.

I start out by saying, Mr. Chairman, that there are certain areas whereby, when the issue becomes clear, that the compromise that some people think can be accommodated, becomes impossible because, Mr. Chairman, there are various issues where the compromise is to deny the issue.

For instance, in the area of abortion, for those people who believe that terminating a pregnancy after it has commenced represents to them wanton murder of an innocent child and that life starts at conception, there can be no compromise as to when a pregnancy can be terminated. Although I am not in the first group, I recognize that there is no compromise with it. For people who believe that

there is a supreme being who is the creator of the universe, the compromise that agnosticism presents is not a compromise between religion and atheism. There is no compromise. Mr. Chairman, unfortunately in the area of an entrenched charter there is virtually no room for compromise between that situation which permits the legislators to continue to change the laws and that situation which says that there are going to be barriers set up to prevent them from doing so. When I heard the Member for Wellington speak, it appeared to me that he was really saying that despite his statement that he is for an entrenched Charter of Rights, that he is really not for an entrenched Charter of Rights, because he said that he believes that we could go with a statute that had paramountcy.

Now, a statute which has paramountcy, which can be changed by the same people who enacted the statute, is by definition not an entrenched charter, and perhaps we are discussing definitions rather than concepts. An entrenched charter is something which the legislators cannot change, except by rules which are established which go beyond their power to change ordinary legislation.

Now I want to tell the Member for Wellington that I, too, can compromise, if our terms are the same. Although I don't really have great faith in a statutory Bill of Rights, although I do not have a great deal of faith in a Bill of Rights which has paramountcy over all other legislation, I would be prepared to yield 100 percent all of my opposition to the Trudeau proposal if it could be established that the next Federal Government will have the same right to change the proposal as Mr. Trudeau has in enacting it. That's my compromise, Mr. Chairman. Because then he can enact whatever he wants and at least if I can run around and get people to agree with what I am saying, get them elected to office, win 145 seats, I can undo what he's done.

Now, Mr. Chairman, that seems to me to be a reasonable compromise and really, for the Member for St. Johns or for anybody else to say that the Provincial Government has behaved badly with regard to the Charter of Rights, is to ignore what has happened in this country. I happen to believe that the Provincial Government has not behaved well with regard to the amending formula. I believe that the amending formula that is being pursued is not a good formula, but I do agree that the Constitution should be patriated and I am prepared to have it patriated on the formula that now exists.

In other words, the Federal Government says that they can change the Canadian Constitution any time they want to. Now listen, Mr. Chairman, to what they are saying and I tell you, Mr. Chairman, that I happen to agree with them, but listen to the monstrosity of it. Because I say it's legal doesn't mean I say it's right. Mr. Trudeau, who is supposed to be a sophisticated mind, says if it's agreed to be legal, you can't argue that it's wrong; because the Supreme Court says it's legal, it must be right.

Listen to the monstrosity of it, Mr. Chairman. Mr. Trudeau is saying that the Federal Government could pass a law making him the reigning monarch in Canada as long as he lives and as long as his children live and as long as their children live. Mr. Chairman, this is what the Federal Government is saying, that they could pass a law creating a

monarchy in Canada, creating a hereditary monarchy, that Mr. Trudeau will be the king and that his descendants, in fee tail, as long as they exist, will continue to be the monarchs of Canada. He says that's legal.

Mr. Chairman, as strange as it may seem, I happen to agree with him. I think the Federal Government can amend the Canadian Constitution and make a proposal. Where I don't agree is that Westminster has to go along.

Mr. Chairman, the notion that Westminster is a group of 620-odd M.P.s who can only vote in one direction is contrary to all of the principles of parliamentary democracy. When the Chair or the Speaker says the Yeas and the Nays and the Canadian government says, it's only the yeas and you can't say nay, then everybody should under that the Canadian government is wrong. They may be right — in fact, I think, despite the fact that it's before the Supreme Court of Canada and my opinion is therefore gratuitous and really probably shouldn't even be expressed — I happen to think that the Supreme Court of Canada may well decide that Canada has the power to pass this proposal. But the Supreme Court will never say that Westminster has to pass it and no court in Britain will say that Westminster has to pass it.

So we may yet, and I happen to think that's the way it's going to come about, we may have the Supreme Court of Canada saying that this is legal and then, as I said in the House four or five months ago when we first sat here, there has to be a contingency plan and that contingency plan has to be a concerted effort on the parliamentarians in Great Britain that they not give effect to this proposal, that they merely send the Constitution back to Canada. If it comes back to Canada with the present amending formula, if the provinces are right, it could never be amended again. I don't think the provinces are right. If the Supreme Court says that I am right and the provinces are wrong, that the Federal Government can pass it, and it goes to Westminster and Westminster patriates, simple, plain and simple, without passing laws in this country, Mr. Chairman, then we will have a completely flexible Constitution. One government can come in and say what they think should be the laws of the country and the next government that gets elected could come in and say we're going to change those laws. I happen to believe, Mr. Chairman, that is the essence of the democratic process and I respect those who disagree.

But for those who say that the . . . people of Canada are waiting for their rights and that the Indians in the north are waiting for their rights, will they not understand that if anybody has had entrenched rights in this country, it's been the Indians in the north. Their rights have been entrenched in the BNA Act under Section 91, which deals with Indians. Their treaties have held to be always binding on the various governments. They have had the right to sue on them and what has it done for them, Mr. Chairman? What has it done for them? They have their rights in the Constitution and ever since those rights were granted in the Constitution, the Legislatures, both at the federal level and at the provincial level, have said those people have their rights; they are not to be interfered

with and therefore we have no responsibility for their social and economic well-being and that's what has done in the Indians in this country, Mr. Chairman. That's what has done them in, their entrenched rights in the Canadian Constitution. And for the Member for Wellington to talk about the people in Salem waiting for their rights and the people who had to ride on the back of the buses waiting for their rights, and the Japanese who lost their territory waiting for their rights, all of those rights were guaranteed by the United States Constitution, Mr. Chairman. They are all part of a constitutional entrenched Bill of Rights at the present time and it hasn't helped those people.

Nor will it help the Canadian people if we, with the same Parliament that we have and without a charter, elect what will ultimately be a Fascist type of government, I agree that the Legislature will not protect their rights and neither will the courts, Mr. Chairman. There is only one way to protect rights and that is for citizens to be in day-in and day-out vigilant about the fact that there are people who will want to take them away and to fight that every time they see it happen. That's the only way.

Mr. Chairman, I must really plead with members in this House and particularly with the Member for Wellington who talked about some sensitive areas. He said that there are only two women in this House; somehow women have been interfered with. How will you correct that interference? You will require women to vote for women and you will say that is granting them rights and there will be 50 percent of the people in this House who are women. He said there are no people of native blood in this House. I happen to believe that there is, but that's beside the point. How will you protect that? You will require Indians to vote for Indians and that will be conferring rights, so to speak, on the Indian people.

Mr. Chairman, I want to tell the honourable member something else. I want him to know where ultimately that kind of thinking leads to. It leads to trade unions naming trade union representatives; it leads to Indians naming Indian representatives; it leads to women naming women representatives; it leads to other groups naming their other representatives, so that you don't get in by appealing to the public at large but you have to make yourself acceptable to a particular group.

Mr. Chairman, there happen to be five Jews that I know of in this House, five. That's roughly 8 percent of the members; it's almost 10 percent, from a group constituting 2 percent of the population. Somebody would calculate, and people have calculated, you've got four times as many as you should have; you've got four times as many as you should have. (Interjection)— Well, Mr. Chairman, I know who the people are who will take me out. They are the people who will say that the women have to have women, the Indians have to have Indians, the Jews have to have Jews, the Anglo-Saxons have to have Anglo-Saxons. Those are the people who will take me out. They are here now without that kind of law. They are here now without that kind of law and I say, Mr. Chairman, that I want the Indians to be able to elect their representative and he may be a white. Do you know, Mr. Chairman, that I was the first Commissioner of Northern Affairs and there is something that I pride myself in and which the New

Democratic Party Government fought for, that the Manitoba Metis Federation came to me in 1969 with considerable pressure, saying we have Indian Reserves, but there are non-treaty Indians who have left the reserve many years ago, for one reason or another. They now live just beside the reserves. It happens in many places. It's in Norway House, at Cross Lake, at Brochet. There are many places where the non-treaty community is very close to the reserves and they took upon themselves the name Metis. It was a traditional name, really, attributed to a particular ethnic group that resided here and founded this province alongside with the Selkirk Settlers. But the non-treaty Indian, the person who had lost treaty status, needed a name and he called himself the Metis and they made the Manitoba Metis Federation.

They wanted me, Mr. Chairman, with considerable pressure, to say that the Manitoba Metis Federation will be the council for the non-treaty places, in the same way as the Indian Reserve has council for the treaty places and I said, not on your life. You can do what you like with me, and there was considerable pressure; you can apply physical pressure to me. There is no intention by me to create another reserve situation in the Province of Manitoba. There are Community Councils, and we were the first one to set them up and they became completely democratic, and we said that those Community Councils will elect their Mayor and Council and their Mayor and Council will be elected by the citizens and if the Metis citizens elect a Metis, he will be the Mayor and the other, if they elect Metis to be the other councillors, they will be the council, but they will be elected from the citizens of the community and they will not be named by the Manitoba Metis Federation and the fact is, Mr. Chairman, that those communities all elected councillors.

In many cases, a white non-Indian native was elected in a council where there were many people of racial Indian origin, but they elected people of Scotch origin and people of German origin and people of Anglo-Saxon origin and they became the councillors of these communities and it proceeds that way to this day, Mr. Chairman, and I say that that is one of the proudest moments that I had in the New Democratic Party Government, that I did not say that the non-treaty communities will be governed by the Metis, they will be governed by the citizens of those communities.

