

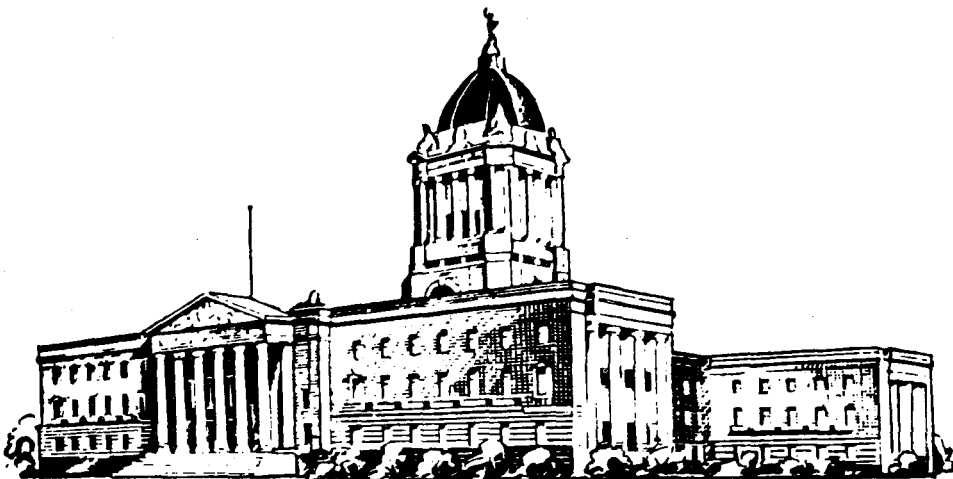


First Session — Thirty-First Legislature  
of the  
**Legislative Assembly of Manitoba**

**DEBATES  
and  
PROCEEDINGS**

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Speaker*



# THE LEGISLATIVE ASSEMBLY of MANITOBA

Tuesday, November 29, 1977

TIME 8:00 p.m.

## INTRODUCTION OF GUESTS

**MR. SPEAKER:** Before we proceed I should like to direct the attention of the honourable members to the gallery where we have the St. Johns Evening School Adult Education Class in attendance. These students are under the direction of Mr. Allan Bush. On behalf of all the honourable members I welcome you here this evening.

## THRONE SPEECH DEBATE

**MR. SPEAKER:** The Honourable Member for Logan who has eight minutes left.

**MR. JENKINS:** Thank you, Mr. Speaker. I won't take too much time to sum up. I think I have stated my position, the position of our party on this side of the House with respect to the Family Law Bill that has been introduced in this session. Before I sit down, Mr. Speaker, I would like to offer my congratulations to the member for Wellington on making his maiden speech in this House. As my MLA I am glad that he is here to speak for me.

I would also like to, at the same time, welcome — unfortunately they are not here this evening, but will be here shortly — the other two new members on our side of the House, the Honourable Member for Transcona and the Honourable Member for Churchill. I am sure that you are going to hear from them shortly in this debate. If not this evening, I am sure tomorrow or the next day. I would also like to offer my congratulations to the new members on the other side of the House. Unfortunately we haven't heard too many of them say anything except the mover and the seconder of the Speech from the Throne. It's unfortunate that the strategy of the government seems to be that they're not going to rise and take part in the debate in this House, which is traditional. My leader, the Honourable Member for Rossmere, the Leader of the Opposition, has said that we will proceed as a normal session here with the Throne Speech debate and the Progressive Conservative Party being a party of tradition, I thought that they would engage in the tradition of the thrust and flow of debate in this Chamber, especially since I read in the newspaper that the Honourable Member for Morris, the minister without portfolio, government House leader, minister without portfolio No. 1, has been instructing the new members in the rules of procedure and decorum in the House. The Honourable Member for Morris, I will give credit to. He said that there is some times in the past, that his decorum was a bit lacking in this House too. That is quite true. That's understandable within the parliamentary procedure that we all follow.

One thing I did take objection to, there was a slight hint that the former Speaker was not quite as impartial as he should have been. In fact, I think it was some time in the first legislature that I was a member of, the Honourable Member for Morris was threatening to move a motion of censure, not only against the Speaker, but myself. However, I think he thought things over and perhaps he thought we weren't as partial as he thought we were. Needless to say, he never introduced that motion of censure against the Speaker or myself.

It's unfortunate, as I say, that the strategy of the government — even the First Minister, I hope that some time or other during the Throne Speech debate, perhaps after the amendment has been voted on that he will be at least getting up to say something. But we haven't even had anything from the leader of the opposition. Maybe he hasn't had the word from across the street yet.

Mr. Speaker, I see that my time is rapidly running out. I just want to reiterate once again to the this Chamber. That is one person who I thought would be at least up saying something about this bill.

**A MEMBER:** She will.

**MR. JENKINS:** You know, we have heard about open government. This is muted government over there. Muted. No words — as my honourable friend says, it's the Muppet Show. But anyway, I am sure that some time this evening the honourable attorney-general is going to get his opportunity to introduce his legislation. I know that he was here all afternoon when I was speaking and I asked certain questions and I hope that he has taken note of them. I hope he's not just going to read a prepared speech there that tells us such and such a things are going to happen. Well it's not against the rules, for the benefit of the Honourable Member for St. Vital, for a minister introducing a piece of legislation. He can speak and use notes, prepared notes. Check with your rules and check with Hansard. That's quite permissible. But I wish that he would just stray a bit from the prepared text that he is going to deliver to us and tell us what the intentions are, when you're going to bring the bill back, exactly what you intend to do with the bill, in unequivocal terms so that we on this side of the House know what you're doing. Thank you, Mr. Speaker.

**MR. SPEAKER:** The Honourable Member for St. Boniface.

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**MR. LAURENT L. DESJARDINS:** Mr. Speaker, I am tempted to take part in this debate now I see that the First Minister is in his seat. I am not always that fortunate but the attorney-general has no finger nails left and before he takes his shoes off I think we better allow him to introduce his bill so I would like to move, seconded by the member from The Pas, that debate be adjourned.

**MOTION presented and carried.**

**MR. SPEAKER:** Adjourned debates on second reading. On the proposed motion of the Honourable First Minister, Bill No.2.

**MR. JORGENSON:** Mr. Speaker, if I may, may I call the order of business. I would like to call Bill No. 5.

## **GOVERNMENT BILLS - SECOND READINGS**

### **BILL (NO. 5) - FAMILY LAW**

**MR. SPEAKER:** The Honourable Attorney-General.

**MR. MERCIER** presented Bill (No. 5) - An Act to suspend The Family Maintenance Act and to defer the coming into force of The Marital Property Act and to amend certain other Acts and make Provisions required as a Consequence thereof, for second reading.

