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of the
Legislative Assembly of Manitoba

**DEBATES
and
PROCEEDINGS**

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THE LEGISLATIVE ASSEMBLY of MANITOBA

Wednesday, December 7, 1977

TIME: 8:00 p.m.

BILL NO. 5 — FAMILY LAW

MR. SPEAKER: Bill No. 5, the Honourable Member for Inkster.

MR. GREEN: Mr. Speaker, this piece of legislation is the one that has probably caused the most controversy and interest on behalf of at least certain people of any bill that has been presented to the Legislature at this session. I would like, at the outset, Mr. Speaker, to say a few words with regard to the people who presented themselves as a citizens' movement at the Legislature some ten days ago with respect to this bill. I think that it is well remembered by members of the House that in accordance with historical and traditional style of protest movements, that a group of people attended at the Legislature and exercised their lawful right to protest peacefully the passing of this piece of legislation by the new provincial government.

I would like to indicate, Mr. Speaker, that it was with some regret that I had to view the attitudes of some members opposite when the group of citizens entered the Legislative Assembly, because, Mr. Speaker, this has happened on previous occasions, and on each previous occasion, Mr. Speaker, — and I will say that there was one exception which the Member for River Heights, the present Minister without Portfolio would recall — there has been a concerted attempt by both sides of the House to see to it that the Legislature does not degenerate by responding to gallery activities when it is considering legislation. And the reason for that, Mr. Speaker, is that historically we have seen some of the worst developments taking place when a group of citizens, each of whom is normally a very decent, law-abiding, honest and sincere person, but when gathered together under an emotional atmosphere, when passions are high and when taken collectively, certain dangers can result. And there was an attempt, Mr. Speaker, by certain of us to get it understood from the very outset that whatever the emotions were, that there would be decorum in the Legislature, and I regret to say, Mr. Speaker, that those efforts were not co-operated in by members of the opposite side, that both the Attorney-General and the Member for Lakeside, who should know better, attempted to respond to the gallery by suggesting that the Legislature should adopt different courses because of their presence, which is exactly the opposite thing that should be done, Mr. Speaker. And what occurred was a normal response and one that I hope will not occur in the future. I would ask every member of the Assembly to guard against the Assembly becoming a place which is ruled by the gallery, because, Mr. Speaker, and I repeat, historically some of the worst incidents that have occurred have occurred when that kind of thing was encouraged and developed. And it could be encouraged and developed, and when it does, Mr. Speaker, not only is the democratic process in danger, but we ourselves could be physically in danger. We have had the pleasure, in the province of Manitoba, of having an open gallery with a minimum of security, that many people coming to Manitoba are astonished to find that they can walk into the gallery, take their places, and without any difficulty at all. I would hope, and would expect, that it would stay that way. But it would not stay that way if the gallery is encouraged, by members of the Legislature to involve them emotionally in activities which could, I repeat, degenerate. Mr. Speaker, I say that it would be a danger to the democratic process, it could be a physical danger to honourable members. You know, Mr. Speaker, I fear for my own safety. I think that maybe somebody in the gallery could be aiming something at the First Minister, and could miss and hit me. Even worse, Mr. Speaker, they could be aiming at me and hit me. And therefore, Mr. Speaker, I would suggest, in this calm atmosphere in which we are tonight, that we vow ourselves in advance that we will not permit the gallery to be played to, and that we would use efforts on both sides of the House, not to encourage the gallery but to urge that there be decorum such as was attempted by members on this side of the House.

Now, Mr. Speaker, let's deal with the legislation itself. First of all, I wish to indicate that different members of the House and different members of the government look with different degrees of enthusiasm on particular bits of legislation that are being pursued. And honourable members on the opposite side will come to appreciate that, if they do not already appreciate it, that one pet piece of legislation which is something that a particular Minister or a particular member has been very, very much interested in and is willing to put as a priority in debate, as a priority in presenting bills, another member might consider to be of lesser importance. Some pieces of legislation are pieces of legislation that persons would not even pursue if they were not being pursued on a general basis by a particular program which the government, as a unit has developed. This particular piece of legislation, Mr. Speaker, is one that commenced some three years ago by reference to the Law Reform Commission, it moved through a committee of members of both sides of the House, at which it appeared, Mr. Speaker, it appeared and indeed the reports to our caucus — and I was not a member of that committee — the reports to our caucus was that there appeared to be unanimity of opinion on the committee and that this was one piece of legislation — and that is the legislation that we adopted last year — on which there would be no real political difficulty because all sides of the House and all members of committee appeared to be moving in the same direction. Those were the continued reports that came back to our group.

I was somewhat surprised, Mr. Speaker, and expressed my surprise, that there was such

unanimity of opinion, that there would be no partisan difficulties with regard to this legislation, but nevertheless those are the reports that came by, and continued right, I think, until about the middle of the last session of the Legislature when it became apparent that this so-called unanimity of opinion was breaking down and that members of the Conservative Party, for the most part, were adopting one view, and that members of the government party, the New Democratic Party, were adopting a different view.

And the essential difference was as follows: That with regard to the division of property that the parties were agreed, but that the Conservatives wanted more flexibility and more options, and more opportunities for circumventing the rule, or putting aside the rule that marriage is an equal partnership and the property of the spouses accumulated during that marriage should be split on a 50-50 basis; that there should be more flexibility; and with regard to The Maintenance Act, that there appeared to be a difference in principle between the members of the government party and the members of the Conservative Party, with the difference being that the members of the Conservative Party felt essentially that the rule which requires a wife to be on good behaviour, in order to entitle her to maintenance, both during the existence of the marriage and after the marriage has broken down, is one that should not be departed from.

I hope I am being fair that that was where the division was, and that division became apparent in the vote, because on the vote, on the 50-50, five Conservatives voted with the then government; and on the maintenance legislation there was a complete rejection by the opposition. So that appeared to be distinction.

Now, I have said, Mr. Speaker, that each person looks with different degrees of enthusiasm on different pieces of legislation, and I want to clarify my own bias in this connection before I proceed any further; that I looked with not a great deal of enthusiasm on some features of the legislation, certainly not on the principles. On the principle of marriage being an equal partnership and property acquired by a husband and wife during the marriage being something that they both earned, and which should be divided 50-50 — that I am fully in accord with. As a matter of fact, the reason I am, Mr. Speaker, is that it works in my personal favour in this connection, and therefore I have a vested interest in being fully in accord with it.

With regard to the law of maintenance, and when a husband or a wife, or a spouse, should be required to maintain the other, I, Mr. Speaker, again, am fully in accord with the principle that a marriage in which the parties do not wish to live together cannot be sustained, and that the economic circumstances of the parties, and the manner in which they have been accustomed to surviving in the world should not change merely because of that breakdown, that it has to continue, and that one could not begin to determine what has caused the breakdown.

On those two principles, I am fully in accord with the legislation, and those are the two principles upon which this legislation is based. And therefore, although I had some degree of doubt, and still have some misgivings with regard to various features of the legislation, I am fully in accord with the principles therein, voted for it, and hoped, Mr. Speaker, hoped, because it is a natural consequence of any beginnings of legislation, and especially legislation that introduces a new concept — that it would improve, and that some of the unfortunate features of it from time to time would be removed. But I did regard, and I do regard the legislation to be an improvement in terms of the relationship between a husband and wife to that which exists up until the time that the legislation was passed.

The most difficult feature of the legislation, and again, one which I say would improve with time, is the notion that during the marriage relationship it is to the benefit of that relationship that issues be decided by third parties outside of the marriage. Just as I'm against that with regard to labour relations, I am against that with regard to the marriage relationship, and I say, Mr. Speaker, that that eventually, that that exists today, it exists in the legislation, will not affect certainly over 90 percent of the marriages in the province of Manitoba; and when it does begin to affect them, it will affect them in a more positive way than they are affected by the present law. The difficult marriages, Mr. Speaker, the ones that would be affected by this legislation, and from which resistance is coming, in my opinion, are those marriages where either the husband or the wife, in order to be equal, and it is usually the husband in our society, depends for his dominant role in the marriage on a system of laws which makes his wife economically dependent upon him, and that is what the marital property legislation is trying to change. That is what is being resisted, because there are many in society who have depended, and continue to depend, on their dominant economic position in society to keep their marriage the way they want it to be regardless of how it affects the other person. That's what's intended to be changed by this legislation. And I, Mr. Speaker, go along with that principle, and support it.