Mr. Chairman, there is considerable argument, considerable argument as to whether the world should move in one direction, or the world should move in the other direction. There are some who say that you have to have legislation, an affirmative action program, which means that if your son and a treaty Indian both apply for a job and your son happens to be from a very poor family, but the law at the moment is that a certain number of treaty Indians have to have the job, then your son's rights are deprived in favour of an affirmative action program.

Mr. Chairman, there have been numerous debates on this subject. I happen to be of the group that does not think that people should be distinguished between on that basis; that the way of curing it is not by affirmative action programs but by concerted efforts to bring the people who are in the

disadvantaged situation to the mainstream of the Manitoba Society, so that they have a greater equality of opportunity, but not be telling somebody that your son is denied his rights because somebody else has been given it under an affirmative program, because he happens to be a native. Because, Mr. Chairman, as sure as God made little apples, when you start doing that, the reverse will take place and people will logically say that, you know, there are too many of you people in the medical profession. There will be a quota of how many can get in. After all we've got Anglo-Saxons, we've got Germans, we've got other people who want to be doctors.

**MS. WESTBURY:** They did it before, didn't they?

**MR. GREEN:** They sure did and they'll do it again. They sure did it before. Mr. Chairman, the honourable member says that they did it because they didn't have their rights guaranteed and that's why it happened in the United States.

Then can you tell me why the Negroes had to ride in the back of buses in the United States, when they did have their rights guaranteed.

**MS. WESTBURY:** No I can't; I was talking about Manitoba.

**MR. GREEN:** Well, Mr. Chairman, that is not the reason it was done. That is not the reason it was done. It was done because there happened to be a healthy degree of anti-Semitism at that time and it wouldn't matter if you had a Charter of Rights or you didn't have a Charter of Rights, because when the Jew came in for a job and the gentile came in for a job and the gentile wanted to hire his fellow-gentile rather than the Jew, he could find out 150 reasons why that person was more desirable to him than the other person. If you think that you can pass a law against it, madam, the Member for Fort Rouge, I say to you that you are fooling yourself and you're doing worse than fooling yourself, you're fooling these people into thinking that legislation is going to protect their rights, when it's not going to protect their rights.

The honourable member said that Gordon Fairweather is doing a tremendous job. I find it almost laughable because last year he was complaining about the honourable, the former Member for Portage, Mr. Enns, because he was Chairman of the Human Rights Committee and he was a Conservative. Now, if you want to feel that way and you want to do it, then there is no statute in the world that's going to change things. What we do know, Mr. Chairman, and I'm not saying that the courts can never do anything right, all I'm saying is that in the last analysis, if they do something which society disagrees with, society should have a right to change it and it shouldn't be by an amending formula, which is virtually impossible to do.

I've heard in this House that Sweden has a Charter of Rights and that's not a dictatorship and it works. Sweden is a unitary state. Do you know how their charter works? Did anybody look? You have to make a motion to change the constitution during this session of the Legislature. It has to be passed. It doesn't become operative until an election is held and then at the session following that election, it can be passed into law, but it can be passed by the

elected representatives of the people and by a majority. It simply has to go through two parliaments with an election in between, so that public know what they are voting for.

That's the basis upon which it has changed the Charter of Rights in Sweden, but here, Mr. Chairman, it has been suggested that after you pass the law that says, by the way, that everybody is entitled to life, liberty and the security of the person, which I say that there will be no difficulty interpreting it as meaning property, and if the New Democratic Party in Ottawa thinks that a judge can't make security of the person property, they must have some very bad legal advisors, because they suddenly caved in.

So don't worry about your property, it's protected and if the Tories in Ottawa tell you that it's not protected in the Charter of Rights, they're just not using their imagination. So that does not become an issue.

The very first issue that I can think of that will come to the Supreme Court of Canada is whether life starts at conception and whether the Charter of Rights guarantees that life will exist and the Supreme Court will decide either that it does, or they will say that women, having equal rights and the right to liberty, are permitted to terminate a pregnancy. No matter which way they decide, people who have argued for a Charter of Rights will say that it's wrong. I notice now, Mr. Chairman, that the pro-life people are calling this a charter of injustice. They are now calling it — they were for a charter of rights. They are some of the statistics that have been used by the Prime Minister to say that they have a Charter of Rights. They're now calling it a Charter of Injustice, hoping against hope, because now there's no way out.

If this goes to Britain and it's passed, and I suspect that that may be one of the things that the Minister has to worry about, because then his staff of lawyers, Mr. Chairman, won't be able to handle anything that is happening.

I have looked at, Mr. Chairman, five or six statutes that we passed at the last session of the Legislature — and I've only looked at them in a cursory manner — and I know that they will be challenged as offending the Bill of Rights, the Charter of Rights, and they can be challenged in a private law suit. Interestingly enough, they can be challenged in a private lawsuit. The Attorney-General then has to find out about that lawsuit, get somebody down to become a participant in that lawsuit, defending his legislation because it may go to the Supreme Court of Canada as between two people who have set up the case, which is what they did in the United States. They set up cases to get the laws ruled ultra vires, as between one friendly person and another friendly person, and then the Attorney-General had to have his lawyers go down there.

Mr. Chairman, I am sure that there is question as to whether The Legislative Assembly Act, as it now exists, interferes with freedom of conscience and freedom to participate in political affairs, and that's going to come out, Mr. Chairman. I've moved a resolution to eliminate one part which is merely symptomatic of the entire disease. There's a section, Mr. Chairman, in our Legislative Assembly Act that says during an election campaign, a person supporting a candidate cannot advertise his support

for that candidate. —(Interjection)— The Election Finances Act. He cannot express his support for that candidate; cannot buy an ad in a newspaper to support that candidate. We have refined our democratic process to such a fine pitch that we make it unlawful to speak in favour of a candidate during an election campaign. That's how refined we have become.

The next law is, Mr. Chairman, since you can't buy an ad in a newspaper, and since Mr. Lyon, the government, can publish whatever they want, and the Free Press can publish whatever it wants, and the parties that are seeking to get elected say we're being ruined by government literature and the Winnipeg Free Press and we can't buy an ad beyond a certain amount, and no private group can support us. The Manitoba Federation of Labour can't buy an ad. And if the Member for Inkster happens to be a great supporter of somebody, he can't buy an ad, and he can't publish anything in the paper. So what will he do, Mr. Chairman? He'll set up a printing press and he'll publish a paper. Then there will be law against setting up printing presses and there will be people, RCMP officers running into your basement and breaking up the printing presses because you're violating The Elections Act by publishing good things about a candidate. That's what will happen, Mr. Chairman.

That's what will happen with the extension of these laws. I might hope that the law would be set aside — as a matter of fact, if we're in that game, I have to play that game, and I will be a lawyer, I am certain, in many constitutional cases. I may find, as a matter of fact, Mr. Chairman, I may find that I could do more in the courts than I can do in the Legislature, because if I get elected and pass the laws that I want to pass, the courts will undo them. So really the place where the action is will be in the courts.

And my friend says, well, the courts work. You know, I've been in court. I mean, I can tell you that sometimes they make the wrong decision; all you have to do is add up the number of cases I've lost, and those are the wrong decisions of the courts. Sometimes they make the wrong decision, but they do make good decisions, yes. That's like saying, Mr. Chairman, that we can appoint a dictator because he will be immune and isolated from the political whims. He will not be pressured from one side or another and he will do what is right. He will grant rights. Indeed, Mr. Chairman, there is as much solid philosophical, sound argument for a beneficial dictatorship as there is for a Charter of Rights, as there is for parliamentary democracy.

You can, with skill in reasoning and with perfect motivation, come to the conclusion that this is the best system.

**MR. CHAIRMAN:** The honourable member has five minutes.

**MR. GREEN:** You can make out a good case for it, and a sincere case for it, Mr. Chairman. I hope, and if I go back and find that I'm wrong, I will apologize, I hope that I have never said that the other people don't make a sincere argument. They do make a sincere argument. What I have said is that when Trudeau and other people have argued that if you're against a Charter of Rights, you're against rights or you're a reactionary, which is what I heard in this

House, or that you're in bed with the Premier because he happens to have the same opinion as you do, and of course if you think the same way as the Premier of the province, you must be suspect that it is the Red Green access. —(Interjection)—

Mr. Chairman, the fact is that there are numerous questions on which I would agree with some of my friends here, and there are numerous areas on which areas I will disagree with them. I will disagree with them that I will prevent a hospital from hiring nurses to treat your mother if the nurses that work there happen to go on strike. I disagree with that. I'm not saying that they don't have sincere, sound motivation for their argument, I think they're wrong, and no doubt they think I'm wrong, but that doesn't make the motivation any the less sincere. And there are these motivations, Mr. Chairman, and you come down to what is always the basic motivation, your gut feelings. What we say in law, you know the guy in the street, he understands gut feelings. In law they say it's the inarticulate major premise. And even those people learned in jurisprudence say that judges do not decide on the basis of law, they decide on the basis of their gut feeling, which translated into legalese, is their inarticulate major premise.

Now if we are agreed that the inarticulate major premises are going to rule, whether it's a beneficial dictator, whether it is by a Charter of Rights for some of the — and I say a major part with this Charter — do you know that the Bill of Rights in the United States is four or five paragraphs contained in the Charter that's going to occupy every area of jurisprudence on the Canadian scene. There are few areas that cannot be involved in the Charter of Rights as it is now worded, given ingenious lawyers and the desire to please. And there will be numerous cases on, Mr. Chairman, The Blood Test Act, which I voted against. I am sure that will be held to be unconstitutional by a Charter of Rights, as well it should be. But I would prefer those people who don't believe in it to vote against it. To vote against it, not wait until some judge votes against it. It will be held to be unconstitutional if two people in this House voted against it.