**MOTION presented.**

**MR. SPEAKER:** The Honourable Attorney-General.

**MR. MERCIER:** Mr. Speaker, Sir, if I may, inasmuch as this is my first opportunity to address this assembly, indicate my personal honour and privilege in representing the constituency of Osborne in this legislature.

I believe, Mr. Chairman, the constituency has been well represented in the past recent years with Mg. Stinson, Dr. Baizley and Mr. Turnbull and I hope that I am able, Mr. Speaker, to continue that fine tradition brought forward by these gentlemen. Briefly, Sir, I extend my congratulations to you and the Deputy Speaker in your respective elections. Although, I would say, Sir, that after witnessing the proceedings last night in the House, I was particularly upset with the decorum and I would hope that you would receive greater support from the members of this Assembly than you received last night. I have been in the past, Sir, a member of the City Council which has on occasion received some criticism for the manner in which it has conducted its affairs. But I note that in the past, for example, I had occasion to be a member of City Council with...

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

**MR. GREEN:** Yes, I rise on a point of order, Mr. Speaker. Mr. Speaker, the honourable minister is introducing a bill. He has had three or four days in which he could have participated in the Throne Speech debate making the . . . *vis-a-vis* kind speech he is making now yourself and the constituency. But I suggest that introducing a measure of a bill, that there is some relevance that he speak on the bill. I don't wish to interrupt what would be the honourable member's first speech in the legislature, but he could have done what he is doing now in the proper place, on the Throne Speech debate, which he could have done yesterday or the day before or at any time that it was claimed that he was unable to speak.

**MR. SPEAKER:** The Honourable First Minister.

**MR. LYON:** Mr. Speaker, on the same point of order, my honourable friend, leader of the House for the opposition will be surprised to learn that I agree with the general comment. But in view of the fact that the Speaker has been allowing wide latitude in the last three days, and in view of the fact that my honourable friend has not demonstrated that same fastidiousness toward his own colleagues that he is now demonstrating toward the attorney-general, perhaps the attorney-general could be allowed to proceed.

**MR. SPEAKER:** The Honourable House Leader of the Opposition, on the point of order.

**MR. GREEN:** Yes, to the point of order, Mr. Speaker. I regret that the Leader of the Opposition has seen fit at this stage to incorrectly question the way in which you have been conducting the proceedings of the House, Sir. As a matter of fact, I can't recall in the past three days any person speaking on the Throne Speech, which is as broad as legislative debate can possibly be, could have been called to order on a question of relevance. I'm glad that the First Minister agrees that with respect to the introduction of this bill my remarks are correct. I would ask the honourable member to

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stick to the relevance of the bill and perhaps it was his mistake, not ours, that he did not know that the kind of talk that he is making now was completely relevant yesterday, the day before, this morning, this afternoon, and he would not have lost his right to introduce the bill.

**MR. SPEAKER:** The Honourable First Minister, on a point of order.

**MR. LYONS:** My side of the House is usually quiet, it is equally quiet on the other side. What he has been saying tonight. Let him establish the same fastidiousness with respect to question period and other lapses on the rules of this House with respect to his own side before he presumes to question anybody on this side of the House.

**MR. SPEAKER:** Order, order please. I want to say to all members in the Chamber that the points that have been made by the House Leader of the Opposition and by the First Minister are points that are well taken. I have allowed a fair degree of latitude in debate, and I warn members that if you ask me as your officer to impose strict limitations when it comes to points regarding debate in this House, those points and those limitations will apply to all members of the House equally. The Honourable Attorney-General.

**MR. MERCIER:** Well, Mr. Speaker, having witnessed the proceedings in this House last night, I can understand the reluctance of the members opposite for me to discuss the matter of decorum and I'll proceed to discuss the bill.

**MR. SPEAKER:** The Honourable Leader of the Opposition on a point of privilege.

**MR. SCHREYER:** Mr. Speaker, I believe that the records will show that at least on two occasions I did rise and attempt, Sir, attempt at least, to give you some support with respect to the importance, the critical importance of maintaining decorum in this Chamber, not only with respect to the Chamber proper, but with respect to the public gallery. That being the case, and on the record, I wonder what my honourable friend is referring to.

**MR. SPEAKER:** The Honourable Attorney-General.

**MR. MERCIER:** Mr. Speaker, in introducing this bill, Sir, and in considering the — (Interjection) —

**MR. SPEAKER:** Order please. I have recognized the Honourable Attorney-General and I would wish that all other members of this Chamber recognize him also.

**MR. MERCIER:** Mr. Speaker, in introducing this bill — (Interjection) — Bill No. 5, Sir, the number of speakers who have spoken previously dealing with the reply to the Throne Speech have dealt in some way with this particular bill and have indicated that they wish for me to indicate my personal views. In introducing this bill, Sir, I would suggest that to do such would — and those kind of replies — indicate a lack of comprehension of the legislative process, I would suggest. Legislation in this Chamber is not come about as the result of fifty-seven different personal opinions with respect to any proposed legislation, but is legislation proposed by two political parties, that in government and that in opposition.

Sir, in introducing this legislation, I am, however, not unmindful of the concerns of the various women's groups who have come forward in support of same. As a practicing solicitor dealing in some way with family law for some ten years, certainly not as long as some members of this House may have been active in family litigation, I believe I can bring some sympathy and some understanding for the plight of many women who have felt, perhaps justifiably, that they have been treated inequitably.

Mr. Speaker, members of the assembly will be aware that a family law review committee has been appointed consisting of three litigation counsel who have all specialized in family law for some considerable number of years. They have been appointed to review The Family Maintenance Act and The Marital Property Act in their present form, and report to me as to the problems caused by the legislation, and to recommend appropriate legislative amendments. And those are in fact, Sir, their terms of reference. They are in fact that simple. There have been numerous inquiries and requests to what are the terms of reference of the family review committee. Those are the terms of reference: to review the existing legislation, report as to the problems, and recommend appropriate legislative amendments. These counsel, Mr. Speaker, are not appointed by virtue of any personal philosophy that they may have. They're appointed as well experienced lawyers who have been very active in this field for many years. There has been a comment indicated by the Honourable Member for Selkirk, in which he expressed concern over the cost of these counsel. I would point out to you, Sir, that the counsel retained by the former Attorney-General and the cost of same has now approached \$10,000 and all of those bills are not in. I say that, Sir, not suggesting in any way that those counsel should not have been appointed, Sir, but in support of the position that this is a very serious matter and a very important matter to many people in this province and that expense is justified. I further point out to you, Sir, that it was members of the Attorney-General's department, who recommended the

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appointment of outside counsel to handle this particular task. I may say, Sir, that I am proud to be associated with the members of the Attorney-General's department, and in fact those in the Municipal Affairs department and Urban Affairs. I think too often criticism is unjustifiably directed to civil servants, and I certainly am very pleased with the ability of the civil servants in these respective departments.