In doing so, Mr. Speaker, I do have to make some remarks with regard to some of the positions that are pursued by individual groups, and this is not a criticism of the individual groups, it merely indicates, and I say this to the Minister of Labour who is not here, that you can't always legislate what somebody asks for. You have to look at what they're asking for in relation to the totality of rights in our community. And one of the strongest groups behind this particular legislation, and if the members consider that, as it was suggested, that I am playing to the gallery, I can tell you that for reasons which I plead are not my fault, although it happens that way, I am considered the *bête noire* of the so-called women's groups in the New Democratic party, well generally because I have not accepted some of the propositions which I consider completely unrealistic, and once, with regret, you don't accept everything that they say, you are a cop-out, you are a male chauvinist pig, or you are against them. I can tell you that throughout the last two years, in arguments of this kind, Mr. Speaker, and I'll give you two examples — the Attorney-General will be interested in one — women's groups, or the groups that

have organized themselves Who say they represent women — and they represent a small portion of women — say that in a rape case evidence of previous sexual misconduct on the part of the woman should never be admitted, it is never relevant, and should never be admitted. I try to reason with these people, and I say, "Never?" and they say, "No, never," and then I give them the proposition: Supposing that your son was habitually sleeping with a young lady for 52 weeks of the year, every weekend, when the parents went away. And one night the parents came back early, and when she heard the door open she started to scream 'Rape' because she was afraid of facing her parents with the evidence that she was with your son. Do you say that I cannot ask on behalf of your son, when this young lady accuses him of rape, "Did you have sexual intercourse with him last week, and the week before, and the previous week, and 52 weeks prior to this happening?" I tell the honourable members, they say, "No, you can't ask him that." And at that point, Mr. Speaker, I have to say to them that, "I am behind your position. I agree that previous sexual misconduct should ordinarily not be relevant, but when you take the position that it is never relevant, what you are doing is making an impossibility out of the situation."

I could relate other examples, and I could relate examples with regard to the Wives and Childrens Maintenance Act, and the Family Law and the Marital Law, which are equally difficult, Mr. Speaker, and which I tried to reason with them could not be made features of the law. As a result of that attempt to reason with them, I became again the opponent of marital law legislation. Well, Mr. Speaker, despite the fact that I was the opponent, the two features upon which I attempted to reason with them were indeed made part of the legislation by even those whom they thought were their strongest friends and proponents; that they had to at last admit that they couldn't have legislation which just didn't pay attention to reason.

So I have to tell honourable members that if one thinks that I am making the statements that I am making in order to try to endear myself to a particular group of people, I tell you that there is no chance of that, because I am not able to follow logically the propositions they have been presented. However, they do have a case, Mr. Speaker. They do have a case. There are problems. Those problems are apparent. I am aware of them. The legislature has looked at them and the legislature has attempted to deal with them, and I say, although I am not an enthusiast, it is not one of the bills that I would have worked hardest for. Nevertheless, it is an improvement over the existing law and it is not written in stone. It can be changed by the legislature from time to time in order to improve it.

What do we have instead, Mr. Speaker? We have a new Minister, Attorney-General. We have saddled this Attorney-General with bringing in the most difficult, the most complex, the most unworkable, the most complicated, the longest, the least comprehensible bill that has been ever presented to a Manitoba legislature. Mr. Speaker, the honourable member says "come on". The Honourable the First Minister . . . —(Interjection)— Mr. Speaker, the Honourable the First Minister has worded the bill, not that it is in the enactment of a law, that it is the suspension of a law. But, Mr. Speaker, that's not what's happening here. What the Attorney-General is doing is, he is bringing in a statute which enacts all the previous statutes and common law that exists with regard to husband and wife, and I defy honourable members to produce any preceding statute which was as complicated, which was as difficult to understand, which was subject to conflicting judicial interpretations, which was subject to differing interpretations with regard to how it will affect taxation; which nobody could understand, which was unworkable, which has shown itself time after time after time to be unworkable; which in certain cases has shown that the judges will regard marriages of equal partnership, which in other cases which appear similar on the facts it has shown that judges will not regard marriage as an equal partnership; which in certain cases has said that a wife despite the commission of one act of adultery will be entitled to maintenance from her husband, which in other cases has said that if there is a single indiscretion it revokes the right of the wife to maintenance. But that's what this Attorney-General has been saddled with. And no wonder, Mr. Speaker, he looks haggard. —(Interjection)— That's right. No wonder he looks haggard.

Mr. Speaker, I say that the Attorney-General looks haggard, because he has been given . . . —(Interjection)— No. You know, the honourable member doesn't know what he's enacting. This is the first bill that the Member for Rock Lake — he doesn't know when he passes as the law — and that's what the bill could say. —(Interjection)— This is not a suspension of laws. The Conservative government is saying, "We don't want the Marital Property Act. We don't want the Maintenance Act. The easiest way to get rid of them is to suspend them. If we ever in the future want them we can enact them, but in the meantime what we are doing is saying that those laws do not exist." And that's the case, Mr. Speaker. You could say suspension with regard to any law and you're no further ahead.

Now, Mr. Speaker, I don't believe that the government has any intention of bringing in new Family Law legislation and they have proved it. They have proved it. They have gone and said that they are forming a commission, and I'll read their own words back to them pretty soon, a commission to review the legislation privately and to tell them what to do, and on that commission they have appointed two people who have been completely adverse to the laws.

Now what did the honourable member say when we appointed Blackburn to the Autopac Commission? What did he say? There is no commission. Obviously they are going to introduce Autopac even though we admitted it. Don't forget that the Blackburn Commission was a commission which was set up for the purpose and right in the terms of reference how best to bring about public automobile insurance in the province of Manitoba.

But the honourable member said that that was a fake commission. Well, Mr. Speaker, this one is a

fake; that one wasn't a fake. We said what it was to do. This one, Mr. Speaker, this one is a reversion and we know the attitude of my honourable friends . . . —(Interjection)— Mr. Speaker, we know the attitude of my honourable friends. When they wanted to flood South Indian Lake they appointed a commission to see whether or not they would flood South Indian Lake and then the minister responsible for setting it up said, "It doesn't matter what the commission says, we're going to flood it." We had that example of verdict first, trial afterwards. And we have the same thing, the verdict is what is being brought in by my honourable friend and the trial afterwards is what's going before the commission.

So Mr. Houston was questioned as to how he could in honour take on this responsibility. Now what did Mr. Houston say? He made a very significant and pregnant remark, Mr. Speaker. He said, "Sure, I can do it. I can ask to defend murderers and I go in and defend them." So what he is saying, Mr. Speaker, is that this Act is a murderer, and he is going in to defend them; except the jury, Mr. Speaker, has already indicated that it's going to convict that murderer and has expressed itself in that way.

Well, so I say that the Attorney-General is haggard. The Attorney-General has got before him a bill, Mr. Speaker, at least 10,000 pages long, located in at least 1,000 different volumes and at least 30 or 40 different indexes, and he is bringing that in and the Honourable Member for Rock Lake is voting for it — and I tell the Honourable Member for Rock Lake that the legislation may as well have been one paragraph; it is one paragraph now that these laws be suspended. It may as well have been the following paragraph:

"The Statute and common law as it exists as of today is the law of the province of Manitoba." The honourable member knows and the honourable member agrees with me that that's what it may as well have said. And the honourable member is the first one who should understand what he is doing because he referred, Mr. Speaker, to the family legislation. —(Interjection)— The First Minister is in trouble. Leave him alone. He's in trouble; he's in trouble; leave him alone; leave him alone.

Mr. Speaker, he refers to the —(Interjection)—

MR. SPEAKER: Order, order please. Order please.

MR. GREEN: Mr. Speaker, I think that honourable members should, despite the fact that it's stopping my speech — and maybe it's effective because we know from what is going on on the other side that they cannot sustain the position.

The First Minister has referred to those two bills as being a "dog's breakfast." Mr. Speaker, the bill that he is bringing in with, I repeat, thousands of volumes of common law, statute law that previously existed before, the interpretations on it, the undecided questions that arise from it, it's not a "dog's breakfast", it's a 'hog's banquet', Mr. Speaker. It's a hog's banquet, that's the comparison.

The terms of what is clear . . . You know, you may be able to say that what we have brought in is not as good as what existed before although we don't agree with that. But to suggest that what we brought in is less clear than what existed before is to show a complete lack of understanding of what the common law is and what it has been saying. The fact is, Mr. Speaker, I have tried to explain to many of the people involved in this question, that the Murdoch case is probably bad law — the Supreme Court of Canada — but probably going out. Probably there are going to be different judges in different parts of the country — and the Honourable First Minister at least understands the common law — who are going to progressively move in the direction of recognizing that in our day and age, when two people wed one another and take on different functions towards a common goal, that they are working as partners. Perhaps that wasn't true a hundred years ago. And the common law might develop to that point. But if it might, Mr. Speaker, does that not prove the point? Is the common law clearer than what we have said? I repeat, to some they may think it's better, but don't say it's clearer because you cannot advise any of your husbands or wives at the present time that if they do not arrange their affairs in accordance with strict contract — and then it will be difficult to interpret — you don't know whether the Murdoch case will be followed, whether the new ensuing law will be followed or whether something in between will be followed.