I am sure, Mr. Chairman, that The Election Finances Act will be held to be unconstitutional as limiting the freedom of speech during an election campaign. It does limit it; there is absolutely no doubt. And if the Charter of Rights doesn't hold it to be unconstitutional then I'll really be disappointed in the judges, that we are going to be involved in these court cases.

Mr. Chairman, let me just sum up by repeating. You can have a beneficial dictator who you can argue is the best form of government and he will govern by an inarticulate nature premise which may be smarter than anybody's in this House. You can have a Charter of Rights with the judges, the nine people; they are not starting to talk about them, they are now in the political scene. This guy is a Conservative. This guy is a Liberal. This guy makes decisions which favour womens' rights. Mr. Chairman, we are talking about them as if they should be elected to office. But that's what coming now, but they will decide by their inarticulate nature premise and legislatures will decide by their inarticulate nature premise. Where does the most

power for the people lie? Does it lie in naming a beneficial dictator? Does it lie in referring matters to the court? Or does it lie in their right to kick you out, to kick you out, to kick you out, to kick me out, to kick him out, to kick anybody out who they don't feel is doing a job for them? I went into this arena of politics because I believe that I could accomplish through the Legislative process. That is being taken away from me, Mr. Chairman.

**MR. CHAIRMAN:** The Honourable Member for Fort Rouge.

**MS. JUNE WESTBURY:** Thank you, Mr. Chairperson. I was told today if I called you Mr. Chairman you'd be nicer to me and I said, I have no complaints about the way this chairperson treats me. I don't think he didn't like it when I called him Mr. Chair and so I changed it back to Chairperson and I hope you'll assure everyone in your party that you don't object to being called a Chairperson, Mr. Chairperson. I was told actually that it was because some of the chairpeople were older people and I don't think they're older from where I'm looking anyway. So I'm not going to judge you in that way, Mr. Chairperson, I have no complaints about your fairness or the way you treat me, and if you want me to call you Chairman, I'll call you whatever you like, so you just let me know, please. I stopped calling you Mr. Chair because you didn't like that.

Mr. Chairperson, it's very hard to follow the Member for Inkster. He's an articulate and clever and an exciting debater and even when he makes me most outraged, I enjoy listening to him for those reasons.

You know, we've had on the Order Paper, for about two months, I think it must be, a resolution on the Constitution. And we have not been permitted by the Government whose resolution it is to debate that. And yet day after day after day we have to sit here and hear the Constitutional Debate debated even though the resolution is being kept from the floor and I want to express my disgust with that. Now we've had, you know, considerable reference just this evening to the Constitutional Debate and I'm a little exercised and I just want to say a couple of things on that and at the time sticking to my resolution not to debate the Constitution until the constitutional resolution comes to the floor of this House.

Mr. Chairperson, I want to remind the members of this House that we had a Premier of Manitoba — (Interjection)— at least he's pretty sure it'll be somebody in his party, Mr. Chairperson. We had a Premier of Manitoba who said, "Nice women don't vote. What does a nice woman like you want to vote for?" —(Interjection)— He said something stupid too. They aren't all Conservatives, all the dumb ones, who'd say foolish things about womens' rights.

We had another Premier of this province, Mr. Chairperson, who said, "How can you say we don't like women? We're the best breeders in the world." —(Interjection)— He said, "in the world," I think, which was an exaggeration, of course, but we've known that Premier to exaggerate at other times as well.

Mr. Chairperson, when I heard someone of my own generation make such an outrageous and insensitive and cruel remark, I knew that I had no rights in this province as a woman and that as a mother of

women, I could expect no rights for those women. And, Mr. Chairperson, I deny categorically that women have ever sought the right to vote only for other women. The Member for Inkster was suggesting that if the Bill of Rights went through and it's women who have asked to be included in the Bill of Rights to be entrenched in the Constitution, we have no intention of voting only for other women.

Mr. Chairperson, I have been asked to ask the Attorney-General if he would give us the amount of salary and expenses of Manitoba's Counsel, Mr. Twaddell and of the other people whose names, I understand, are Professors Schmeiser, Mr. Yost and Mr. Squair, salary and expenses to date, and separately the salary and expenses of their appearance in the Supreme Court. And my reason particularly for asking for the latter, Mr. Chairperson, is this: I heard the Premier of this province indicate on television last week that he will not accept the judgement of the Supreme Court. That was what I understood the Premier to say on television last week, Mr. Chairperson. I said, "He indicated that, Mr. Chairperson," and when the press asked him what he would do, he winked and giggled and said, "Wait and see." Mr. Chairperson, it's the Premier of this Province, the Government of this Province, that have sent this matter to the Supreme Court and they are bound, I suggest, to accept the verdict of the Supreme Court, morally bound, —(Interjection)— and I don't believe that's what he said, Mr. Chairperson. (Interjection)

Do I still have the floor, Mr. Chairperson?

Mr. Chairperson, when we discussed the Budget in the past two weeks, I was one of the few that talked about the Budget in my address, and the other speeches were interesting. I enjoyed them and certainly they were valid in the matter of the Hydro matter which was something that, you know, I tried to get passed on to a Committee and which the government refused to do, but now that we're onto the Attorney-General's Estimates, if it wouldn't stick into anyone's craw, I would like to discuss the Attorney-General's Estimates.

Some of these matters I'm just not sure where in the Estimates they should be discussed further and I'm going to mention them now and ask the Attorney-General under what letter, number, he would like me to further talk about some of these matters, because, I couldn't find them stipulated in the line by line. It makes it a little difficult.

There was a matter that I brought up in Municipal Affairs yesterday and I was told I should have brought it up in this department, so I'm going to refer to that.

A complaint was brought to me by an elected official from a municipality, not the City of Winnipeg, on the matter of negotiations, for instance, in the area of police protection. As they presented the problem to me is that the area of government which raises the tax should be responsible for the spending of the money raised and under the present circumstances that does not always happen. For example, in terms of policing in municipalities, where the municipal governments pay the cost of the policing, but the province negotiates with the police, how much the bill will be and then the municipalities have to pay for it.

Mr. Chairperson, at the moment, the municipalities, in other words, have no say in how much these

services will cost and they find it makes it extremely difficult for them to develop their budgets from one year to the next, because they haven't got any control.

Now I have been asked to bring this to the attention of the Attorney-General and to stress the fact that they need to be more directly involved in this kind of negotiation. The responsibility for paying for the service being with the property taxpayer, the property taxpayer and the government to whom they pay their taxes, that is the municipal government, should be involved in the negotiation of the delivery of the services and at the present time that doesn't happen, Mr. Chairperson.

The area of revenue sharing also between the province and the municipality needs improving. The province needs to re-examine revenue sharing with other levels of government. At the present time, it was pointed out to me, municipalities carry a lot of the tax burden passed off by the two senior governments and even though the municipal governments haven't got very much control over the spending in some of these areas, they have to take the blame from their voters and they have asked whether it would not be possible, Mr. Chairperson — I still am not sure why this comes to the Attorney-General, but Municipal Affairs told me to come here with this problem, so this is what I'm doing and I hope that the Attorney-General can give me an answer which will be acceptable to some of my advisors.

Mr. Chairperson, the Member for St. Johns was talking today about the child custody decisions and I wanted to ask you a question as to reciprocity on custody order. I understand . . .

**MR. CHAIRMAN:** Order please. Could we have a little consideration for the member who's speaking? Could we have a lot of consideration for the member speaking? Could we have any consideration for the member speaking?

The Honourable Member.

**MS. WESTBURY:** Thank you very much, Mr. Chairperson.

I was asking about the reciprocity and custody orders that Ontario is the only province, I understand, with whom we do not have reciprocity in custody orders.

There was a report in the second-half of 1980 in August, I guess it was, to the effect that custody orders are enforceable only in the province in which they're issued, which varies from what I just said, because I was told Ontario was the only one that doesn't have reciprocity, so I would appreciate if the Minister could take a minute just to explain to us what the situation is between the provinces. In December the Attorney-General had a discussion with an author who had written a book about incest and she asked the Attorney-General if he would consider providing new legislation to protect the rights of children, who have been victims of this terrible crime, and I want to ask the Minister if he is going to be introducing any legislation which will provide a greater protection for the child. It seems that now, most of the time, they're just returned to the family and I would appreciate it if the Attorney-General would tell us what he's planning to introduce in this area of protecting children please.

**MR. CHAIRMAN:** The Honourable Minister.

**MR. MERCIER:** Well, Mr. Chairman, if I can attempt to go back and I take it that's the end of the opening statements by all political parties.

Mr. Chairman, perhaps dealing with the Member for Fort Rouge first. She indicates she would like to know the expenses of Messrs. Squair, Twaddle, Yost and Schmeiser. I think she was here, Mr. Chairman, when I attempted to answer that question or enquiry, related enquiry, from the Member for Wellington.

I have no hesitation, Mr. Chairman, in obtaining that information and providing that information to members of this Assembly, but let me point out to her and to other members, Mr. Chairman, that firstly the timetable for this whole constitutional proposal was established by the Federal Government. We didn't choose the timetable. Our Premier asked in September for continuing discussions with the Federal Government and other provincial governments on the Constitution. That has been rejected. It has been asked for on a number of occasions since then and has been continually rejected, but I point out to her that we have had this time schedule imposed upon us and again I say to her that we have used very limited resources in Manitoba to deal with the whole constitutional question.