I want to emphasize again, Sir, that we wish to maintain and protect the principle of equal sharing between marriage partners. Our purpose is to ensure that this principle is applied clearly, understandably, and unequivocally. Let me deal with some of the problems that have been expressed. The following is not in any way exhaustive of those difficulties if The Marital Property Act and Family Maintenance Act are allowed to remain in their present form. It is rather only a reference to what is most apparent of such difficulties. The whole notion of the immediate joint ownership of family assets presents obvious problems and difficulties in three significant areas.

The first, Sir, is the classification of assets as between family and commercial; secondly creditors' rights; thirdly potential tax problems. Of the three, the third mentioned is probably the most onerous and could work a burden upon the parties involved. With regard to these tax implications, the previous government retained a prominent tax lawyer in this city on June 10 of this year, who pointed out serious income tax liabilities that may result. Without going into any detail, I cite as examples, Mr. Speaker, capital gains taxation which may result from dispositions under The Marital Property Act; anomalous situations which may arise under Section 74 of the Income Tax Act; the roll-over provisions when dealing with attributions of income gains or losses; income splitting between spouses; revenue applications on family assets on which capital gains are taxable but capital losses are not allowable; tax treatment of family assets which are converted into commercial assets and valuation problems.

This legal opinion, Sir, by letter dated June 24th of this year, generally advised the previous government that short of amendments to The Income Tax Act, the Federal Act, he could see no real solution to these problems at that point in time.

The federal government, I am advised, was approached in this regard and the Honourable Ron Basford, the Federal Minister of Justice, made a commitment at a meeting of Attorney-Generals back in June that he would do everything within his power. It was not a commitment of the federal government but a personal commitment of his as I understand it to ensure that spouses were not penalized tax-wise because of marital property legislation requiring the equal sharing of marital assets. The former Attorney-General, I am advised, wrote to Mr. Basford in July and the former Minister of Finance wrote to his counterpart in Ottawa in early August urging amendment to The Income Tax Act.

I have now received a reply from the Honourable Ron Basford dated November 14th indicating that officials of his department are discussing the possible tax consequences which could arise under the provisions of The Income Tax Act with officials from the Federal Department of Finance. We have not received any commitment in writing, Sir.

The Federal Minister of Finance has stated that the legislation has significant income tax implications and will almost certainly require some basic changes to The Income Tax Act. However, federal officials are not yet in a position to discuss the details of the federal review and any tentative results obtained to date.

It seems to me, Sir, that this legislation should not become law without some commitment in writing from the Government of Canada so as to ensure that Manitoba citizens are not penalized tax-wise because of this legislation.

The Honourable Member for Selkirk, Sir, indicated in his address yesterday some concern that there had been no discussion on the part of the present government during the election campaign with respect to these Acts. I say to him, Sir, I did not hear, to the best of my knowledge, any comment from him with respect to the possible tax implications of this legislation which were within his knowledge during the election campaign.

I further point out, Mr. Speaker, that the Premier and the Attorney-General for Prince Edward Island just very recently, last week, advised Mr. Basford that it is essential that amendments be made to The Income Tax Act as most provinces have already enacted legislation or have proposed it or enacted it subject to proclamation and in order to bring these Acts into effect, these amendments are necessary.

I would also advise, Mr. Speaker, the Members of this Assembly that the same prominent tax lawyer was retained by the previous government to study the ramifications and implications of The Marital Property Act on insurance policies and pension plans. Concern was expressed about the difficulty in categorizing life insurance policies into either family assets or commercial assets. There were evaluation problems respecting pension plans and the possibility of enormous problems in terms of payment of an equalizing amount on a pension plan. Many pension plans have locked-in benefits not payable until retirement.

Many other points of concern have been expressed dealing with The Marital Property Act. Concern has been expressed as to the scope of Section II which appears to apply to every married person anywhere in the world. It is essential, Sir, that a definition be supplied which will define the persons to whom the Act ought properly to apply. Section II appears to negate a lawful agreement made by parties after May 6th, 1977 in some other jurisdiction who later come to live in Manitoba. Section II discriminates between void and voidable marriages. Why should a person induced to enter into a form of marriage by the wrongful misrepresentation of another be deprived of rights. As a general rule, the imposition of legislation retroactively is considered to be oppressive and runs

counter to the recommendations of the Law Reform Commission in this respect.

The legislation appears to discourage attempts at reconciliation of spouses who are living separate or apart on or prior to May 6th, 1977. It states that the Act does not apply to parties that are separated on May 6th but remains applicable only so long as they continue living separately and apart. Therefore it appears that even a reconciliation of extremely short duration which proved unsuccessful would bring those separated spouses within the regime. There ought to be a permissible period of say 90 days to correspond with the provisions of The Divorce Act for the purpose of attempting reconciliation without bringing the regime into operation.

Subsection 3(2) of the Act is particularly vague and its purpose difficult to determine. The Act also provides for an accounting of commercial assets where an order for the separation of the spouses has been made or proceedings therefor have been commenced. In that The Family Maintenance Act does not provide any grounds upon which a spouse is entitled to apply for an order of separation. This results in a possible requirement of accounting of commercial assets at any time.

In dealing with debts and liabilities of commercial assets there is a possibility of some unfairness in the application of the Act. Exception to the rule that there be no negative value in determining debts and liabilities as commercial assets should not be restricted to debts and liabilities of a spouse directly incurred in fulfilling family obligations. Most debts incurred in this regard would be incurred indirectly.

Section XI provides that any asset held, used or dealt with during the marriage in a manner indicating an intention on the part of the spouse that it should be treated as shareable is deemed *prima facie* to be a shareable asset. There has been concern expressed that this may be a trap for the unwary and cause difficulties that were not intended.

With regard to The Family Maintenance Act, again several concerns have been expressed. The Act places an onus upon a separated spouse to become financially independent of the other spouse. However, there is no definition of financial independence. Is a person earning, for example, \$12,000 per year financially independent where the other spouse is earning five or six times as much?

Another question that has been raised: Should jurisdiction be given to the Court of Queen's Bench as well as the County Court and Provincial Judges Court and Family Division? This would allow all matters to be dealt with in that court where there is real property to be divided or if petition for divorce is filed.