And the same thing is true of maintenance. The honourable member has had cases in the Family Court. I have had cases, Mr. Speaker, which have taken the following different direction — that if the wife has not entitled herself to a separation she cannot get support for the children. Now that's astonishing, but I will give the honourable member chapter and verse that I've had such cases. Or that if the wife is guilty of one act of indiscretion, she discounts herself from maintenance and may lose custody of the children. Now that is very rare. As a matter of fact when I say lose custody, I'm talking about losing maintenance where it has occurred and then one has to start arguing whether the children are entitled to maintenance regardless of what the husband's conduct is.

There have been varying degrees of maintenance as to what a wife is entitled to and what a husband is entitled to and it is impossible to go through this "hog's banquet" and make clarity of the law. So when I hear honourable friends on the other side base their enactment of all of these laws on the basis that the new law is not clear, how many of them know what the old law is? How many of them can attest to the clarity of the old law? All we know is that it existed. That's the only thing that's clear, not what its terms and conditions are. And if one looks at the new law — and there are faults that one can find with it, and there is some unclarity I agree — but not nearly as unclear as the law that the Honourable Attorney-General is steering through this House. And let there be no mistake about it, Mr. Speaker, the Attorney-General is bringing legislation into this House. He's not bringing a suspension. He's not bringing a suspension because a suspended law doesn't mean that there is a

vacuum of laws. A suspended law means there is an enactment of the existing law. Use the words of the First Minister, "as it exists today." The common and statute law of the province of Manitoba, some of which dates back 600, 700 years, and which you have to go through those books to find, that's what is being enacted, not a suspension. And all of the members on the other side who are seeking clarity, I tell them not because it's such a great feature of my argument but because it is so, that the new law is much clearer than the old law. That doesn't make it better. But don't argue that the old law is clearer.

So what do we have here, Mr. Speaker? We have a piece of legislation and I will admit, Mr. Speaker, that in my opinion and I hope that it is the case, that it should affect no more than 10 percent of the marriages in the province of Manitoba because, Mr. Speaker, the day that marriage relationships in our province have to depend on politicians, legislatures and judge, is the day that we can forget the marriage relationship.

So let's agree with that. I agree with that 100 percent.

MR. EINARSON: That's right.

MR. GREEN: But the Honourable Member for Rock Lake does not know that today for the same 15 percent or perhaps a greater number — for the same small number — marriage relationships fall into the hands of politicians, judges and legislature. And therefore, let my prayer . . .

MR. SPEAKER: Order please. The honourable member has five minutes left.

MR. GREEN: Mr. Speaker, my hope and prayer, and I will admit that there are some misgivings from time to time, that the legislation that we have enacted and which the honourable member is suspending will not in any way create any problems for the existing wholesome marriages, but will be able to deal with much more effectively those that do wind up in a Court of Law. And, Mr. Speaker, there are marriages in this province, and I regret to say it but I am convinced now by my honourable friend opposite, that it is so, that there are some marriages in this province where because tradition has shown that the one with economic power is the dominant person — and it happens in most cases to be the male in our society — that that male depends on the existing laws which make his wife in many respects an economic chattel of his, to maintain his position in the marriage. Those are the people that are being protected by the enactment of — and I use the First Minister's words — the common and statute law of the province of Manitoba as it exists this 7th day of December, A.D., 1977. That's what the statute should say. There should be no pretense about it.

And some day — and I agree they may bring it in. I'm not suggesting they will never bring it in because the pressures may eventually be strong, strong enough that they will have to bring it in — but in their heart of hearts they hope that the problem will fold up its tent and silently steal away. And if they can get away with that, Mr. Speaker, if they can get away with that — and we don't intend to let them — if they can get away with that then that statute which is being enacted by the Attorney-General, that statute which whereby this Legislature is going to declare that marital law in the province of Manitoba will be as the common and statute law of the province of Manitoba was on the 7th day of December, that's today or whatever day that it's passed, 1972 shall be the law. That group over there is going to try to maintain that statute as long as they can. This group over here, and hopefully with the help of that one additional person in ten, is going to try to see to it that that portion of marriages in the province of Manitoba — and it's a small one, I will agree — which is held together by means of the economic position of a man in our society having a dominant role over his wife and wishing to keep it that way, that there will be a remedy, and that's, Mr. Speaker, what the issue will be based on. I am very pleased to be on this side of it. I would be running for cover if I was on the other side of it and I hope and trust — well I don't know if I do — I gather that the others are going to run for cover, because their position as at today that they are enacting clear, more workable, more understandable, less problematic, less complex, more comprehensible law is absolutely wrong. If the new law is a dog's breakfast, the old law which is being introduced by the province of Manitoba is, I repeat, a hog's banquet.

MR. SPEAKER: The Honourable Attorney-General will be closing debate. The Honourable Member for Wellington.

MR. CORRIN: Mr. Speaker, I'd like to move adjournment . . .

MR. JORGENSEN: Mr. Speaker, I've indicated earlier that we're accepting no more adjournments on debate. If the honourable member wants to speak, he speaks now.

MR. SPEAKER: Order, order please. The Honourable Opposition House Leader.

MR. GREEN: Mr. Speaker, the honourable member did indicate, and they could vote against the adjournment. I want to advise my honourable friend that we will use the time tonight if he will let us use it, so that the honourable member can make his speech tomorrow, but I believe that there is one speech on succession duties, one speech on the hours of work, and if my honourable friend sees no objection, I would call those bills back again so that we would proceed through until 10:00 p.m. and the honourable member will speak tomorrow. Those speeches would be made tomorrow in any event. They are people who intend to speak. I also expect, Mr. Speaker, that to my knowledge — I

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can't make any unbreakable commitment — but to my knowledge, tomorrow's speeches on bills will be the last speeches, so I think that if my honourable friend will let the adjournment go, we will use the time tonight for what would be used tomorrow in any event.

MR. SPEAKER: The Honourable Government House Leader.

MR. JORGENSON: I am prepared to be cooperative with the honourable members in the opposition and, with that assurance, I am quite prepared to allow then the adjournment to stand, and we'll call another bill.

MR. SPEAKER: The Honourable Minister of Health.

MR. SHERMAN: Mr. Speaker, I'm certainly prepared to have the adjournment stand in the name of the Honourable Member for Wellington, but I would like to speak before he adjourns the debate for the day. Sir, I don't intend at this juncture to debate the pros and cons of Bill 60 and Bill 61 of the last session of the Legislature, the Marital Property Act and the Family Maintenance Act, because the merits of them were discussed and debated thoroughly in the House and in committee last winter and spring and no doubt they will be redebated should events transpire in the current session of the Legislature to produce the review that's requested in the legislation before the House at the present time, and the consensus that's being requested of the Opposition in the House for passage of that legislation. If the legislation passes, there will be no doubt additional examination and debate on those two proposed statutes.

My remarks tonight will be addressed to the bill itself, to Bill 5, which calls for a suspension of one of those statutes and a deferment of the other, pending a review of their efficacy in terms of implementation in the mosaic of statutes with which we live in Manitoba. I will address myself specifically, if I may, to the objections that have been raised rather vocally by a number of members on the other side, notably the Honourable Member for St. Johns and the Honourable Member for Selkirk, with both of whom I enjoyed serving on the committee in the last session that dealt with the legislation, but both of whom have raised the charge and the challenge that the Conservative government of the day elected on October 11th of this year has no mandate, no mandate, Sir, to introduce Bill 5 and ask for suspension and deferment respectively of Bills 61 and 60. I challenge that charge with all the vigour and sincerity at my command, Mr. Speaker. I say to the Honourable Member for St. Johns and the Honourable Member for Selkirk and their colleagues who have joined in the same cry — and there are some who haven't, but there are some who have — that the Progressive Conservative government of the day elected on October 11th of this year, has indeed a mandate to do precisely what is being sought in Bill 5. I challenge my friend, the Honourable Member for St. Johns, to dispute the fact that throughout the weeks and months of interesting and productive deliberations that all of us on that committee, all who appeared before that committee, all who took an interest in the formulation of that proposed legislation contributed to throughout those weeks and months, those of us representing the Conservative party on the committee, and specifically I myself, said over and over again that we believed that the legislation proposed at that time was ill-conceived in terms of the sharpness of definition that was brought to it, that it did not anticipate the myriad problems that would arise as a result of conflict with other statutes already on the books, and with the infinite variety of problems and situations in the lives of Manitobans, or the lives of people anywhere who would be touched by such all-encompassing legislation, and that what we wanted was a deeper, more intensive and broader study of the legislation so that when we did it, we would do it right. I don't think, Sir, that the Member for St. Johns or the Member for Selkirk can challenge the position that I take in that respect and the position that I put to this House, and that, Sir, really is the nub of the debate on Bill 5 in my view.