I point out to her that in a number of other provinces, B.C., Alberta, Saskatchewan, Ontario, Quebec, Newfoundland and at least two other Maritime Provinces, although they are not named as such, they have responsibilities for Inter-Governmental Affairs. They all have separate Inter-Governmental Affairs Departments and Ministers, although in one province the Attorney-General in Saskatchewan is also the Minister of Inter-Governmental Affairs. But they have used, I suggest, resources to a much greater extent than we have in Manitoba and if she wants to ask for the expenses, the legal fees, paid to Mr. Twaddle, certainly that can be made available and perhaps she would like to at the same time, Mr. Chairman, advise this House of the legal fees paid to Mr. Robinette, who's appearing before the Federal Government.

Mr. Chairman, I'm prepared to enquire into those; obtain the details and make those available, but all I'm trying to say is that we have used in Manitoba a very limited resources, that I suspect that the amount of money spent in every other province, and certainly with respect to the Federal Government, have been much greater than the expenses in Manitoba.

The Member for Fort Rouge asked certain questions relating to RCMP contracts with municipalities. I would suggest that she raise those under Law Enforcement, Item 7, which deals with the RCMP contracts.

She raised a question with respect to reciprocity with Ontario on custody orders. My understanding, Mr. Chairman, is that Ontario has different legislation than other provinces but I have not had brought to my attention any unusual difficulties that that legislation has caused and perhaps the member later on could indicate whether she has had some information to that effect.

She refers to a discussion I had with an author related to incest, which I think was a telephone call I had from a radio show. I discussed the whole problem of incest with that person, who had written

a book on the subject. I indicated to her at the time that our department considers that to be an extremely serious offence. We have treated it accordingly. Her inquiry was — I consulted with the Minister of Community Services and Corrections, and he wrote a fairly detailed response to her indicating their department's role where that problem exists and how they attempt to deal with it and how they have attempted to deal with it under the child abuse legislation, etc. We could look through our records and perhaps I can obtain a copy of that letter, which I think sets out the manner in which that department treats it as a social problem, and I think it's quite comprehensive.

Going back further, the Member for St. Johns raised a number of matters in his comments, Mr. Chairman. He referred to the promise system; when is the implementation date? Mr. Chairman, I could indicate to him that it would appear to me that the implementation date for the promise system is probably the latter part of 1982. It is a complicated system. We have had people just very recently visiting other jurisdictions where it has been implemented and looking at their systems with a view to tailoring them to implementation in Manitoba.

We expect that a demonstration test system should be available within the next three months. There is a great deal of scheduling involved in implementation between the police agencies and correction systems and all of the different organizations involved.

Having said that, Mr. Chairman, I think it's fair to say that we regard it as a very important improvement in the administration of the justice system in Manitoba, in order to maximum utilization of court time, and of prosecutors, police, reporters and everyone involved in that system and if it's possible to move that implementation date up, I would certainly encourage the department and do everything we could to implement the system as early as possible.

The Member for St. Johns referred to Mr. Kasser. I suppose that could be raised under Legal Services, Criminal Prosecutions and if he wishes, I can comment on it at that time.

Again, jurisdiction of Family Courts, related to his questions yesterday, the recent article in Macleans, the Paul Glass Court of Appeal Decision in B.C., which is being heard in the Supreme Court, as I indicated, we are very concerned with that. Certainly one way of resolving the situation, and we have discussed this with other provinces, is through a constitutional amendment that would give provincially-appointed judges all powers necessary to deal with all aspects of family law. An interim solution could be the Federal appointment of existing provincially-appointed Family Court judges to deal with those aspects of family law that may be ruled unconstitutional by the Supreme Court and, again, this is hypothetical at this stage, Mr. Chairman, but we are doing our best to prepare for what may be an adverse decision from the Supreme Court.

The Member for St. Johns referred to wire-taps and recent articles in the newspaper relating to evidence heard by the McDonald Commission. I suppose that could be dealt with, Mr. Chairman, under Criminal Prosecutions. Certainly I can indicate to him that some time ago — it must be two years

ago — I wrote to the McDonald Commission and I believe the Solicitor General, or the Minister of Justice at that time, and requested that they inform us of any illegal activities which come forward to the McDonald Commission in the course of their inquiry. I don't believe, Mr. Chairman, we have heard anything from them in that regard.

He refers to the Wilson case that was reported in the newspapers at the end of last week, the decision of his honour, Judge Dubiński. I can indicate, Mr. Chairman, that we are considering an appeal of that decision to the Manitoba Court of Appeal and because of that, I hesitate to get too involved in the details of that particular case. I think I can indicate to him that it was a case that arose under an authorization in 1978 and since then there have been changes made by the department in the wording of the order, which has caused some problem in this particular case.

I have requested the department to review all existing orders in view of the comments that have been made in that particular case. I have asked for a report with respect to the reported costs involved in the police investigation, but pointing out that the Police Department performed the investigatory function in this case. The Crown Attorneys do not guide the Police Department through the investigation. When the police have completed their investigation, they forward their brief to the Crown Attorney, who then makes the decision as to whether charges will be proceeded with, but I have requested information with respect to the cost.

The Member for St. Johns, I think, did not indicate a great or — perhaps, I want to make sure I'm correct, some perhaps lukewarm support of prosecutions related to gambling. I do point out, Mr. Chairman, that a review of the Criminal Code has been undertaken by the Federal Minister of Justice as a result of a meeting a year-and-a-half ago with the then Minister of Justice, in consultation with the provinces, and there's no question that gambling offences in the Criminal Code have to be looked at in the course of that review.

Mr. Chairman, I believe I've been able to respond to most, if not all of the enquiries that have been made in the opening statements, and I think where appropriate they can be raised again when we come to the specific item that's pertinent to them.

**MR. CHAIRMAN:** The Honourable Member for St. Johns.

**MR. SAUL CHERNIACK:** Thank you, Mr. Chairman, and I thank the Honourable Minister for his response. Just two points, one of which will, of course, be dealt with later, and that is the question of the wire-tapping, and that is, the Minister talked about the wording of the Order, I hope he will elaborate on that and indicate what change was found necessary. My point was, of course, whether the Minister authorized wire-tapping without a proper investigation of other investigative procedures that should have been taken, or may have been taken. We can deal with that later.

The Minister also said that the Crown Attorneys do not guide the police, and yet, quickly it comes to my mind that one of the Crown Attorneys made a point of saying that it was he who made sure that the police understood what he thought was what society

expected in relation to censorship of books. And that I think, was a direct instruction from the Attorney-General's Department to the police to threaten prosecution in the case of certain books which the Crown Attorney apparently thought were not acceptable to society.

More important in relation to this particular item, Mr. Chairman, I ask the Minister if he would make available to us the research documentation that took place in Quebec in relation to the Constitution. I think that applies to this item before us.

**MR. MERCIER:** On that particular item, Mr. Chairman, I'll check that tomorrow morning with officials in my department. I believe the report which we have received is in French only, as I recollect, and was interpreted not wholly, but read by a member of my staff and I received a short report of it. But let me check in the morning and advise the member tomorrow or the next time the Estimates come up.

**MR. CHERNIACK:** French is okay; it's one of our constitutional languages.

**MR. CHAIRMAN:** (1) — pass; (2) — pass; (b) — pass. (c) Administrative Services: (1) Salaries — pass; (2) — pass; (c) — pass. (d) Canada-Manitoba Gun Control: (1) Salaries — pass — the Honourable Member for St. Johns.

**MR. CHERNIACK:** Mr. Chairman, I am very seriously interested in the question of gun control. I have the belief, and I think it's a rather unpopular belief, that a gun is designed to kill or to injure, and I therefore, in my own mind, have a strong opposition to guns as such, and therefore, the control of guns becomes important as long as this country does believe as it does, that guns have a place in the community. I understand the use of guns by law enforcement people; I find it difficult in relation to weapons of murder, killing and injuring in the hands of the public. I know it's not a popular position especially when one deals with the hunting community. But I would like to hear in this particular regard what is the present situation in the department regarding registration, which I believe we're involved in, the role that is played by this department and its success in that regard.

**MR. CHAIRMAN:** The Honourable Member for Minnedosa.

**MR. DAVID BLAKE:** Before the Minister replies to that I can't agree with the Member for St. Johns. I don't think guns have ever killed anybody, it's been somebody that's been using a gun that has killed someone. If you're going to outlaw guns to prevent killings, you might as well outlaw bathing suits to prevent drownings, or licence bathing suits to prevent drownings.

But I realize there may be some need for some type of registration or type of control, but I think the Attorney-General has had a great number of presentations in connection with gun control, and I think it's something you have to handle on an unemotional basis. You have to be very pragmatic about gun control and do it in concert with all of those different groups within the community that

handle weapons of one type or another, whether they be military, constabulary, or whether they be the hunting or the target community.

I know the Minister has received a great number of presentations from various sections of the community and we may be able to have some dialogue on this and I would be interested to hear his remarks on what the position of the department is to date on it.

**MR. CHERNIACK:** Mr. Chairman, I have to tell the Honourable Member for Minnedosa that his analogy, which I think is not helpful, it might have been more correct if he had said, guns don't kill people, bullets kill people, and therefore if you could just remove the bullets and have the gun, everything's fine. You know, don't have the shell, don't have the bullet, use the gun, play cops and robbers and say I gotcha, and then there'll be no problems of either death or injury.

So I have to admit he's right. Guns don't kill people, bullets kill people. So if we can agree to remove bullets then I don't mind his playing with guns all he likes.