Another question that has been raised: Should the Act provide for postponement of sale of real property? Is it constitutional, Sir, to give this power to the Provincial Judges Court, Family Division? Partition and sale is an equitable remedy and the existence of an order giving sole possession of the home to one spouse and the children is certainly one of the factors taken into account by the Court of Queen's Bench in these matters.

Concern has been expressed as to why is the right to financial disclosure from the other spouse available only when the spouses are living together? It also appears that the Act does not set out anywhere the grounds upon which the court must grant or refuse a separation order. Does this mean that we revert to the common law to determine whether or not it is appropriate to grant an order of separation or has a spouse an absolute right to an order for separation upon request without any grounds or reasons? I believe the intent of the legislation was the latter, Mr. Speaker, but there has been concern expressed.

As to the bill itself, it provides for the immediate suspension of the operation of The Family Maintenance Act as soon as the Act receives Royal Assent.

Pending the receipt of the report of the Family Law Review Committee and the introduction of suitable amendments to the Act hopefully at the 1978 session of the Legislature, The Wives and Children's Maintenance Act will continue in full force and effect. On the recommendation of the Family Law Review Committee, we have also introduced amendments to The Wives and Children's Maintenance Act to provide for interim orders of maintenance, either on notice or *ex parte* where necessary.

The Family Law Review Committee, Sir, has considered these provisions of The Family Maintenance Act to be such an urgent needed reform that these provisions should be in force even while they continue their review of the legislation.

The bill provides that The Marital Property Act will not come into force on January 1st, 1978 as earlier proclaimed by the previous government but that this Act will come into force even while they continue their review of the legislation. The bill provides that the Marital Property Act will not come into force on January 1, 1978, as earlier proclaimed by the previous government, but that this Act will come into force at some later date to be fixed by proclamation. In this regard, once again, we await the report of the Family Law Review Committee with a view to introducing amendments to the Marital Property Act at the 1978 session of the Legislature.

The bill also provides for the Provincial Judges Court, Family Division to enforce its own orders under the Wives and Children's Maintenance Act in the same manner that provision was made for that Court to enforce its own orders under the Family Maintenance Act. There is also the usual transitional section providing that orders made under the Family Maintenance Act may be varied or discharged under the Wives and Children's Maintenance Act.

Sir, the Family Law Review Committee has received copies of all of the submissions made before the Legislative Committee which considered the family law reports of the Manitoba Law Reform Commission, and the committee which considered the Marital Property Act and the Family Maintenance Act. The Family Law Review Committee will also be considering the recommendations of the Manitoba Law Reform Commission and legislation introduced in other provinces.

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It has been announced so far, Mr. Speaker, that the time for filing submissions was to expire on November 30th, I believe. It would be my intention, Sir, to extend this time for filing submissions, hopefully into mid-December.

You may be aware, Sir, that a seminar on these Acts sponsored by the Law Society of Manitoba was held in the Convention Centre on Saturday, October 15th of this year. It, Sir, drew the largest turnout of lawyers and other interested persons in the history of the Law Society. Some 500 to 600 people, mostly lawyers, attended because they wanted to know what these Acts said, and how these Acts could be applied to practical situations. It became clear that there was hopeless confusion in many areas as to the intent and meaning of the Act. The coming into force of these Acts in their present form would only lead to confusion and considerable litigation.

In this regard, Sir, the recently appointed Executive Director of Legal Aid, who was in attendance at the seminar, indicated that these Acts could probably bankrupt the Legal Aid program in very short order.

Let me, Sir, once again, assure members of the Assembly that this government is committed to the principle of equal sharing between marriage partners. We want to ensure that this principle is clearly maintained and protected and enacted in legislation which is easily understood and which will not generate endless litigation and tax problems. I understand, Sir, that when this matter was under consideration in the last session of the Legislature that there was a great deal of co-operation exhibited between members of all political parties in dealing with the proposed legislation and I would hope, Sir, that that would continue when the review and report from the Family Law Committee is submitted and this matter is again before the House.

**MR. SPEAKER:** The Honourable Member for Selkirk.

**MR. PAWLEY:** Mr. Speaker, I have listened with interest to the introduction of the Bill No. 5 by the Honourable the Attorney-General, and I must say, after listening to the comments by the Honourable the Attorney-General, that I see even less reason, tonight, than I saw last night, for a suspension, or a deferral of the legislation before us.

First, Mr. Speaker, I would like to deal with the issue of taxation. Mr. Speaker, the Honourable the Attorney-General referred briefly to discussions which had taken place with the Minister of Justice, Mr. Basford, letters which had been forwarded to the Minister of Finance from my colleague, the Honourable Member for Seven Oaks, in August of this year. At the meeting in June that was referred to, there was a firm assurance by the Minister of Justice that the federal government would remove all problems that might be involved insofar as taxation was concerned, involving this new law.

But, Mr. Speaker, interestingly, although some general reference was made to taxation problems, it is my understanding that there is in fact an unintended tax benefit to Manitobans resulting from the passage of this legislation. There is provision in the legislation under Division 2 of the Marital Property Act which gives Manitoba residents an unintended potential tax benefit, and I wish that the Honourable the Attorney-General had pointed that out to this House this evening, rather than suggesting that the taxation problems were purely of a negative nature.

Mr. Speaker, it is by advice and information that to the extent that the marital home and family assets generate income, whether on a regular basis, or in respect of capital gains, I believe that the spouses, each of whom is deemed to have an ownership interest in the asset, will be entitled to split the income and pay tax thereon at his or her own personal rates. Now, Mr. Speaker, I think that one does not have to be a tax authority to know that there is very distinct potential tax benefit insofar as that particular provision is concerned, referred to by the Attorney-General this evening.

So, Mr. Speaker, I would hope that we would not blur the principles of this legislation by making reference to taxation problems. First, there was the assurance by the Minister of Justice that every move would be undertaken by the federal government to remove difficulties — and Mr. Speaker, I do not know whether the government of today has the desire or the initiative to ensure that the Minister of Justice follows through with what his commitment to the former government in this regard.

Mr. Speaker, the Premier, in his usual manner, attempted to leave the inference that there was no reference to taxation problems. Well, all, Mr. Speaker, that the Premier disclosed by his comments earlier, from his seat, I believe, that no reference had been made in June of 1977 to tax problems, all that he disclosed was the fact that he had been absent from the proceedings or had neglected or ignored the discussions that had taken place during the committee. Because he would have noted, and I'm sure the Member for St. Johns, in fact, I'm sure you, Mr. Speaker, recall very well the references to potential tax problems which we would have to follow through. Those tax problems were followed through as I indicated, with the Minister of Justice, and furthermore, as I indicated earlier, the tax problems that are referred to, to a significant extent, could bring about an unintended tax benefit to Manitobans. Let that be clear on the record.