I want to repeat, and I don't intend to belabour members on either side of the House, but I want to repeat essentially what I said in third reading on Bills 60 and 61 on the night of June 17th of this year in the dying hours of the last session of the last House, and that is that I consider that the opportunity that I had to serve on the Committee on Statutory Regulations and Orders under the distinguished chairmanship of the Honourable Member for St. Vital in deliberations leading to the bills, the legislation that finally found its way into the House, was one of the highlights of my personal political experience. I repeat that, and I repeat it with sincerity. It was one of the highlights of my political experience. I enjoyed it. I was educated by it. I felt I made some small contribution to making imperfect proposed legislation less imperfect. We never made it perfect, but we made it less imperfect than it was when it was first presented to us in November of 1976 in the form of proposed legislation, subsequently draft legislation being piloted by the Attorney-General of the day, the Member for Selkirk, and ably assisted by the Member for St. Johns and other members of the New Democratic Party who served on that committee. But from the outset, Sir, I think I made it perfectly clear and I have stacks of documentation to support my claim, that I felt and the four of us from the Progressive Conservative caucus, including the Honourable Member for Sturgeon Creek, now the Minister without Portfolio responsible for the Manitoba Housing and Renewal Corporation, the Honourable Member for Rhineland, and the distinguished officer who now sits as arbiter of this House, you yourself, Sir, the Honourable Member for Birtle-Russell, made it abundantly clear that we felt the proposed legislation, that both proposed statutes were fraught with implicit difficulties that

had not been properly anticipated or thought through by the government of the day and that every time, virtually in every hearing, in every public appearance, in every public representation and in every examination done by the committee of that legislation, there were new anomalies, new inconsistencies, new difficulties that presented themselves, new considerations, new circumstance that hadn't been thought of and the process of deeper investigation and more intensive intensive examination requiring some delay commended itself ever more strongly to us throughout those deliberations. We made it quite clear that we would want to go into a broader and deeper examination and investigation, that we would want to suspend implementation of the legislation in order to make that possible, and we placed it on the record through the words of some members of our delegation on that committee and particularly myself. It was not only recorded in transcripts of committee hearings that I have in front of me and in Hansard of that particular session, but it was reported by members of the fourth estate, members of the press who covered those committee hearings and the House debates very assiduously and conscientiously.

And I want to read back to the Member for St. Johns and the Member for Selkirk and those colleagues of theirs who may be under the misapprehension that we don't have a mandate to do what we're doing. What I said — and I'm not citing myself as any paragon of knowledge on the subject, but I happened to be speaking for my caucus at the time and I think members would concede that — what I said on the night of June the 17th, five and a half months ago on that very point, and I said, Sir, and I quote from page 3912 of Hansard for Friday, June the 17th, 1977, "Sir, we reiterate our commitment to the principle. In fact, Sir, I am authorized by my caucus to advise you that I can give a commitment on behalf of my caucus that if the day comes, and hopefully it will, when the day comes that we may have the opportunity of forming the government in this province, we will implement in legislation the principle of equal partnership in marriage, but we will do it in a way that does not involve the kind of intrusion and the kind of interference in individual affairs we feel is implicit in this legislation." And nothing could have been more clear than that to the Member for St. Johns and the Member for Selkirk. Nothing was more clear than that to particular reporters whom I don't care to identify, but particular reporters in the press gallery who have given me credit and given us credit in the print media for having put our position on the record clearly, for having indicated clearly that we intended to deal with the proposed legislation and the concept of the legislation in greater depth, which would, by definition, imply repeal should the legislation be moved into a position where it would be enacted and implemented in the current year, the year 1977. We, of course, were not certain that we would have the opportunity to form the government and do that, but we did say to the Member for St. Johns and the Member for Selkirk and their colleagues, and all those who went to the polls in Manitoba on October 11th, we did say on the night of Friday, June the 17th, and on many occasions prior to that — and I don't want to bore members with other references but I have the references here — we did say that that is precisely what we would do if we were elected, that we would pull the legislation back and have a deeper look at it, expose it to broader consideration by a broader segment and spectrum of society in order that we got the principle of equal partnership and equal relationship in marriage enshrined into the laws of this province, but that it was done right and done in a manner that everybody could live with.

And, Sir, I think there's an important point to be made here, that while we were saying that throughout the committee hearings last winter and spring, and throughout the House debates last winter and spring, a great many Manitobans — and I was one of them, and I dare say maybe even the Member for St. Johns and the Member for Selkirk, then the Attorney-General, were two others — a great many Manitobans thought the election of 1977 was going to come in June. We weren't ducking any election issue. We were prepared and were saying all through February, all through March, all through April, all through May, with a view to a June election, that this is what we were going to do. We didn't ask to have the election deferred until October. And I want to tell my honourable friend from St. Johns, whose contribution to the committee hearings and to the proposed legislation I respect, I want to tell him that throughout the election campaign that I was involved in, in my constituency in Fort Garry — and I dare say I went to as many doors and as many public meetings in Fort Garry as he did in St. Johns — I never once, I never once heard the issue of family law raised. Not only was it not raised by a single person at a single door it was never raised by either my New Democratic or Liberal opponents in the campaign. It was never raised at any of the public meetings that I attended. It was never raised at any of the town halls that we held.

And I also want to point out to the Honourable Member for St. Johns that it's interesting that the proclamation dates for both statutes, the implementation and enactment dates for both statutes, were established at a point on the calendar beyond election day itself. The New Democratic government of the day did not obviously, apparently, have the courage to enact, implement, and proclaim that legislation before going to the people of Manitoba. One of those statutes was to come into effect, or did come into effect, has been in effect since the 15th of November. The other one was due to come into effect on January 1st. And that raises the interesting question of why neither of them was enacted or proclaimed or brought into effect before that government of that day had the courage to go to the people and call a general election. So I think that when one is examining the ambivalence of particular parties with respect to that legislation, it's a fair question to ask just how secure, just how sincere, just how certain did the New Democratic government of the day feel about the perfection of the legislation that they were proposing to introduce.

I suggest, without attempting to read motives or impute motives to anybody, that there may well have been many in the New Democratic government and caucus of the day who agreed that there were deep imperfections in the legislation, that there was deep conflict in society over the question of

whether the legislation was acceptable in that form or not, and that as a consequence of that they were not prepared to enact and proclaim that legislation and go to the people of Manitoba in a general election on it. They preferred to time the election for October and proclamation and enactment of the legislation for a later point in the calendar year. I suggest that is something that colleagues of the Honourable Member for Selkirk and the Honourable Member for Inkster, and St. Johns, and the others who've spoken in this debate might think about, because the juxtaposition of dates raises, in my view, a very interesting question, or perhaps, Sir, I'm being overly suspicious. But then . . . well, I certainly would permit a question from the Honourable Member for St. Johns, but just so that I don't lose track of my thoughts on the issue I would ask him if he would just defer for a few minutes. I don't intend to maintain my usual style and use up the full 40 minutes. I'm going to be finished in a couple of minutes, Mr. Speaker.

I want to add one or two other things, and that is that the Honourable Member for Inkster, in just speaking, has suggested that we are running for cover because we are on the particular side of the question that we're on, and that he would be running for cover if he were on our side of the question. Well, Sir, I recognize the political bravado behind a remark of that kind, and I don't deplore the use of that kind of tactic by the Honourable Member for Inkster, but I think it should be accepted for what it is — political bravado and nothing more. I think it's perfectly clear that people in the province of Manitoba were deeply disturbed about the impact and the implications and the ramifications of imperfect, uncertain, half-constructed legislation in a field that was going to affect the lives of every man, woman, and child in Manitoba from this day forward, and exercised enough and concerned enough about it to say in effect, with the ballots that they cast on October 11th, that that legislation — along with various other legislation that had either been introduced or enacted by the previous government — moved them into fields and areas in which they felt they were being catapulted too far, too fast, without a proper look at the consequences and the effects. To say that we are running for cover is a complete rejection of the lesson of October 11th. The lesson of October 11th is that the people of Manitoba wanted some of these statutes and proposed statutes of the last eight years looked at, re-examined, dissected and analyzed a little more carefully and a little more closely so that they knew what they were getting into. That was our mandate. That's what we were charged to do. That is what we are doing.