Mr. Chairman, I've heard this emanating from the south. The biggest lobby in the United States as I understand it, is the gun lobby. And fortunately, the people of Canada do not have that tradition that they have in the United States where the gun is something that you're entitled to have as a matter of right. Now it may well be that the member is right. But when one learns of all the accidents that take place by people who innocently hold a gun in their hand and have no intention of killing, nevertheless, by holding the gun in their hands they kill, then it's not very helpful. To get involved in whether guns kill people or people kill people or whether bullets kill people, the fact is that unless you have a gun in your hand, you do not kill. And I would suggest to the Honourable Member for Minnedosa that I would much rather people carried cameras than guns in their normal pursuits, be it hunting or otherwise.

And if he then says to me, well, people take pictures, cameras don't take pictures, I'd rather get into that kind of a discussion than get involved in whether guns or people kill people, or humans or anybody else.

**MR. BLAKE:** Mr. Chairman, I don't want to get into a debate with the Member for St. Johns, but I didn't think that he was so naive.

**MR. CHAIRMAN:** (1) — pass — the Honourable Minister.

**MR. JORGENSON:** What are you going to do with the woman who has done her husband in with a nine iron; are you going to ban golf clubs?

**MR. CHERNIACK:** The nine iron was not designed to kill or to injure; there's a difference.

**MR. CHAIRMAN:** I would have used an eight iron.

**MR. MERCIER:** Wrong club. I don't want to get in the way of this discussion, Mr. Chairman.

Mr. Chairman, this section provides for a Chief Firearms Officer, Mr. Cooper, a secretary and administrative expenses who oversee the gun control

operation in Manitoba. I'm not sure if the Member for St. Johns has any particular problems that have arisen with constituents that he wishes to raise?

**MR. CHERNIACK:** Mr. Chairman, from the response by the Minister, I assume that it is a passive department which just sits there and waits for people to come in to make a registration. I had hoped that there would be some enforcement involved, some education involved, some requirement involved in relation to this department, where indeed the term control is a positive act by the Minister. Maybe I'm just wrong completely and there is no effort made to control but only to be available to register. I frankly misunderstood the Minister or the wording which says, Canada-Manitoba Gun Control. I thought that there was a requirement or a procedure within the department that is involved in gun control, which I believe has to do with registration, rather than just passively sitting in an office waiting for people to come in and register.

So I would like the Minister to clarify. Does he not accept it as his responsibility to carry out measures of control, which I think must relate to publicity, requirements, enforcement, and therefore review and consideration, rather than just being available to register, so maybe the Minister can clarify?

**MR. MERCIER:** Mr. Chairman, the Chief Firearms Officer, Mr. Cooper, works with the police forces in Manitoba, the City of Winnipeg Police Force, the RCMP, the City of Brandon Police Force, through whom individuals make their applications for firearm acquisition certificates. He is responsible for the overall administration of the provisions of the Criminal Code relating to gun control and the issuance of firearm acquisition certificates, so in a sense it's not particularly a passive role, it's an active role working with these police forces that I've referred to in administering the provisions of the Code.

**MR. CHAIRMAN:** The Honourable Minister.

**HON. HARRY J. ENNS (Lakeside):** Mr. Chairman, perhaps I can bear witness to the fact that the gun control program, registration program, here in Manitoba is in fact working very effectively, and I can explain that in a way we can all understand. My son desired to buy me a shotgun for Christmas this last year, but the actions of the department, this legislation, prevented him from doing that; it's not possible. He had to have a certificate signed by the owner that had to be presented to the retailer, to the store, prior to the store releasing that gun into anybody's custody. In a rather very small way, it demonstrates to me, at least, that my son could not buy his father a shotgun for Christmas, as I like to do a little bit of hunting occasionally out at the farm, simply because of the existence of the administrative arrangement that the Attorney-General alludes to.

And I think, Mr. Chairman, that demonstrates the fact that with respect to the extent that the law now calls for, registration of certain types of guns, they have devised a fairly simple but working arrangement for that kind of control. Of course, with that certificate of ownership there is the proper identifying information as to where that gun is, in whose possession it is, that's available to the department. It

can be made available, I suppose, to law enforcement officers, if the gun should be involved in any criminal act. But, Mr. Chairman, if that's helpful to members of the committee, I found that to be my personal experience with respect to the workings of the gun control laws and registration that we have in this province.

**MR. CHAIRMAN:** The Honourable Member for St. Johns.

**MR. CHERNIACK:** Mr. Chairman, indeed it's helpful that the Minister of Natural Resources, who is probably responsible for hunting in this province — I guess of all those who are, I suppose he ought to have a shotgun of some kind, but it's not for me to comment about that. It was helpful, his description. Does that then mean that it's not just a question of dealing with the police forces, but rather that no one may sell a gun, even a shotgun, without a certificate given in advance, and therefore that is — (Interjection)— Well, then, what enforcement is there when it is found that guns are sold without a proper certificate? Are there regular visits made to the people who peddle guns, to make sure that they have a proper certificate in each case? Is there a penalty of some kind when a gun is found that does not have a proper registration? There has to be some kind of control about the private sale and purchase of guns. Is that done through the police only or are there any other means used?

**MR. MERCIER:** Mr. Chairman, investigations are done by the police. I should have mentioned, too, that the department has to work with the retail outlets of guns. For them to dispose of a gun to someone who doesn't have a certificate, I believe would be an offence under the code. Where a gun is found that is unregistered, again that would be investigated by the police in an attempt to determine where the gun was purchased. I would think that in general records would be available as to serial numbers and the like, which would indicate where that gun was purchased.

**MR. CHAIRMAN:** (1) — pass; (2) — pass; (b) — pass.

Resolution No. 17, Clause 2. Legal Services, Item (a) Civil Litigation, (1) Salaries — the Honourable Minister.

**MR. MERCIER:** This is an area where I can answer a question that was referred to earlier, that being, Mr. Chairman, the costs of CFI prosecutions. It relates to both civil and criminal litigation costs. The latest report that I have as of March 18, 1981, that there is a grand total spent as of that date of \$4,015,857.34. That's composed of, in Criminal Prosecutions, \$1,028,131.82; the Official Inquiry, which was apparently paid for out of the Department of Industry and Commerce, \$1,056,900.91; and the cost of civil litigation, \$1,930,824.61.

**MR. CHAIRMAN:** The Honourable Member for St. Johns.

**MR. CHERNIACK:** Mr. Chairman, I just want to get it clear. The Minister referred to, I think, four items, one of which was the Commission. Does he refer

now to the Rhode Smith Commission? — (Interjection)— Yes.

Mr. Chairman, I am interested in knowing what the Minister's intention is, the extent to which he continues to attempt to bring Kasser to judgment, if I may use that expression. As I understand it, the court in Austria released Kasser. As I understand it further, the Swiss courts refused to release Reiser and Zingre and some other people. (Interjection)— That's a name I never knew, so I don't even recognize it when the Minister pronounces it, but it's one person I never met, although I did meet the others. They cannot be brought to Canada for prosecution apparently. Now there is some effort being made to prosecute them in Switzerland, which to me becomes even more academic.

I would like to hear, just what is it that the Minister is continuing to support? I have not looked at this article for some time. It's dated April 25th, which is recent enough, but as I understand it, the proceedings in Switzerland are in control and in the hands of the Swiss courts and I think they are entitled to expect co-operation from the Manitoba courts, the Manitoba Attorney-General, but I don't know the extent of it. Also, and now I see a comment — there were interviews with Al McGregor and with Gil Goodman on this aspect in this article I am reading — and I don't know the extent to which the government intends to proceed further.

Mr. Chairman, may I say that although I was involved in the very early part of this last decade in this whole question, I did not have much contact in more recent years and it has been in my mind that I really don't know anything about the proposed civil action against Arthur D. Little. Is there such? Has it been dropped? Is it continuing? Where is it at, because I did think that that is where we had a justifiable case. I thought that these criminal prosecutions were — I don't know if the expression is "for the birds", but they weren't really, I thought, of great value in Manitoba, but I had the impression, superficially that we should have had a pretty good case against Arthur D. Little and yet I've heard nothing about it for some years, so I take this opportunity to ask the Minister has it been dropped? Where do we stand? Do we stand anywhere.

I have to say that my recollection was that it was in the hands of Mr. Justice Huband before he became a judge and that's the last I know of it.

**MR. MERCIER:** Just perhaps quickly on the last question. Mr. Chairman, the A.D. Little action is ongoing and counsel are pursuing that and it is an active file.

**MR. CHAIRMAN:** The Honourable Member for Inkster.

**MR. GREEN:** Mr. Chairman, I am certainly aware that there is an action against Arthur D. Little and there were some ramifications of that action, which I don't want to even discuss because it affects the proceedings and strategies that were taken at the time, but when the Minister says it's an active file, I wonder whether he would compare the activity on that file to the activity on the other file, because I think, Mr. Chairman, that it was some three weeks ago at least, perhaps more, when I found out that the lawyers were co-operating with counsel and

judges in Switzerland to have an investigation conducted before the judges by witnesses under oath. I think the Member for St. Johns was to be one of the witnesses. (Interjection)— No, they didn't call me, no. Well, that shows you who is important.