Mr. Speaker, there is reference earlier to cost, reference to the fact that some \$10,000 was paid out by the former government in financial assistance in proceeding towards the development of the existing legislation. I hope and pray that the present Attorney-General is able to minimize his outside legal costs to ten thousand and under. I doubt very much whether he manages to do that, with the direction that he has seen fit to undertake by referring this legislation to this Board of Review.

It's interesting, Mr. Speaker, to note as well the constant reference to calling and requesting the public to refer their briefs to the Board of Review. Mr. Speaker, first I would hope that the members of the public would submit their briefs to a legislative committee of legislators that are expected to deal with this legislation. Secondly, Mr. Speaker, I would be interested in a comment later on by the

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Attorney-general in completing his remarks, whether or not it is the intention of the Board of Review to receive these submissions in person, or only by way of written brief. I have received some indication, Mr. Speaker, that the Board of Review is requesting the brief to be forwarded in to them in writing. I'd be interested to know whether the individuals will be invited to attend in person so they can submit to the same type of process which took place in the development of the earlier legislation which we're dealing with now.

So much reference is made to problems. The problems that are referred to by the Honourable Attorney-General are basically problems of a technical or legal nature, problems, Mr. Speaker, which the Attorney-General indicated to be dealt with by

amendment, Mr. Speaker, and I believe, could have been dealt with very easily by amendment to the legislation which was passed in June of 1977, very easily have been dealt with by suitable amendments just as we had indicated and other groups have been indicating for the past several weeks.

I hear nothing this evening, nothing this evening of such a nature, of such a basic nature of an insurmountable problem that could not have been dealt with justifiably by way of amendment in the normal process through this Legislature, amendments that could have been made without killing, killing the very substance of the legislation that was passed in June of 1977.

Mr. Speaker, we want to talk about problems and difficulties. Then, Mr. Speaker, I think I should spend a little time outlining some of the legal problems, legal problems that have been brought to my attention, Mr. Speaker, too, by lawyers in the province of Manitoba, problems which they are encountering with the old legislation and problems, Mr. Speaker, which they saw some possible light, some hope of seeing removed as a result of the family law legislation which was to come into effect on January 1st.

First, Mr. Speaker, the legislation dealing with grounds. I am told by lawyers, and reference was made to Legal Aid because certainly Legal Aid, I suppose, handles 75 to 80 percent of the caseload dealing with maintenance awards under The Maintenance Act, that there is a major problem existing today in many instances in obtaining information by spouses in order to attempt to obtain an award from the court, fearful of seeking the protection of the courts since in order to do so one would have to serve the other spouse with a document making all the horrible allegations, all the horrible allegations, Mr. Speaker, which you must recall that are spelled out in the The Wives and Family Maintenance Act. It also served to discourage people from seeking the protection of the courts where they required it in many instances. Further, Mr. Speaker, the present legislation has a bar. An applicant can be denied an order simply because the wife has committed adultery or had deserted. In addition, the wife could be denied a maintenance order if there was a written separation agreement. That's the old law, Mr. Speaker, not the new law that we are speaking about. Thus, Mr. Speaker, no matter how many indiscretions the husband may have committed during the marriage, no matter how many indiscretions the husband may have committed, one indiscretion on the part of the wife is sufficient to bar her action for maintenance. That's under the old law.

Mr. Speaker, under the old legislation there is doubt as to whether or not a Family Court Judge has the jurisdiction to make an interim *ex parte* order in an emergency situation. Thus, rather than going through a process of judge shopping, the only safe way under the old law in order to obtain an order is to proceed on the basis of grounds for a divorce to issue a petition for divorce and then to proceed into the Court of Queen's Bench. Mr. Speaker, reference was made about the desire to not necessarily break up a marriage if there was any chance of ensuring the continuation of that marriage. Under the old law, there was very little choice in that particular respect if you were interested in *ex parte* order or an interim order.

Mr. Speaker, also under the old Act, husbands could not apply for a separation order unless the wife could be proved to be a habitual drunkard. Under the new law, husbands have equal rights with wives to apply for separation without having to prove any grounds. Then also, insofar as lump sum maintenance orders are concerned, such orders were not available under the old Wives and Children's Maintenance Act with or without The Marital Property Act. This provision would allow an equity-minded judge to balance off the economic inequalities where one spouse had a very large income or a large amount of property.

Reference was made earlier in connection with the provision dealing with postponement by the Attorney-General, postponement of sale of marital property. Wherever an order, I might point out, is made giving one spouse the right to continue occupancy of the family residence, that order can be accompanied by a further order postponing the partition and sale of the matrimonial home. This provision could provide many spouses with a good deal more security of tenure in the family premises and could prevent some unnecessary litigation taken simply out of spite.

Mr. Speaker, when we proceed to committee, I know that we will hear from lawyers who will point out to members of this House the problems that exist under the old law, and yes, Mr. Speaker, will also point out some of the legal problems that are being created by this government's action in suspending The Maintenance Act and deferring The Marital Property Act.

So we want to talk about problems. Mr. Speaker, one could proceed to talk about technical and legal problems both under the old legislation and under the new legislation, but let's proceed to remove those problems of a technical and legal nature, whether they exist under the old law or whether they exist under the new law. But to scrap a law which is unquestionably better, which is an improvement over the old law, Mr. Speaker, as I indicated last night, is really, I think, a scandal.

**MR. LYON:** You really don't understand?



**MR. PAWLEY:** No, nobody understands, Mr. Speaker, but the Premier. In the Premier's mind, nobody in Manitoba understands anything but he himself. That's the nature of the beast.

**MR. LYON:** If you were a better lawyer than a rhetorician, you would understand. Rhetoric's no answer to fact.

**MR. SPEAKER:** Order please. The Honourable Member for Selkirk.

**MR. PAWLEY:** Mr. Speaker, I would like to be able to proceed. I find so much interruption from across the way. —(Interjection)— Oh, I see, you're not silly, no.

**MR. SPEAKER:** Order please. If the Honourable Member for Selkirk is having difficulty, I would suggest that the other members of the Chamber accommodate him in making his comments.