Now, I want to say in closing, before I yield to a question from the Honourable Member for St. Johns, that I stand here tonight in the same position that I stood in this House on June the 17th on the opposite side of the Chamber, in defense, Sir, of the principles of the legislation. I believe that marriage is an equal partnership and that the enshrinement of that concept is long overdue and highly necessary, and I intend to fight for it. I intend to fight for it. I intend to resist any attempt to water down the principle of that legislation. I was never entirely satisfied with The Family Maintenance Act and the Member for St. Johns knows that — he knows that I voted for The Marital Property Act and I voted against The Family Maintenance Act.

I still have some difficulty with The Family Maintenance Act, in its present form, even though I've been thinking about it in the five months or six months intervening. I'm still not happy with it on the grounds that I cited on June 17th, and that is that it doesn't come to grips with the basic problem in the maintenance field whatever, that it really adds up to a helping of window dressing because it doesn't come to grips with the basic problem of enforcement of maintenance orders, but I could understand if the Member for St. Johns said that that was a red herring, that a step was better than no step at all, but I'm not entirely happy with the legislation as it's framed anyway for reasons that I cited at the time and which I hope will be reviewed by the Review Committee should the Legislature agree to accept the legislation and put a Review Committee to work. But I defend the principles that were enshrined in The Marital Property Act, and I believe in the concept of no-fault maintenance for the sake of children. I'm not sure that I'm prepared to go to a 100 percent no-fault concept because I don't believe that all marital dissolutions, all marital break-ups, all separations in this world can be measured completely and undeniably in no-fault parameters. I would agree that in 90 percent of the cases fault is probably a result of equal destructiveness, or at least shared destructiveness to the marriage on the part of both partners. But I insist, Sir, that there are instances in life where one party is faultless and the other party is solely at fault, and I think it's unrealistic to suggest that those situations, those individual cases don't exist, and I don't see why we should hang an innocent man just to get at the guilty — or an innocent woman, pardon me, just to get at the guilty. So I'm not satisfied yet with The Family Maintenance Act. I do endorse the concept generally of no-fault maintenance for the sake of children. I agree with members opposite that it's the children who have to be protected, and that's really the motivation and the *raison d'être* for no-fault maintenance concept, and I subscribe to the principles that we enshrined in The Marital Property Act and the basic principle of immediate sharing of family assets and deferred sharing of commercial assets. I intend to do my best to fight for the preservation of those principles. But I repeat, I reiterate, that we have every right — on the basis of what we've said and on the basis of what I've said — and I'm prepared to table the transcripts. We have every right and we had every mandate to introduce deferment of the legislation because we said for seven months that that's what we would do.

MR. SPEAKER: The Honourable Member for St. Johns with a question.

MR. CHERNIACK: Yes, Mr. Speaker, the honourable minister agreed to a question. I have a couple of questions. The first one though, is: Would not the minister recall that the recommendations of the Law Reform Commission and some of the delegations were that there be ample notice given of the

intent of the Act by making the Marital Property Act effective as of January 1st to give lawyers and separated couples an opportunity to work towards that, and to give, in connection with the Maintenance Act, an opportunity for the courts to prepare the forms, rules, etc.? Does he not recall that that was a specific recommendation repeated more than once?

MR. SHERMAN: . Yes, Mr. Speaker, the honourable member is quite correct. That was a specific recommendation, but there still was a very profound silence on the legislation throughout the election campaign.

MR. CHERNIACK: Mr. Speaker, another question I'd like to ask. . Now that the honourable member has indicated a difference with one of the pieces of legislation on the basic principle, and indicated that he would fight for certain other principles in the legislation, is it a fair inference to draw that it will be necessary for him to fight within his caucus to achieve legislation along the lines that he supports?

MR. SHERMAN: Mr. Speaker, all I can say to that is, if that's the case it won't be anything unusual, but we manage to get along when we have to.

MR. SPEAKER: May I say to the Honourable Member for St. Johns he has had two question now, and he has already spoken in this.

MR. CHERNIACK: Mr. Speaker, appreciate your guidance and assistance, but it is my impression that within the 40 minutes allowed to the speaker as long as he's prepared to answer a question then there is no rule against it. . May I then infer from the Honourable Minister's last remark, that he was not speaking on behalf of government in espousing the principles which he mentioned, that is immediate vesting of family assets, and subsequent vesting of commercial assets.

MR. SPEAKER: The Honourable Minister of Health.

MR. SHERMAN: Well Mr. Speaker, I may be speaking on behalf of the government, I don't know. I might be speaking on behalf of the government, I was not intentionally speaking on behalf of the government, I was speaking for myself.

MR. SPEAKER: The Honourable Minister without Portfolio.

MR. SPIVAK: Mr. Speaker, I want to, if I may, deal with or add to the remarks of the Honourable Minister of Health, by again quoting from the Hansard of June 17th, and stating very simply the position that I took at the time that I voted in support of the Marital Property Act. The basic problem that I had, and I addressed myself at that time to the problem, was a simple one as to whether the principle of the bill warranted support, notwithstanding the concerns that I had for the precise legislation, nor for the impediments that I thought, or the number of legal cases, at least, that would occur simply because the legislation was not precise and there had been an inability on the part of the government in dealing with many of the specific clauses in the committee to actually tell us what they intended. Rather they continually kept saying, "Let the courts interpret, and then in turn they will establish what really is intended."

Mr. Speaker, on Page 3916 of Hansard, I stated that, "The problem we have is that there are still many issues, Mr. Speaker, that remain unsettled and notwithstanding the problem of dealing with the principle, one, in making a judgment is going to have to determine whether in fact the principle of the bill deserves support, notwithstanding the fact that there were serious concerns and problems that will arise in the future that may very well negate some of the effects." And continuing, Mr. Speaker, I said, "One of the concerns that I have is that the bill itself has not dealt with the impact of federal tax law and the changes are going to occur and the implications for married people when they deal with the effect of the bill in their particular situations."

Mr. Speaker, the Attorney-General has indicated, notwithstanding all the dramatic presentation of the Honourable Member for Inkster, that in effect there will be amendments brought forward to deal with this Act in the next session. That's clear, yes, it has been stated. Mr. Speaker, as well, the principle of sharing has been enunciated, and now we have to then address ourselves to the period of time, Mr. Speaker, in which there will be an opportunity to review some of the concerns that were expressed at the time that the bill was introduced by the members opposite. One did not necessarily visualize that the situation that we have today would occur, but it having occurred and an opportunity for correction, Mr. Speaker, I think that there is an opportunity to give effect, Mr. Speaker, to a more workable bill.

But I want to deal in principle with something else. And I raise this, Mr. Speaker, because I think that the issue is important enough and if I am wrong in what I am suggesting, and the honourable members opposite may want to clarify that, I would like to know about the precedence and the examples.

Mr. Speaker, during the committee hearings Mr. Goodwin appeared on behalf of the Manitoba Bar Association. He appeared on June 2. His presentation and the questions, Mr. Speaker, take only two pages of the committee hearings which indicates a very brief presentation. He highlighted at the time his concern with certain tax implications with respect to the Marital Property Act, and the

suggestions that the government of the day had not considered certain impacts, and that in effect they warranted consideration, because in many respects what could arise from an attempt to provide more equitable legislation would in fact create serious inequities.

Now, Mr. Speaker, the government of the day then hired, while the committee was sitting, as counsel, the member of the Bar Association who appeared before the committee. Well I guess there's nothing wrong in their retaining this counsel. There may have been notice given to the members of the committee that he had been retained, but certainly on June 17, Mr. Speaker, when I was asked to vote on the bill I was unaware of the terms of reference that were given to him nor that there was a likelihood, Mr. Speaker, that he would be presenting a report to the government within, I believe, a week of the passing of the bill. Now the question of propriety of whether a . . . —(Interjection)—Well, I put the question to the honourable member and they can argue this. The question of the propriety of a person appearing before the committee as a witness who then is retained by the government to provide information to the government which is not furnished to the committee, and not furnished to the legislature who then have to make a decision, I think can be put into question. And the members opposite may want to ignore that but I have to suggest that when serious questions were asked with respect to the tax implications, Mr. Speaker, during the committee hearings in third reading of the bill, and those questions are unanswered but obviously were of concern to the government, I believe that there may have been an obligation certainly for the furnishing of more information than was furnished to the members of the committee and to the members of the legislature and certainly, Mr. Speaker, more information in the public domain as a result of findings of the person who was hired as counsel. I do not know whether he would have been hired as counsel if he had not appeared before the committee but I do know, Mr. Speaker, that his appearance was a brief one. He touched on issues that had been raised prior to the actual appearance on his part and in turn he was retained by the government because of obviously their concern with respect to the issues, and the information that he furnished was not made available to the members of the committee.