The fact is, Mr. Chairman, that they were going to have this business and there were two proceedings. One was in the Court of Queen's Bench. I think we were represented by three counsel. We were represented by Jack Chapman; we were represented by Allan McGregor; and we were represented by Gil Goodman, I believe. I'm not certain of that, but there was somebody there from the Crown's office. Then it went to the Court of Appeal and the Court of Appeal, I think, upset the decision of the Court of Queen's Bench, and then Mr. Regehr applied for leave to the Supreme Court of Canada; leave to appeal was granted by the Supreme Court of Canada; and now it's being argued. This is a preliminary point. Mind you, it's a very basic preliminary point; it's whether you're going to go ahead. I'm surprised and I really must say with the greatest of respect to Mr. Justice Freedman, I don't see how voluntary appearances or voluntary enquiries could be prohibited because they have not ruled that there are going to be compulsory ones. . . . Mr. Goodman, I hope, will not let me make a complete ass of myself but something like that happened, because they ruled that you couldn't go ahead with the formal proceedings, they recommended that they not go ahead with the informal ones. Well, you don't need the court for the informal ones.

I didn't know why we were getting involved in all these cases and to do things which couldn't be done in this country. I believe I asked the Minister, and I think it will appear in Hansard at the time, does the Minister ever intend to weigh what we have to achieve and what we have to do in order to make that achievement to see whether the achievement is in any way related to the effort that has gone into it? When does he make that balance?

The Minister has a problem and I'm not going to criticize him. He doesn't want to be the guy who says, we abandoned the criminal prosecution, because the fact is that the present Leader of the Opposition on numerous occasions made very very strong statements about bringing these people to justice and how there is justice for the rich and justice for the poor. It is a problem for a new administration to appear to be any less vigorous in terms of what it intends to do than the previous administration. I can tell the honourable member that I won't criticize him as long as he makes an assessment, as long as he says, okay, it's gone this far, we've done everything that is reasonably possible, that to go ahead with these other proceedings, their chance of success is remote and therefore perhaps we should concentrate on the active file. By the active file, I'm talking about the Arthur D. Little file. Arthur D. Little is here. Arthur D. Little, I would think, is insured. Arthur D. Little, if we succeed, we get money. The other people, if we succeed, somebody goes to jail. If it was our jail, it would cost us money; we wouldn't get any money, it would cost us money.

I think that an Attorney-General is entitled, and I think that now he has some, at least indicators that he is not going to be criticized by everybody if he

makes a sincere assessment of the file and comes to a decision. I also think that some of these proceedings are a little too dramatized. I mean, I read about what Schulz (phonetic) says in New York and then there's got to be a rejoinder from McGregor in Manitoba, an exchange of compliments, like you're an actor, you're a good public relations man; you are a better public relations man than you are a lawyer. I can't remember the exact compliments that were paid, but they were exchanged in that direction.

It would appear, Mr. Chairman, that it is time for such an assessment and I think that if the Minister makes it conscientiously, that people will not be able to fault him for it.

I know that this is sort of a sad story for all of the Province of Manitoba and it's still a story where, I guess it's similar to the Hydro, everybody says that the other guy is wrong and the other guy was to blame.

At the present time there is a Forestry Complex operating in The Pas. My regret is that it's not making money. I think that it's sensible for a project to proceed. I would have certainly wanted the Crown to be the owner of it. We subsequently became the owner of it, not because we wanted to, but in effect we had to. But I did ask the question of the Minister, I think he will recall in the House, in those very same terms. It's been brought up again tonight and I think that the Minister should be concentrating on those areas where productivity is more able to be achieved and I think that civil action is certainly one where that looked better at that time.

**MR. CHAIRMAN:** The Honourable Minister.

**MR. MERCIER:** Well, Mr. Chairman, I do recall the Member for Inkster raising that question. I think when he asked that question, I indicated, yes, there was a point in time where that assessment had to take place and a decision made and determination made as to the value of any further proceedings. I agree with him in principle on that. In view of the ongoing proceedings, I don't think he expects me to indicate when that assessment will take place and in which way it will be determined.

The A.D. Little action has been ongoing for some time. I'm sure he will appreciate that and the Member for St. Johns, I understand it's an extremely complicated matter and there have been some difficulties involved in drafting Statements of Claim, etc., but it is ongoing and there are active discussions, as I understand it, being held with respect to that matter.

**MR. CHAIRMAN:** Order please. An announcement. In the hockey game tonight, Minnesota in the second period is winning 3 to 1 and the New York Islanders in the third period are leading 4 to 2, and in the basketball scores I have nothing.

The Honourable Member for St. Johns.

**MR. CHERNIACK:** Well, Mr. Chairman, I will drop the matter of the — well no, I just want to get clarification.

Is the government still proceeding not only with the Swiss matter, but also as against Kasser, because the very recent item I have still deals with the Manitoba Government continuing its battle to bring

Kasser to trial in Austria. Now that's different than a proceeding which is being carried on in Switzerland, where now the Swiss jurisdiction in some way is asking for co-operation from the Manitoba one. I can understand that the tables have been reversed somehow. Suddenly we find the Swiss prosecution is anxious to proceed with their case and asking for Manitoba assistance. That would be difficult to say, we're not going to co-operate, especially when they asked the Swiss to take proceedings. But what is this thing that's going on in Austria? Is that not settled yet and are we proceeding with that? When the Minister responds, can he just tell us just where we're at with the Arthur D. Little, because I tell you frankly, Mr. Chairman, I always had faith in our cause of action and our ability to prove a case against Arthur D. Little, which was a firm on whom we really relied and I was rather surprised to hear the Minister say it's complicated and drawing a Statement of Claim is difficult.

Well I want to get a clarification. I would have thought that by now we're into court at least, that we're into Examinations for Discovery or wherever we're at. I don't even know where the action is being conducted, because as I say, Mr. Chairman, I lost any personal contact I may have had with that when I left Cabinet five, six years ago. So I really don't know we're at, but I'd like to know that we're somewhere, not at the first step of the proceedings, but well advanced and that indeed we are proceeding with that, unless the Attorney-General tells us that we don't have as good a case as I frankly thought we do have.

So I'd like to know where we're at, without making it difficult, because obviously, Mr. Chairman, we're — apparently it's an active file, which means we're in the process and there may well be statements that the Attorney-General ought not to make at all on this issue, but at least where are we in the court proceedings? That's a matter of public record which he can tell us? And where are we in relation to the Austrian battle with Kasser, who I believe is a crook and I'd like to see him brought to justice, but I don't think we're going to succeed and I want to know where we're at with him?

**MR. MERCIER:** Mr. Chairman, dealing with the A.D. Little action, a Statement of Claim has been filed. As I recollect there was one file that was at one stage struck out and had to be refiled by the then solicitor, but it has been filed. The Member for St. Johns will be aware, of course, that the counsel involved in that case was appointed to the Manitoba Court of Appeal and there was a change in counsel, which brought some delay, while counsel familiarized themselves with the file. Counsel for the province at the present time is Mr. Houston, who is now handling that matter and as I understand it, because I have discussed it with him in various stages, that it is active, it is ongoing, there was some delay while he had to familiarize himself with the amount of material, because of the change in counsel that was necessitated by the appointment of Mr. Justice Huband. I think like him many people do put some, or have some hope of success in that particular case and I think that's probably about as far as I should go on the merits of the case.

Mr. Chairman, with respect to Austria and Mr. Kasser, the news report indicated that Mr. McGregor

has provided some information to Austrian authorities. It is being done by him in a very preliminary fashion in order to obtain their views on this new evidence, which was not before them previously. When he has an opinion from them, he has instructions, Mr. Chairman, to report to me with respect to that matter and no further proceedings will be commenced without further review by our department.

**MR. CHERNIACK:** Mr. Chairman, I'm inclined to tell the Minister a little bit more. For one thing, I was surprised to learn only this evening that the Member for Inkster was not expected to be called in relation to this Swiss procedure and I am surprised that he wasn't and I must say, Mr. Chairman, I was surprised that when I was told that I was about to be asked that no effort was made to find out from me what I knew about our dealings with these gentlemen. Apparently all they relied on was evidence that was given before the Rhodes-Smith Commission, which on review I found, was not really dealing with Reiser and Zingre and this other gentleman, but had to do with other questions.

Well in any event, I was surprised that I was never approached to discuss with anyone what I knew about it and apparently the Member for Inkster had never had anything to do with the others, so that may be the explanation that he wasn't involved, but I must say that I was surprised because I've never discussed my meetings with any of these people, other than what appears on the record of the Commission, which as I say, was not directly related to these gentlemen involved and I'm really rather wondering about what impresses me as a haphazard approach and I just volunteer that information to the Honourable Minister.

On the other hand, I do believe that there is a great deal of documentation regarding the Arthur D. Little affair, which I really would like to see proceeded with, unless I am somehow persuaded that we have no action, my impression is that we should a good action against him and yet I've never been interviewed by anybody about it. I don't know whether any other persons have, but I leave it for the Attorney-General and his department to deal with.

**MR. CHAIRMAN:** (1) — pass; (2) — pass; (a) — pass; (b)(1) — pass — the Honourable Member for St. Johns.

**MR. CHERNIACK:** Well, Mr. Chairman, I believe this is the occasion to discuss the question of the wire-taps, unless the Minister has some other place where he wants to discuss it. He agrees that this is the occasion.

Mr. Chairman, I am amongst many people, I guess, who frown on wire-tapping as a method of investigation, police investigation, and I have good support, because the law itself apparently frowns on the use of wire-tap or that kind of investigative procedure which invades the privacy of people. Therefore the law, as I understand it, is a pretty good law, that for one thing you don't want to let criminals get away without a proper opportunity to investigate them and try them, but on the other hand the law does state apparently, and I'm no expert on it, so I rely on a newspaper's report really as to on what the law is and that is that it may be granted where other

investigative procedures have been tried and failed. I don't want to deal with this particular case, because the Minister said he's considering an appeal and therefore it would be wrong to deal with a particular case, therefore I must ask the Minister very directly as to the procedures which he has determined will apply in his department before an application is made for an order permitting a wire-tap. I understood him to answer the other day that for the last year, his order was that only he may approve of an application, unless he's away and unavailable and therefore I'd like to know just what is the procedure, what are his requirements before he will agree to such an application?