**MR. PAWLEY:** Mr. Speaker, I again refer to the questions which I posed to the Attorney-General last evening. There were a number of questions posed to the Honourable the Attorney-General. I noted that he did make note of those questions. I know that Manitobans are still awaiting a response to those questions which were posed to the Attorney-General last evening. I do know, Mr. Speaker, if those questions are answered, and those questions were not answered tonight, that much of the controversy involving this family law could be swept away within moments if we could only obtain answers to the specific questions which were posed last night to the Attorney-General in connection with the principles of the family law. I regret very much that the Attorney-General has seen fit to permit the doubts to remain rather than attempt to deal with the concerns that are bothering so many groups within the province at the present time as we have witnessed in the last day or two.

Mr. Speaker, we will have our opportunity to further debate this legislation. We will have an opportunity hopefully to receive submissions dealing with these proposed changes. I look forward to receiving advice through the public hearings as to difficulties that in fact we may be encountering from a point of view of the law pertaining to these changes proposed by this government. But, Mr. Chairman, it just does not wash to suggest that there are such technical and legal problems as to prevent us from proceeding with the family law in Manitoba. There are no such major tax difficulties to prevent us from proceeding with the family law in Manitoba. Mr. Speaker, what we are faced with this evening is continued excuses and unjustified postponement and suspension of this legislation. Need I point out, Mr. Speaker, legislation that has been suspended or is being deferred time indefinite, no specific time as to when it will be reintroduced — we don't know whether new legislation will be introduced in the spring session of 1978. The Attorney-General probably could assure us on that point. The legislation is being suspended and deferred indefinitely, that's all we know this evening. And all that we know, Mr. Speaker, is we have received a lot of excuses for an unjustified suspension and deferral of the legislation.

**MR. SPEAKER:** The Honourable Member for The Pas.

**MR. McBRYDE:** Mr. Speaker, I would like to make a few brief comments on this bill and I appreciate what my colleague the Attorney-General has just said and understand the technicalities of what he has been talking about. I suppose one of the reasons why I feel I want to say a few words this evening is that my colleague, the member for Selkirk, has a problem of being too nice. He has been too nice in dealing with the members opposite in his discussion of this bill and discussion of what is taking place.

What we have here, Mr. Speaker, is a possibility of two different laws. We have the old law as it exists now in the case of the marital property and the old law as existed before in terms of the maintenance legislation. There is no one, in the material that I have been able to read in terms of the discussion of this legislation that says there is not improvement needed in the old law, that there are not lots of problems with the old law. My colleague has just outlined this evening some of the problems with the old law. And we have the choice, Mr. Speaker, between the old law and the new law as passed by the previous government. There are many people who are quite satisfied with the new law and think that the technicalities which the member opposite raises are not real problems but problems to use to postpone or stonewall the legislation. But Mr. Speaker, there is a possibility after all the hearings, after all the changes, after the public briefs, after a very effective legislative committee dealing with this law, there is the possibility that the law could still be further improved. I don't think anyone is saying that that possibility doesn't exist.

Mr. Speaker, I think what we are up against here is something a little bit different. When the Conservatives formed the government, when the Conservative Party elected a majority of people and they got together and they said, "We are going to kill this law. We do not agree with this law and we are going to get rid of this law." When they made that decision, the Member for Rhineland and the Member for St. James and the Member for Roblin went away very happy, went away happy, "Well, we're going to get rid of that law we didn't like anyway." And when they walked out of Cabinet, the Minister without Portfolios, numbers one and three, were extremely happy. "We are going to get rid of this law. We do not like this new law and it's coming into effect." And that was the decision that they

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had made as a group, that they had decided to take. Mr. Speaker, all you have to do is look at what has happened, look at the evidence before us, to know that that was their decision and that's the way they want it to move. You can look at the vote on The Maintenance Act and the members of the Conservative Party, how they voted. One hundred percent voted against The Maintenance Act. You can look at the vote, Mr. Speaker, on The Marital Property Act and you can see that the majority of them, including the present Premier of Manitoba, voted against the Act, voted against the Act, Mr. Chairman. Mr. Chairman, I did read what the honourable member said but that doesn't change my opinion. Mr. Speaker, I think the problem is that maybe I'm wise enough to know what the present premier is up to. —(Interjections)— Mr. Chairman, that exchange is giving me some chance to try and get my tone in working order again. I will probably have to speak more quietly even though I don't like to.

The other evidence that we have before us, is the comments made by some of the members of opposite. And I think if you read some of the comments, such as those by the Minister without Portfolio number three, you can see these very strong and definite feelings of those members and the extreme dislike for the new legislation and the principles contained within the new legislation and that was reflected in the vote of all the members opposite in one case and the majority of members opposite in the other case.

But, Mr. Speaker, the evidence that really tells us what's on the minds, what's on the thinking behind the action of the members opposite, is their appointment of this committee, this three person committee that started out as a two person committee, because they say the purpose is to redraft the legislation. We agree with the principles of the legislation. —(Interjection)— Mr. Speaker, then how come the lawyer who was appointed to redraft the legislation and maintain the principles therein is the lawyer who has disagreed with those principles in his presentations before the committee? Who violently and in a hostile manner disagreed with the presentations that were in there. Mr. Speaker, I know that they didn't appoint that person because of his good public relations and the fact that he is a nice guy and able to be diplomatic. I wasn't at those committee hearings but reading over those hearings I can get some feel of the character of the person that was presenting that brief, and it's not very impressive. And I think that that is one of the main areas of evidence in terms of what the intent of the members opposite is. To appoint a person to redraft legislation who disagrees with the principle legislation and then says, "I am no draftsman, I do not pretend to be one." And yet they appoint him as a draftsman who agrees in the principle of legislation.

But, Mr. Speaker, those three pieces of evidence show quite clearly, without having been at the Conservative Caucus meeting or the Conservative Cabinet meeting, that the intention is to do away with the legislation that was passed by the previous government. But now, now they realize they are in trouble. They do have a bit of a political problem and now they're handling that political problem very wisely: Let's pretend we agree with the principle of the legislation; let's postpone the legislation; let's delay the legislation, and; that way we can drag it out and slowly let it die off and nobody is going to be that upset with us if we do it that way. For heaven's sake, let's not say exactly what we intend to do. We don't believe in these principles and we're going to kill the legislation because we don't believe in all these principles.