Now secondly, Mr. Speaker, he was also retained to deal with the question of insurance, an issue that again had been raised in the committee, not by Mr. Goodwin at the time of his appearance, but certainly had been raised by the insurance industry who had presented a letter to the members of the committee. It may have been filed and tabled with the committee, but certainly the members of the committee were made aware of it, in which the insurance industry basically said that they did not want to get involved in the question of the principle of the bill, that was a question of legislation to be determined as a policy direction by the legislature. However there were serious implications to the proposed bill and there was need for clarification, Mr. Speaker, on the part of the government and on the part of the legislature so that they would have some understanding and so that we as members would also have some understanding of the effects that we were giving to the legislation and the consequences, so as to minimize, Mr. Speaker, the inequities that could arise. Mr. Goodwin was again retained and to my knowledge I don't think there was public knowledge of that, nor do I think that his particular presentation has in fact been made public. Mr. Speaker, there is nothing to suggest that the members opposite who are concerned about a particular piece of legislation could not retain counsel and could not ask the advice of others. There is nothing, Mr. Speaker, that suggests that a member who comes before a committee cannot be retained as a counsel to assist the government in carrying out, or in redrafting, or in assisting in trying to make the legislation better. But, Mr. Speaker, I think there is a question when the issues of taxation have been raised over and over again in the committee and were raised in the legislature before we were asked to vote on the final bill. I think, Mr. Speaker, there was an obligation for a far greater disclosure than the honourable members opposite, when they were in government, provided to the members of the committee. And I say, Mr. Speaker, and I suggest that there may very well have been an obligation on their part to disclose more information than they did. I'm satisfied that the tax implications with respect to the act and the inequities that would be caused were not fully understood by the members opposite and that was their justification for retaining Mr. Goodwin and I'm satisfied as well, Mr. Speaker, that there's some justification for an adoption by the federal government of changes to the Income Tax Act that would in fact provide the basis or an opportunity to allow legislation, as has been proposed here and in other jurisdictions, to be able to apply so that there would not in fact be the inequities that obviously were referred to. The members opposite appear to be huddling and let me go through the sequence again. On June 2 Mr. Goodwin appeared before the committee. He was retained on June 10, the committee was still sitting. Mr. Speaker, I believe, that there was an obligation on the part of the government to disclose the terms of reference of his retention because the issue of tax implications of the law was suggested time and time again between the period of June 2 to June 10. I suggest, Mr. Speaker, that before the members of the legislature should have been asked to vote on the bill, at least a preliminary report should have been provided indicating . . . —(Interjection)—No, but it did come on June 24, to the government, seven days afterwards. And, Mr. Speaker, that report indicated that there were serious consequences and as I understand it, and I think the Attorney-General can support this, there has since that time been a request by the Premier of New Brunswick to the federal government asking them directly to provide the changes to the Income Tax Act because the province of New Brunswick, as well as other provinces, have in fact proposed legislation similar to the kind of legislation that's been proposed here, or is contained here, and have asked the federal government to enact the changes of the Income Tax Act so that in effect the inequities that would arise would not occur. And I suggest, Mr. Speaker, that there was an obligation that was not fulfilled and that the consequences are of a serious nature. That they do in fact warrant a supreme effort to try and arrive at that decision before this act become the law, that notwithstanding all the

other amendments that I think will have to be enacted to ensure that it's more workable and more precise and certainly, Mr. Speaker, in the committee the questions were asked over and over again and the Honourable Member for St. John knows that, as to what was really intended by the government with respect to particular legislation. And the answer time and time again was we'll let the courts decide. And, Mr. Speaker, when the suggestion was made that there would be a number of court cases I don't think there was any question, we understood that. There will always be court cases. But because the legislation was not precise and because the members opposite were not prepared to make some of the hard-nosed decisions that had to be made in determining what that legislation should be, they left it open for the kind of legislation which would have provided in many cases an unstable condition with respect to the particular issues.

Now, Mr. Speaker I believe that there is a capability and a capacity to make the legislation more workable and I look forward, Mr. Speaker, to the presentation of the amendments and to that in effect taking place. This having been accomplished I believe that it will accomplish the overall aim of the majority of the legislature, who in fact supported this bill, and I await, Mr. Speaker, the time for the consideration by the review committee and the presentation in the next session of the amendments by the Attorney-General.

MR. DEPUTY SPEAKER: The Honourable Minister without Portfolio.

HON. J. FRANK JOHNSTON (Sturgeon Creek): Mr. Speaker, I intend to be just very brief on this bill, I won't be more than five or six minutes. I just want to remind the honourable members opposite what I said when I was on the other side of the House on June 17.

I'm like the Member for Fort Garry who had a very exciting experience when working on this bill as a member of the legislature for something that would be better for the people of Manitoba. It was a bill that would affect everybody's lives in Manitoba and at that time I said it was being rushed through. At that time I said we had spent lots of time in committee hearings but we were still ramming legislation through this House that was not good legislation and had not been properly studied. Mr. Speaker, I just stood up to say what I said on June 17. We received Bill 61, as members of this legislature, late in the session of 1977. Very shortly thereafter we received this little document that had 41 amendments to it, Bill 61. Very shortly after number three, I numbered them, we received 41 amendments to Bill 61 and very shortly after, and my credit goes to the Clerk who had to put together overnight, Mr. Speaker, this to present to the legislators, and they worked hard at it and they are to be commended, but this is a rough copy of the original prepared for the purpose of convenience only and has not been proof-read for accuracy. They couldn't proof-read it for accuracy, they didn't have time. This is what we had the government of that day ram through this House without the study that it needed which has been proven since that it will affect most of the people's lives in this province.

The principle of equal sharing, like my colleague and my colleagues here, we agree with. We've never argued with it. We didn't in committee and we went into that committee, we four members of that committee, in good faith to give good law and we all worked together, both sides. But when you had this pushed at you, pushed at you with obvious mistakes that will be bad law and put through just for the sake of saying we passed some legislation to go to an election, I might add. It was sheer disgusting in my estimation. And that's what was done. I did have it mentioned in my constituency, Mr. Speaker, and I told them it was bad legislation and we would change it, if we have the opportunity, to workable legislation for the benefit of the people of Manitoba.

It's all very well for the Member for Inkster to stand up and say this may be better than what we have. Well this side of the House, this government will give you something better than what we have and something better than what you gave us because it was slipshod. We would sit in that committee, someone would come up with a suggestion, learned lawyers on the subject, and we'd have a running around like a bunch of mice trying to figure something out to correct something without study. That's the way this legislation went through and it was a shame. It was a shame to the people of Manitoba, it was a shame to the ladies of Manitoba and I still maintain that. But you pushed it through for one reason only. The Member for Selkirk can stand up as he likes and make his grandstand on the Monday night when all the people were here to hear him speak. I would probably suggest that half the people up there will be delegates at the next convention of the NDP, but he put on his show that night and it was a show then and it's a show now. If you haven't got the internal fortitude to accept the fact that we're trying to make the legislation better with the same principles that you agree with it's damn well time you were out of government and that's all there is to it. Thank you Mr. Speaker.

MR. SPEAKER: The Honourable Member for Wellington.

MR. CORRIN: Mr. Speaker, I would now move adjournment, seconded by the Member for Rupertsland.

MOTION presented and carried.

MR. SPEAKER: The Honourable Member for St. Johns.

BUSINESS OF THE HOUSE

MR. CHERNIACK: Mr. Speaker, on matter for procedure I see the honourable, the House Leader is returning to his seat. He has indicated that he does not believe that there will be concurrence with an adjournment tomorrow on this bill we've just adjourned for tomorrow. Might I indicate to him, Mr. Speaker, that I've been holding back my contribution. I've been waiting for two things, one of which was accomplished and that is to hear from some of the members opposite but what I'm still waiting for, Mr. Speaker, is for the honourable, the Attorney-General to honour his undertaking to give a copy of a certain letter to the Member for Selkirk which he was free to distribute and I've been waiting for that so that I could see it before I make my contribution. I thought I would inform the Attorney-General and the House Leader that if we don't get it tomorrow I'm going to try to adjourn again because I do think the Attorney-General had an undertaking which he hasn't met yet.

MR. SPEAKER: I may point out to the Honourable Government House Leader that we have now covered all the bills there, is it the intention to proceed with the resolutions?

MR. JORGENSEN: Mr. Speaker, I wonder if it would be agreeable to call Bill No. 3 back again. I think there's some understanding that that would occur.

MR. SPEAKER: May I point out to the Government House Leader that it is a very rare occurrence that would . . .

MR. JORGENSEN: There has been an agreement that this would happen and as long as there's unanimous consent, we can do it. And I believe there is unanimous consent.

MR. SPEAKER: Is there unanimous consent? Then I would also like to indicate that this should in no way be considered to be setting a precedent for the rules of our House.