**MR. MERCIER:** Well firstly, Mr. Chairman, the procedures that we have developed in the department involve approval by senior officers, require senior officers in the department to authorize an application for an authorization.

We have just very recently updated, well really it's an updating of the persons involved and the Crown Attorneys involved, who will be actively involved in bringing forward the applications. The provisions of the Criminal Code relates, as the Member for St. Johns has referred, to a situation where other investigative procedures have been tried and have failed, or other investigative procedures are unlikely to succeed or the urgency of the matter is such that it would be impractical to carry out the investigation of the offense using only other investigative procedures.

The practice of the Department now in its application is to make the application on the basis of one of those three conditions, not on the basis of all three, so that the exact situation has to be identified. It's either a situation where other investigative procedures have been tried and have failed or it's a situation where other investigative procedures are unlikely to succeed or it's a situation where the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures. Prior to the, I guess it's fair to say, prior to the change, in view of the newness of the Criminal Code provisions, as I understand it, there were situations where the application may have said, "all three" instead of using the word "or" they used the word "and" and so as the Member for St. Johns I think would agree, it is impossible to qualify the application under all three situations. And in view of that situation there has been a change in the wording of the application which makes it incumbent upon the department to identify which situation is clearly identified and in the evidence, and is the basis of the application.

**MR. CHAIRMAN:** The Honourable Member for St. Johns.

**MR. CHERNIACK:** Mr. Chairman, I understand the distinction and I can understand why one of the three makes more sense than all three, but I want to know whether the Minister in approving of an application being made — well, let me put it differently — let me ask him what he requires be produced by the investigative people or by his department to prove to him that one of these three whichever one is being used, is in fact truthful? In

other words, does he just get a statement from someone saying, "The emergency is such that we don't have time," or one of the other two reasons, or does he actually get an accounting which explains and justifies that statement? I don't know if he can give us an example of an occasion but I want to know whether he relies on the statement made by someone else or whether he requires that they describe to him the basis on which they make their claim so that it is his judgement and not a referred judgement from them which is the basis. And it comes to mind very quickly that he lost a case because some policeman swore out an information because someone else told him to do it and apparently it wasn't done on his own information and belief. And there was a case dismissed because of that, so I'm asking him very specifically; is it based on the fact that someone tells him that I believe, I inform you and I believe that one of these three things applies, or does he actually insist that they give him a proper accounting, a proper statement, justifying that?

**MR. MERCIER:** Well, just referring for a moment to a comment the Member for St. Johns made about another situation. That situation, I think, has been covered by some changes made by the Director of Prosecutions and the procedures used in the swearing of information.

Let me go back a little bit, Mr. Chairman. My concern a year ago, I think as a number of members of the Legislature indicated during the last consideration of the last set of my Estimates, that they had concerns about the use of wire-taps. As a result of those concerns that were expressed at those Committee meetings and in view of the responsibility in which I suppose I ultimately bear for the carrying out of those procedures, I took it upon myself to review with the department the applications that were being made so that I could be satisfied as to those applications. Generally speaking when Crown Attorney comes forward with an application of this kind, he has an affidavit from a police officer involved in the investigation, generally, which is being reviewed by him and, generally, a number of other senior counsel in the Department. And he reviews the facts of the situation with me surrounding the investigation and generally those discussions do or require to involve the provisions of the Criminal Code as to what other investigative procedures, if any, have been carried out or what the exact circumstances are depending upon which one of those areas is being applied for. And that is the general manner in which the discussion takes place, Mr. Chairman, and questions are generally asked by myself relating to the facts that are described to me and a decision is made as to whether the application will go forward.

**MR. CHERNIACK:** Mr. Chairman, I want to tell the Minister that from his discription, I am now assuming that when the decision is made to approve of the application that then the decision is his based on his own review of the facts as they are presented to him and not based on an opinion of someone else. Now let me clarify what I mean. He could get an affidavit by some police officer saying, "I have tried other means such as, personal surveillance and it hasn't helped and therefore this is, in my opinion, all of the

ways possible," and therefore the Minister can then almost rubber-stamp what the opinion is based on his belief that the opinion is right.

The other way would be for the officer to say, "I've tried the following means, one, two, three, four. I have failed," and then it's up to the Minister to say, in his own mind, "Well, there are no other means available, therefore, in my opinion, one of these three pre-conditions applies and therefore I assume responsibility." More specifically, in the case that we're not really discussing, was that his decision, or was it just a rubber-stamping of someone else's opinion? And I say that because I don't know, I have no personal information or even information given to me as to how the courts do it, the extent to which the courts look into the wire-tape or whether they just accept the fact that the Attorney-General recommends it that they rubber-stamp him. I really don't know, and I'd like to make sure, Mr. Chairman, that the law, the intent of the law is indeed being carried out and that there is no casual compliance with it in order to achieve wire-tapping. And I say that because there is indication in this country that there has been abuse of the laws concerning privacy.

**MR. MERCIER:** Mr. Chairman, I don't think there's any rubber-stamping that goes on in these cases. First of all there has to be the approval, for example, in the City of Winnipeg of one of the top three policemen in the department before an application is made. It has to be reviewed by not only the Crown Attorney involved but a senior officer of the department, plus myself. And the Court does not rubber-stamp these applications at all, Mr. Chairman. Questions are asked. Draft orders are revised. There's questioning as to compliance with the provisions of the Code that are being referred to and it has not been a rubber-stamping affair. It is an application I think that is considered extremely serious and it has to be considered by top policemen in the Police Departments, senior members of my department and my experience in discussing these applications with individual Crown attorneys is that the courts do not rubber-stamp them in any means whatsoever.

**MR. CHAIRMAN:** The Honourable Member for Inkster.

**MR. GREEN:** Mr. Chairman, I'd like to take this one step removed and first of all make sure of whether or not my fears are justified.

There were certain wire-tappings done with respect to a trial of which we were all cognizant of. They involved calls in this building to another person; calls between other people and other locations. Numerous calls were tapped. I expect that the calls were between one person and everybody that spoke to him and between another person everybody that spoke to that other person. They weren't all calls involving the one person. Let's just carry this forward to the courtroom. In court the Crown wished to introduce evidence of certain calls. The defense took the position that they may be withholding exculpatory calls and the defense asked for the right to hear every call. And the trial was adjourned and the defense lawyer and the accused and the prosecution lawyer then sat for two weeks listening to calls. Now, if they were all calls involving the accused, I am not

greatly concerned because the accused knew of those calls, and could have advised his counsel of those calls. But am I correct in knowing that the accused and the defense lawyer heard calls between two third parties, in other words, not involving the accused and all calls that were wire-tapped which could have involved a thousand calls.

Am I correct in making that assumption, because if I'm not correct, then I'm not going to be able to pursue this much further, and I'd be glad to be not correct.

**MR. MERCIER:** Mr. Chairman, with respect to this question, I want to make sure the Member for Inkster wants to be very careful as I do and other members would be when this particular prosecution by the Federal Government is to be reviewed very shortly in a Court of Appeal.

Because of concerns and questions that were reported in the newspaper and questions from individual members of the Legislature, Mr. Chairman, I can indicate that I have received from the Royal Canadian Mounted Police Commissioner, assurance that no conversation of any other MLA other than the MLA involved was recorded on these tapes.

**MR. GREEN:** I assure you, Mr. Chairman, that is not my problem. I'm not worried about protecting members of the Legislature. If it was a call involving the accused, let's forget the case for the moment. There was a bunch of wire-tapping done. The wire-tapping involved calls between the accused and other people and between other people and third persons. They weren't all calls as between the accused and other people. The wire-tapping involved a network of calls. Does every one of the calls that was tapped involve the accused? If they all involved the accused and another person, then I am not going to pursue the matter because I was concerned as to whether the accused and his lawyer were listening to calls which did not involve the accused, and if that is not so, then I am happy to hear that it is not so and happy to be told, if that's what the Minister is telling me, that every call that the accused heard was a call in which he was involved, and therefore he and his lawyer only heard himself talking to another person, being a call that he would know of, that there were no calls as between two other people that were heard by the accused and his lawyer.

**MR. MERCIER:** As I was indicating, Mr. Chairman, I have received assurance that no conversation of any other MLA was recorded on these tapes. In one instance only, an MLA identified himself in making a long distance call whereupon the device was immediately shut down. There was no conversation involved listened to or recorded, and my understanding is that there are no other calls, if the member is referring to calls between people other than MLAs and third parties, that no such calls were recorded.

**MR. GREEN:** Mr. Chairman, apparently my question has not been understood. The wire-tapping order gave a network of calls, provided for a network of wire-tapping. In other words, the accused could be talking to AB, or AB could be talking to CD. Would the accused hear back wire-tap calls in which he was not involved as between AB and CD?

Does the Minister understand my question?

**MR. MERCIER:** I understand that question, Mr. Chairman. My enquiry was made with respect to MLAs in this building, not with respect to other conversations of other persons who might be named in the order outside the building.

**MR. GREEN:** I assure the Minister that I'm not concerned with the problem of MLAs. That was not my problem. I am concerned — and I'm not even concerned, other than the kind of concerns that have been previously expressed. I'm now talking about a new concern, and if it's not there, I'm happy that it's not there. I gather that the accused had his phone tapped so that people could hear what he was saying to other people, and if those are the calls that were listened to, that problem will be dealt with, and I'm not going to raise it anew.