So they did decide to appoint another person to the committee to review the legislation, who happens to be a woman, and they did get the attorney-general to try and justify in technicalities the reasons for postponing the legislation. Mr. Speaker, we do have to feel sorry for the new Attorney-General. He is new in the House. They have given him that task to do. He's done a reasonable job of trying to justify their action. But, Mr. Speaker, it doesn't quite wash. It doesn't quite wash. There is only one thing they intend to do. And I think that the key, the other key that you can see here is last night my colleague, the member for Selkirk, presented to the attorney-general a list of questions. The members opposite say, "We agree with the principle of this legislation." The attorney-general says there a number of principles in this legislation" and he listed them, one, two, three, four, five. Which of those principles do you agree with and which of those principles do you disagree with? And the members will not answer. They will not respond to that question because there are some of those principles they disagree with and there are some of those principles they want to use to kill this legislation.

There is a reason, Mr. Speaker, why I think that when we look at the evidence we have to look specifically at the remarks in the vote of the premier. Because we have been able to see as members of the opposition in the few days that the legislature has been in session that the premier controls what happens. He tells all those people there what's going to happen, what they are going to do and how they're going to perform. So his comments and his votes are very significant in terms of what's happened here. Mr. Speaker, I don't think he's going to deny that because he enjoys that everybody knows that he is in fact the dictator of the Conservative government, the dictator of the Conservative party, and it doesn't bother him.

**A MEMBER:** Even you will get used to it.

**MR. McBRYDE:** Mr. Speaker, the premier has stated that even I will get used to his being the dictator. Mr. Speaker, I don't think the people of Manitoba are going quite get used to him being the dictator of Manitoba. I don't think they're going quite be able to adjust to his being the dictator. . .

**A MEMBER:** Just having a government that knows what it's doing, that's what you'll get used to. It will be a good lesson for you. Speaker, so it's clear there is no doubt in my mind, and there is no doubt

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in many of my colleagues minds, I don't think there's much doubt in the minds of the people that are concerned about this legislation, that the real purpose, that the real goal of the members opposite is to kill this legislation because some of the key principles they disagree with. If that's not the case, Mr. Speaker, if that's not the case, there are some few simple things they can do to demonstrate that I'm wrong. The premier can make me look very silly, he can show that I'm completely wrong. And all he has to do, Mr. Speaker, all he has to do, is not holler from his seat with his silly little comments but to stand up after I sit down and make the following commitments. One, that he will withdraw this bill, Bill No. 5.

**MR. LYON:** Don't be silly.

**Mr. MCBRYDE:** That he'll have a committee that comes into effect in January when the legislation comes into effect and this committee will see how the bill actually works in its function and what changes are necessary from actual experience that takes place. But he will not have on that committee Mr. Houston. And that at the next session of the legislature he will bring in an amendment. And if they mean what they say, if they mean what they say that they agree with the principles of this legislation, then there is nothing stopping them from carrying out those steps. Nothing stopping them at all. If they don't carry out those steps, they don't mean what they say, and they're purpose is to kill this legislation cause they disagree with the main principle.

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

**MR. AXWORTHY:** Mr. Speaker, I beg to move, seconded by the member from St. Boniface that debate be adjourned.

**MOTION presented and carried.**

**MR. JORGENSON:** Mr. Speaker, I wonder if he would call the two motions standing in the name of the premier.

**MR. SPEAKER:** On the proposed motion of the Honourable First Minister. The Honourable First Minister.

**MR. LYON:** Mr. Speaker, I beg to move, seconded by the Honourable the Minister without Portfolio, the Government House Leader, that during the present session of the legislature rules numbers 2,3,8, (1), 35 51, 94 and 107 be suspended and that the tabling of reports or periodical statements which is the duty of any officer or department of the government, or any corporate body to make to the House as ordered by the rules, or orders and forms of proceedings of the legislative assembly of Manitoba or by the journals, or by the statutes of the province of Manitoba be dispensed with.

**MR. LYON:** I don't believe that any long explanation is needed. This is the traditional resolution that is brought in in special sessions of the legislature to facilitate the passage of the business that is before the House. And there has been an accommodation arrived at between my honourable friend, the member for Inkster, house leader for the opposition, and the honourable, the House leader for the government, with respect to proceedings in the last few days. We would, nonetheless, like to have the measure before the House in the event that accommodations do not work out in a mutually satisfactory way, in order that this resolution can be brought on, if necessary, to facilitate the business of the House.

**MR. SPEAKER:** The Honourable House Leader of the Opposition.

**MR. GREEN:** Mr. Speaker, I move, seconded by the honourable the member for Selkirk that debate be adjourned.

**MR. SPEAKER:** You have heard the motion by the Honourable House Leader of the Opposition. Is it the agreement or wish of the House to adopt this motion? .

**MR. GREEN:** Mr. Speaker, we have a motion to adjourn.

**MR. SPEAKER:** The motion to adjourn debate.

**MR. GREEN:** Right. Mr. Speaker, just before the honourable member rises with the next motion — just so there is no misunderstanding — my discussions with the government House Leader envisaged possibly passing a resolution in the form introduced by my honourable friend, but with certain of the rules deleted, but it's rather academic if we never get to it, and I'm hoping that that's what will happen. But just so that I maintain some integrity within my own group, I never agreed that

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this motion would proceed as indicated by my honourable friend, I indicated that certain of the rules would be deleted. I repeat, it's academic until we come to an argument, but I don't want it to be understood that I made such an agreement, and I have people to account to in that connection.

**MR. SPEAKER:** The Honourable First Minister.

**MR. LYON:** On the point of order raised by my honourable friend. I hope he wasn't suggesting I was imputing any agreement on his part. What I was suggesting was that the resolution was being moved in the usual way and that accommodations had been made. I'm not suggesting my honourable friend would ever agree to this, we'll probably have to put it through by force majeure, but we'll do it if we have to.

**MR. GREEN:** Well, Mr. Speaker, I don't think it's prudent to talk about such things, because which majeure will be more of more force is not, at this point, an issue. The point that I'm trying to make is that the agreement that the House Leader and I arrived at, which is academic and I don't care, is that a resolution in the form of resolution would pass with certain of the rules deleted, but we don't have to proceed that way. We can proceed as you have suggested and just leave the motion adjourned on the Order Paper. I just want it confirmed that that's what it was agreed to.

**MR. SPEAKER:** Is there agreement then on the motion of adjournment by the Honourable House Leader of the Opposition? Then we'll proceed to the next motion in the name of the Honourable First Minister.

**MR. LYON:** Mr. Speaker, I beg to move, seconded by the Honourable Minister Without Portfolio, the House Leader, that during the present session of the Legislature, the House have leave to sit in the forenoon from 10:00 a.m.

**MOTION presented.**

**MR. SPEAKER:** The Honourable House Leader of the Opposition, or does he wish to await for explanations from the Honourable First Minister?