MR. JORGENSEN: I hope, Sir, that your you're not implying that getting unanimous consent for anything is going to be setting a precedent because that's a precedent that's been set long ago.

MR. SPEAKER: I just want to point out that to return to the same piece of business for the second time in the same sitting, I do not want that to be considered to be setting a precedent. Is it then the intention to start with the bills as they are on the Order Paper.

MR. JORGENSEN: If you just call Bill No. 3 we'll see where we go from there.

BILL NO. 3 — AN ACT TO AMEND THE GIFT TAX ACT

MR. SPEAKER: Bill No. 3— an Act to amend the . The Gift Tax Act Honourable Member for St. Vital.

MR. WALDING: Thank you, Mr. Speaker. I don't see the Honourable Minister of Finance in the House, I hope that he has not left for the evening. I hope that he would find my remarks this evening to be of some interest to him.

Mr. Speaker, I rise this evening with some trepidation to speak on this bill for I intend to do something this evening that I've not done in the six years that I've been a member of the House. Mr. Speaker, I intend at the conclusion of my remarks to accuse another member of this House of telling a false-hood.

Mr. Speaker, I intended from the beginning to say a few remarks on this particular bill and I wanted to speak on the principle of it and maybe to reply to some of the remarks that members on the other side had raised. However, circumstances have been such as that I believe I should speak on a related matter, one perhaps dealing more with a matter of the privilege of the House rather than strictly on the bill itself. I hope that you will give me some latitude so that I will need not rise again on a Matter of Privilege having to do with this.

I did speak to some of my colleagues about this particular matter, Mr. Speaker, who tended to agree with me but to mention that it was rather a minor point and that maybe I shouldn't raise a fuss about it. Well, Mr. Speaker, it may be a matter of minor importance, but I think it is a serious matter and one that we should not allow away without some discussion. I raise the matter not simply because of a concern with truthfulness but with the concern for the matter of the privilege of the House. I have a deep respect for the traditions and the privileges of this House and I believe that they are a serious matter. I believe that if we let away any minor infringement of the privilege of the House that it will be used as a precedent for a slightly larger infringement on a future occasion. I believe also that any diminution of the privilege of the House reflects upon all of the members and further, any reduction in the trust that any of the members have in each other is a serious matter and one to be dealt with.

Mr. Speaker, I believe that the facts in this matter are fairly simple and straightforward and I intend to go through them a step at a time. On Friday November 25 the Honourable Minister of Finance introduced Bill No. 3 for second reading in the House and towards the end of his remarks he said to this House, he told the House, that he had a document which contained information that certain family farms had been sold in order to pay those succession duties. Now I was rather surprised to hear him say that because I had on previous occasion spoken to different Ministers of Finance, to ask

them if such a thing had in fact happened and I'd always received the assurance that no this had never been in effect. I will read for honourable members the actual words spoken by the Minister of Finance and members can then judge for themselves. The Minister of Finance said on page 30 of Hansard: "I did not realize it until finally I was able to get my hands on an Order for Return which I filed in this House a year ago, a year and a half ago, to get a break-down of where this money was coming from that we were coming from people who primarily could not afford or who were not in the position to avail themselves of expensive advice and had to sell the family farm, or whatever it was, and get out of Manitoba." Now, Mr. Speaker, that was an extraordinary statement to come from a man with considerable experience in this House. And just to make sure that it was not a slip of the tongue and to give the honourable minister to correct it if he had in fact said something that he had not meant and because I really could not believe that he had in his possession a document which showed what he purported it to show, I asked him the question at the end of his remarks as follows: — "Mr. Speaker, the Minister of Finance referred to some statistical information that has recently come to his attention. Would he be prepared to share this information with the opposition," and then the significant words, Mr. Speaker, "so that we may see the number of farms that had to be sold to pay those duties?" I phrased it in such a manner, Mr. Speaker, so that if the minister did wish to correct his remarks he could in fact do so at that stage. The minister informed the House that he would be willing to do so and that he would file that within a day. I will not comment further on the delay in filing it, but I still found it difficult to believe, Mr. Speaker, but it is to be expected that when a member makes a statement in the House that he can expect other members to accept the truth of what he says and that other members can expect the truth from any member making such a statement.

Beauschene has a citation which mentions this on page 126, it's citation 145 and it says in part — "A statement made by a member in his place is considered as made upon honour and cannot be questioned in the House or out of it." Therefore, Mr. Speaker, I was particularly anxious to receive a copy of the Order for Return that had been quoted. I went back to Votes and Proceedings of the mentioned time, which I believe was June 19, 1976 to find out what it was that the honourable minister, then I believe the acting Leader of the Opposition, had asked for and he had asked in his order of the House to know, and I quote, "The size of the individual estates and succession duty amounts collected under the Manitoba Succession Duty and Gift Tax Act during the fiscal years ended March 31, 1976 and March 31, 1975 as well as the total amount collected for each of the fiscal years ending March 31, from 1976."

Mr. Speaker, I finally obtained a copy of that reply to the Order for Return today, and as I had rather expected it did not mention any farms being sold to pay succession duties. What it did show was that in the years from 1966 to 1972 there was no succession duty in Manitoba and for the years 1973 to 1976 it gave various amounts as being collected by year in lump sum. Then followed some ten pages, two columns giving aggregate net value of estates and the amounts of duty collected in them. Nowhere did it mention or give any examples of any farms that have been sold to pay succession duties.

Mr. Speaker, when the Honourable Minister of Finance made this statement in this House that some family farms had been sold in order to pay the succession duties, he was at that time in possession of this document. I believe that the honourable minister is quite capable of reading it and understanding exactly what is therein. I also believe that he did not read what he said in the House was in this document and that what he quoted to the House was therefore untrue and that he knew it to be untrue, Mr. Speaker.

I will therefore say, in conclusion, Mr. Speaker somewhat regretfully, and realizing the consequences, that the Honourable Minister of Finance has lied to this House and I call upon him as failing in his duty as a minister, I call upon him to resign his portfolio.

MR. SPEAKER: The question on Bill 3, An Act to Amend the Gift Tax Act. The Honourable Minister of Finance will be closing debate. The Honourable Minister of Finance.

MR. CRAIK: Thank you, Mr. Speaker. Mr. Speaker, there have been a number of positions put forward during the second reading and the summary comments are really not greatly different than those comments that applied to the Mineral Acreage Tax Act in that it boils down to a pretty fundamental difference of approach, philosophical approach between the two sides of the House.

Mr. Speaker, there was no sort of clearer example of what can happen between theory and practice than the example that was demonstrated here in the debates. The Member for Inkster and to a certain extent similarly the Member for Lac Du Bonnet presented the theoretical case, the theoretical argument behind the rationalization for the existence of succession duties and on this side of the House there was no better case could have been given than that that was given by the Member for Pembina who didn't deal with the theory involved behind the taxation policy, but dealt with the actual practice and impact of the tax on the one segment that he was most familiar with, that of farming. And the Member for St. Vital, who's got himself all cranked up into a sweat here because I suggested that I was going to give him examples of farms, I suggest to him that this is fraught with farm examples. The former Minister of Agriculture, if he wants a good example said there was only one case of a farm being hit by succession duties. Well, Mr. Speaker, if you want examples or if the Member for St. Vital wants an example of some sort of extortion he had better read what the Member for Lac Du Bonnet said in regards to the succession duties.

Mr. Speaker, perhaps we can deal with this document, that has been so dramatized here tonight, that Order for Return that I placed 18 months ago and I asked for that return I would imagine ten times, Mr. Speaker. I stood up and asked for that order over and over and over again, and not only did I ask for it, the House Leader that's now on this side of the House asked for it and others asked for it and the government always somehow said, "Yes we will present it, yes we will present it." And never did. And only, Mr. Speaker, when we finally got onto this side of the House, Mr. Speaker, and that's a pretty bad commentary, sad commentary, perhaps the member would like to sally around his conscience for a while and work on that one. That a member of the legislature should have to wait 18 months, still not get an Order for Return, which is basically a very simple Order for Return, but then only get it when he gets onto the government side. Is that what the intention was of the democratic process that gave a member of the Legislature the right to ask for an Order for Return? And he has the colossal gall to stand up and try and make an accusation, to call me a liar or something like that, because I made reference to the fact that there was evidenced in here that a farmer was penalized by this and had to sell the farm and get out of the province.