Could the accused and his lawyer hear calls which were wire-tapped in which the accused was not involved? In other words, the accused has his telephone tapped so that he can be heard talking to AB, he also has his telephone tapped so that he could be heard talking to CD. Also, AB and CD could be heard talking to each other because they are part of a possible conspiracy. When the accused is given the opportunity to listen to the calls, I can understand that he would listen to all the calls between himself and AB, himself and CD; these are calls that he already would know about, having made them and talked them, and all he hears is them being confirmed. Has he also been given the opportunity to hear calls between AB and CD?

**MR. MERCIER:** Mr. Chairman, I can't answer that question because I don't have the particular knowledge of that case, but let me just offer an opinion. If those conversations were to be part of the evidence against the accused, then I would think that he would have an opportunity to listen to them.

**MR. GREEN:** Certainly, Mr. Chairman. That's not the problem. The problem is that the prosecution said, we're going to introduce these calls. That's the evidence. The accused said, I want the right to hear all the calls. The judge then adjourned the case and gave the accused and his lawyer the right to hear all the calls, whether they were going to be introduced into evidence or not, and I'm wondering if the calls between AB and CD were listened to by the accused, even though he was not a party to that conversation, because if so, Mr. Chairman, I have a serious problem, a very serious problem, one that affects everybody in society, and one that I would like to see the law changed. I think the judge was wrong if he did that, and if he didn't do that, then I don't want to be making the criticism that I'm ready to embark upon if he allowed the accused and his lawyer to listen to calls in which the accused was not involved between AB and CD, and if he didn't, then I just want to be told that he didn't and I'll leave it at that. But if he did, then, Mr. Chairman, I have something to say about that.

Therefore I would ask the Attorney-General, if, by tomorrow, he could find out, or if he's going to tell me today, that's fine, but I would like to know whether the accused and his lawyer were able to listen to calls in which the accused was not one of

the participants in the conversation between AB and CD, or between calls that were made to AB by other people because his phone was tapped.

The phones that were tapped were not merely the accused's, but AB's phone was tapped, therefore every call that came to AB during that period was tapped. If the accused could hear those calls, Mr. Chairman, I think that it is a problem of momentous importance, and I want to know whether the accused heard calls to AB, in which the accused was not a participant, because it's not that the prosecution wanted him to hear those calls. The prosecution took the position that all he's entitled to is to hear the calls which are going to be introduced as evidence. But the accused raised an objection. He said, I want to hear all the calls, and subsequently did hear all the calls, and if it's calls in which he was not involved as a party — you see, I don't mind him listening to his own calls, he's just getting back what he's already said before, and is entitled to know what he said and what the person said to him, but I don't think he's entitled to know what AB said to XY. If AB's phone was tapped, and he was permitted to listen to that call, then I think, Mr. Chairman, that is a matter of tremendous importance and I would like the Minister to be able to answer that question for me.

**MR. MERCIER:** Mr. Chairman, we can make an enquiry of the federal prosecutor in that case. The member understands it's a federal prosecution. I don't think he's obligated in any way to answer our enquiry. He may offer to do so. I'm not presuming at this stage what his reaction will be, but we certainly can make the enquiry from him.

**MR. GREEN:** Mr. Chairman, I want the Minister to make the enquiry in about as agitated a condition as I am, if my fear is justified. I'll tell the Minister why he has to do that. If the judge is going to let the accused and his lawyer listen to what AB says to Joe Smith, which isn't even relevant and which the Crown has taken aside to make irrelevant, can the Minister use his imagination as to the kind of information about AB and XY, AB and PQ, AB and ST, that is available to an accused, and I don't know who the accused is going to be, I don't know who his lawyer is going to be, but all of a sudden, all kinds of private information is made available to these people and we've got the potential of terrible things happening.

The Crown did not want to introduce that, the police did not want to give it to them, but the judge ordered that that be made available. Now if it's only the accused's calls, then what I say is not a problem. If it's not the accused's calls, then I don't want the Minister to be so passive about it. Get excited, because it is a problem, it is a serious problem.

**MR. CHAIRMAN:** (1) — pass — the Honourable Member for St. Johns.

**MR. CHERNIACK:** Mr. Chairman, I assume that the Minister will be reporting back on this question raised by the Member for Inkster, so I want to still deal with wire-tapping, but refer now to an article written by Val Werier, where it appears from the article that he was interviewing a lawyer named Rocky Pollock, and then he makes certain

statements, which may or may not be correct, but I'd like the Minister to look into that and tell us about it.

Now I'm quoting from the article, he says, "The solicitor-client relationship is considered an inviolate trust under our system of justice". Well, we all know that. "But police listened to more than a dozen calls between counsel and client, according to evidence brought out at the trial. It is true police may have to listen to the conversation to determine when it starts and ends for it is all recorded on tapes. This poses a dilemma because they are not supposed to listen to such conversations." We know that, Mr. Chairman. Then, the article goes on to say, "Furthermore, the trial revealed that police made brief summaries of the subject matter of these client-counsel talks", and that I find a matter of serious concern.

Apparently, according to this statement, not only did they listen to what was, I believe, confidential and none of their business, but they also made summaries of the subject matter.

Then the statement goes on to say that one of the conversations overheard was between a woman and another solicitor, this woman happened to have phoned from one of the homes that were tapped, she called her lawyer on matter that had nothing to do with any offence, but it was overheard. (Interjection)— Well now, the Member for Inkster says, did the accused hear that call, which is a relevant question which needs answering, but I'm also concerned that the police heard that call, and if they made summaries of that call, it may have involved something altogether unrelated to the application that was made for the order and also, as the Member for Inkster, suddenly the accused becomes entitled to listen to conversations that have nothing to do with his affair, but then become information available to him.

And I think it's a terrible thing to read a lawyer saying, and I quote again, "You have no idea what it is to practise criminal law in this day and age when you can't rely on the confidentiality of a phone call". Mr. Chairman, I've had very little practice in criminal law, but it is distressing to know that this can go on and that is, of course, the reason why the code provides such very particular proof before it is permitted to wire-tap a telephone.

That's why I would like, really, Mr. Chairman, and I hope that we will adjourn before we complete this item, so that the Minister can respond tomorrow to the questions that were asked, and give us more elaborate assurance that the whole system of wire-tapping is clearly under control, is not a matter that the police have any power over, that is entirely and completely the first responsibility of the Attorney-General of the Province of Manitoba, in addition to that of the court that grants the permission.

I'd like also for him to be able to report to us on the — I'm not at all clear on what is the requirement, but I believe that there is a requirement that there be a public statement as to wire-tapping orders that have been made, granted, and what has been done. I forget whether they come after six months or wherever. Frankly, Mr. Chairman, I've never seen that public statement, and it may well be it's in a document that is available to me that I haven't looked at, but I don't know where it appears and I think that that ought to be clarified for us.

Now, one other thing, one step aside, is the statement made, and again I come back to what is

reported in this article in relation to the case that we are not discussing, insofar as it relates to Judge Dubiński's decision and that is the estimate that some \$200,000 may have been involved in the investigation of that particular case.

Now that of course is relevant and a matter we can discuss. It has nothing to do with the decision to appeal or not to appeal and I'd like to know, is that estimate within the ballpark of the actual cost or closer to it. Secondly, I'd like to know precisely whether that is the charge that goes directly to the Department of the Attorney-General, or to the City of Winnipeg Enforcement, or is it something that is part of the RCMP costs for which we pay a set price, which is now being bargained at, whether indeed this is the cost to the taxpayers of Winnipeg, of Manitoba or of Canada and I'm not urging an immediate response, Mr. Chairman.

**MR. MERCIER:** Well, Mr. Chairman, the cost that he's referring to in that article would be costs of operation of the City of Winnipeg Police Department. I indicated earlier, I have requested from the department a review of the exact amount of costs involved.

What is referred to our Estimates, Mr. Chairman, what we refer back to a discussion earlier on, if the actual cost would depend to a great extent on whether transcripts were typed, or only portions of them were typed, and the balance of the tapes were listened to by counsel, for example, as occurred in a case that the Member for Inkster referred to earlier, but I'm awaiting a report from the department on the cost factor that has been referred to.

With respect to the annual reports, Mr. Chairman, those appear in the Manitoba Gazette and have already appeared in the Manitoba Gazette in the early months of this year.

With respect to overhearing solicitor-client conversations, Mr. Chairman, I am as much concerned about that as the Member for St. Johns or any other member. It would be my view that, and I would think almost an unanimous view, that those kinds of conversations should not be the subject of a wire-tap and that is again part of the concerns we have with respect to this case and hopefully before the next time this subject matter is discussed in the Estimates, that I will have had a full report on this case from the department. In fact I think we could agree, Mr. Chairman, if not, as long as my Estimates are ongoing, this matter could be raised as soon as I have that report from the department.

**MR. CHAIRMAN:** (1) — pass; (2) — pass — the Honourable Member for St. Johns.

**MR. CHERNIACK:** I would suggest that committee rise before we pass these items because they do remain for consideration, when the Minister has some response, which he's undertaken to give. I don't know whether he would have any objection to our Committee rising at this stage and if he says no, I'll leave it to him to make the motion.

**MR. CHAIRMAN:** Well, the only comment I can make and if the information is not available by tomorrow that, will Committee readjourn? — (Interjection)— Well, I'm a servant of this group. I'm going to call in and if anybody wants to stop me, they may do so.

**Tuesday, 28 April, 1981**

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(1) — pass; (2) — pass — the Honourable  
Member for Inkster.

**MR. GREEN:** Mr. Chairman, I move that Committee  
rise.

**MR. CHAIRMAN:** I have a motion Committee rise.  
All those in favour please say aye. Contrary, please  
say nay.

Committee rise.