Mr. Speaker, there are lots of examples. Mr. Speaker, perhaps some good examples could be taken from here. What you will find is the fact demonstrated that the big estates are the ones that are not in here. It's the smaller estates that are in here. It is the farm-type estates that are throughout this document. The big estates are not in here. The big estates, if you will look a little more closely, he will see estates in here where there was a \$3 million estate that paid only \$3,000 in tax. He will see another one where almost 30 percent of the money was paid. That's the person he caught. That's the farmer that doesn't have the expensive advice. That's the farmer that doesn't have the expensive lawyers, like the Member for St. Johns, and the expensive accounts that he can pay and has knowledge of to tell him how to get his money out of Manitoba or at least his liability out of Manitoba, so that when something happens in the family that he isn't caught, or his estate isn't caught, or his survivors aren't caught.

Well, Mr. Speaker, there's also the example presented by the Member for Lac du Bonnet. We have exemptions of \$600,000, and this is really going to solve any problem there is on the family farm. Well again, Mr. Speaker, there is perhaps an example where that might apply, but the problem is not handing it on from spouse to spouse, the problem is to hand on the family farm which is principally fixed assets, and to hand it on from generation to generation. And he didn't deal with that question. He tried to paint a picture of the family farm being handed on from a husband to a wife, which he said, under the new laws, under succession duty laws, there are allowances of \$250,000, and 50-50 sharing in the new Marital Property Act, presumably this could happen. But that is not the problem. The problem is to hand it on from generation to generation.

Now, Mr. Speaker, let's look at this philosophical difference that exists between this side of the House and the other side of the House. Is there really that big difference? Well, the Member for St. Johns says, "No farm." I say, "No Order for Return until you get to this side of the House so you can get it yourself." Now, who is the real villain in the peace? You know, throw up your smoke screens and your red herrings and all the rest. I shouldn't even have bothered giving it to you, you don't deserve it. You don't even deserve it. You know, how low can you really get? I really expected more

more of you. Now let's get back down to the arguments that were fired across this Chamber. Let's get down to the real theoretical, philosophical argument for the existence of the succession duties. Let's get back to that very one major point, that is the major point — the theory versus the practice. The practice is that in actual fact the government of Saskatchewan, who finds itself with a much greater agrarian community relatively than the province of Manitoba, found it necessary to also get rid of succession duties. And it isn't just that it applies to people caught in the family farm situation, or in the passing land on from generation to generation, it also applies equally to the typical small business that represents the largest sector of the business community in Manitoba, which is the family business or the small business that has developed in this province as well, it isn't just the farmcase. It also applies equally to the small businesses of Manitoba as well.

And let's look again at the philosophical arguments that take place. Are they really that deep? Why, if they are that deep, did the First Minister of the day during the election campaign suggest that a meeting — in an agrarian community, incidentally, in Gimli — and I quote here and the Leader of the Opposition is here and he can pass comment on this if he so desires — which the headline says, "Schreyer Hinting Death Tax May End." Gimli — "Succession duties may not be levied in Manitoba for very much longer Premier Ed Schreyer hinted Saturday. He told a questioner at a meeting here that Manitoba cannot continue this tax much longer if the majority of provinces discontinue it." Well, Mr. Speaker, I ask you . . .

MR. SPEAKER: Order please.

MR. SCHREYER: A point of privilege, Mr. Speaker.

MR. SPEAKER: Order please. The Honourable Leader of the Opposition.

MR. SCHREYER: Yes, Mr. Speaker, I cannot prevent the honourable member from attempting to quote me, but certainly the headline for one thing is quite misleading, and insofar as the body of the story is concerned, it is correct so far as it goes but there is one thing left out. At the time, I indicated that I didn't feel that any one province could sustain this tax by itself, and that if the majority of provinces and the majority of Canadians were no longer living with this tax, that it could not logically,

or in common sense, remain here.

MR. SPEAKER: The Honourable Minister of Finance.

MR. CRAIK: Mr. Speaker, I'm pleased that the Leader of the Opposition was reasonably accurately quoted then. He's essentially as said, he's now qualified to the extent of the majority of Canadians, but, Mr. Speaker, as I said in the opening remarks on this bill, that Manitoba finds itself in competition with other provinces, and particularly other provinces in western Canada, and the succession duties that no longer exist in British Columbia or Alberta or Saskatchewan — and both British Columbia and Saskatchewan have been removed in the last year. Manitoba is the fourth of the four western provinces to remove succession duties. And that, Mr. Speaker, I would think if I was a person on the street during the election campaign and I read this and heard the other reports — and I think there were other reports in the electronic media as well — that it would have given me, as a voter, some indication that the Leader of the New Democratic Party was accepting the inevitability, at least, that succession duties probably, very probably, were going to be lifted from me. I think that's, Mr. Speaker, a fair assumption for the electorate to have made.

The position of the Conservative party was more clear. It said, "We will remove succession duties." The position of the New Democratic Party expressed by the leader, the now Leader of the Opposition, was not as unequivocal, but certainly there was a very strong suggestion there to the electorate that in either case the succession duties would, in fact, be removed. Mr. Speaker, that's the sum and substance of the arguments. The succession duties raise approximately somewhere in the order of \$6 million a year, and it has been a self-defeating tax to a certain extent, to the extent that as the tax was increased, back several years ago, the amount of money that came into the province has not gone up in relation to the other sources of revenue available to the province. The amount of revenue achieved from the succession duties, from the death taxes, in relation to the total revenues of the province is lower now than it was in earlier years when it was first transferred from the federal government to the provincial government when the federal government at that time administered the program, and then dropped the tax when they went into the capital gains tax field, because in many cases it does constitute a form of double taxation, because there is often a recapture or a capital gains that occurs at the same time as a death tax coming on and you get the capital gains tax plus this death tax' one compounding the other. That's at the federal level. And that was the rationale behind the federal government removing itself from the death tax field, and then it was picked up by the provinces.

But my point is, Mr. Speaker, that at that time these taxes, despite the fact they were not as severe as they have been in the last few years, brought in, in relation to the total revenue of the province, a larger proportion. Now what has happened, and the argument has been used that there may have been as much as a billion dollars flow out of the province, which I haven't said, Mr. Speaker, that I knew whether there was a billion dollars flow out or not, but I would very much buy the argument that the more severe the taxes became two or three years ago, that with the removal of the tax and the non-existence of it in Alberta, and the much higher limits in Ontario, and the other jurisdictions to which estates could be arranged to flow to, that the revenues for Manitoba were receding all the time. And as a result of that, you had your pools of capital disappearing from the province of Manitoba' which traditionally have had to supplement and complement the investment of capital by the provincial government.

Well what we've been getting in the last few years in Manitoba, and the statistics bear this out very clearly, is that we've had an increasing dependence on investment by the public sector in capital investment, to the point, Mr. Speaker, where it's becoming a great concern to Manitoba. The capital investment alone of the Hydro projects of northern Manitoba are staggering compared to the capital investment that has been going on by the private sector. In 1977, Mr. Speaker, the capital investment in Manitoba, the predicted capital investment in Manitoba for 1977 is the second lowest of any province in Canada, Mr. Speaker. The second lowest — 1977 — that was the predictions in early 1977. Now this is, Mr. Speaker, a very serious matter, and this has been the trend. So, Mr. Speaker, the aim and objective of removing the succession duties is to try and bring back that capital investment in Manitoba, keep that capital investment here at least as a resource to try and regain our position, and try and regain the position of checks and balances between the private sector and the public sector which has been slipping more and more toward the public sector.

Well, Mr. Chairman, I don't think we're going to resolve the arguments any further at this point, and I would recommend this bill to the House.

MR. SPEAKER: The Honourable Leader of the Opposition with a question.

MR. SCHREYER: Yes, would the honourable minister permit a question? Well, I have many questions, Sir. I'll have to content myself with one. I'd like to ask the honourable minister that when he made passing reference to the fact — and I agree with him it is a fact — that the yield from the succession duties is no higher today than it was, say 9, 10 years ago — I presume he meant when it was collected at the federal level at that time — the honourable minister has suggested that this proves that it's, in a sense, a self-defeating tax. Would he agree, however, that there is just a possibility that one of the reasons why there's been no growth in yield is because the exemption level was at \$50,000 ten years ago, and is at \$250,000 today? Isn't that one of the reasons?

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mr. CRAIK: Well, Mr. Speaker, I think it's more likely to be that the capital is escaping, and if you want to look at the statistics here I think you'll see that the producers of the revenue are not the very large estates, they tend to be the smaller ones.

MR. SCHREYER: In my question I asked whether the exemption from \$50,000 to \$250,000 wouldn't at least be one of the factors. Wouldn't the minister agree?

MR. CRAIK: Well, Mr. Speaker, arithmetically it has to be a factor, but I think the prime factor, Mr. Speaker, is that the large estates as time goes on, and the availability of other provinces is open, they're leaving.

QUESTION put, MOTION carried.

MR. SPEAKER: The hour being 10:00 p.m., the House is adjourned and stands adjourned until 10:00 a.m. (Thursday)