**MR. LYON:** Mr. Speaker, the explanation is equally brief. This is the customary so-called speed-up resolution which is being moved and placed on the Order Paper for debate, the accommodation of which my honourable friend, the Minister for Inkster spoke earlier is in force at the present time, and should it become necessary to utilize the resolution at least it will now be before the House for utilization.

**MR. SPEAKER:** The Honourable House Leader for the Opposition.

**MR. GREEN:** Mr. Speaker, I move, seconded by the Honourable Member for Selkirk, that debate be adjourned.

**QUESTION put, MOTION carried.**

**MR. SPEAKER:** Can I ask the government House Leader if we would reverse to adjourn debate.s?

**MR. JORGENSEN:** Will you proceed to the adjourn debatee to second reading taking them in order, Mr. Speaker?

#### **ADJOURNED DEBATES ON SECOND READING**

**MR. SPEAKER:** On the adjourned debate on Bill No. 2. The Honourable Member for Point Douglas. (Stand)

#### **Bill No. 3 - An Act to amend The Gift Tax Act (Manitoba) and The Succession Duty Act (Manitoba).**

**MR. SPEAKER:** On the adjourned debate on second reading on Bill No. 3. The Honourable Member for Point Douglas.

**MR. DONALD MALINOWSKI:** Mr. Speaker, if anybody wants to speak they may speak. Otherwise I would ask it to stand.

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

**MR. SAUL M. CHERNIACK:** Mr. Speaker, I think I would have some comments on this bill, and I appreciate the opportunity to speak on it. I want to indicate that this bill has been in the offing for a long time, should be debated; there's no reason for any delay in debating it, and I for one, and I believe members on this side are prepared to debate it, debate it at length, debate it on principle, but not delay the debate at all.

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long time, should be debated; there's no reason for any delay in debating it, and I for one, and I believe members on this side are prepared to debate it, debate it at length, debate it on principle, but not delay the debate at all.

Mr. Speajer, we have said before, and it bears repeating, that the Conservative party is the logical party to be involved in its concern over the question of estate taxation. I don't know the history of estate taxation in any detail, I don't know what government first brought in this legislation. Certainly it was brought in in legislation in the . — probably firstly in England by a government which was neither Conservative or Liberal. But in any event, it was a government, no doubt, which became very much concerned about the fact that there was accumulation of tremendous assets in the hands of the few, that there was a power position being acquired by few people, few groups of people, and that the acquisition of this great wealth was a dangerous and harmful one for a democracy and the development of a viable economy, for a viable state. And the legislation which took place, I presume firstly in England, certainly in various other countries in Europe, in the United States and in Canada, were all a recognition of the fact that it became necessary to ensure a form of redistribution of wealth in order to see to it that the continued accumulation of wealth from generation to generation should not be allowed to go unfettered. In addition to that, there was a recognition of the principle of taxation needing to be progressive, needing to be based on ability to pay. AND£ Mr. Speaker, it is difficult for me — well, I have been unable — to find or assess a form of taxation which is more progressive than that of inheritance taxation. Because, Mr. Speaker, it should be clearly understood, that the persons who are being taxed, under a succession duty Act, are persons who are the recipients of a windfall gift. The persons who are being taxed for succession duty purposes are persons who did nothing to accumulate the wealth, did nothing, in no way, by way of sacrifice, to save that wealth, to acquire that wealth, but indeed only fall heir to it on the death of another person. And that is a logical place for the state to step in and say, just as it does with income taxation, that it is an appropriate time for the taxation to take place. And that, Mr. Speaker, to me is the most progressive form.

It is interesting that those who are most interested in the acquisition and maintenance of wealth who have proven to be most concerned about estate taxation. In Canada under the BNA. Act the right to tax estate tax is in the provinces. And many wise people a number of years ago, in the principle of Confederation, agreed to have a uniform system of taxation in Canada by granting onto the federal government the provincial rights f so that the general overnment could apply succession duty taxation across-the-board in Canada. And because it was a provincial right the agreement arrived at was that the federal government, which would be charged with the imposition and the collection of the taxation, would retain 25 percent of the revenue, and return 75 percent to the provinces in which the estates were taxable. And that continued for some period of time, until the Government of Alberta in its day, decided that it did not wish to retain its 75 percent, and thereupon announced that it would rebate unto the taxpayer its portion of taxation. And this would be typical of the province, in Canada, which has been most Conservative, which is the wealthiest, whose revenue has been the greatest, on a per capita basis, and who has learned to cater to the millionaires of that province, and to the oil barons from other parts of this world.

Mr. Speaker, I must admit I'm surprised that the Minister for Public Works has been quiet for so long, and now that I see that he wants to enter the debate in his usual manner, which means from his seat —(Interjection)— Oh, I must point out to the Minister for Public Works that I didn't notice his absence, and I wish I could continue to not notice the fact that he might be absent so that I could continue without having his interruptions. I suppose, until this moment, I should have expressed pleasure in the fact that the First Minister has been so busy doing what is probably the right thing for him to do, and that is some work, that he would not be interrupting me either, but he already proved that I was wrong.

**MR. LYON:** I've been listening to the same thing for twenty years, you haven't said anything new yet.

**MR. CHERNIAK:** Mr. Speaker, do you notice Mr. Speaker, that the First Minister continues to make his speeches from his seat; and continues to interupt others and continues to show an example, especially to his new members, which I urge them to ignore. Because of all the people in this House, Mr. Speaker, the Leader of the Conservative party is the one who is prone to be probably the most insulting and the one most likely to interfere with the proper decor in this House.

**MR. LYON:** You don't understand Parliament, you don't like heckling, that's your problem. You're too good a Socialist.

**MR. CHERNIAK:** Mr. Speaker, you notice he is still making his speeches, and one would invite him to stand up and make a speech, but I would like to listen to that while he is standing and while he is in order. But while he's out of order, Mr. Speaker, I will have to remind you, Mr. Speaker, that he is the one who is constantly ttempting to distract other speakers and attempting to interrupt them. That is the arrogance with which he is now prepared to operate, and indicated earlier, I think, to the Honourable Member of The Pas, that we too, will have to learn to accept his dictatorship or some similar thought in his mind. —(Interjection)— Mr. Speaker, his insults are continuing to come across, but that is to be expected because he has shown his way. And let the people of Manitoua only enter into this Chamber to see the way he operates.

Mr. Speaker, this government, that has been elected recently, and whose campaign pledge it was

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to deal with the Legislation before us now, is about the fifth government — fifth or sixth government in this country — to give up succession duty taxation. Mr. Speaker, he thinks they're the eighth, and maybe he's right. The fact is, the Premier has a cute way of attempting to mislead the public, and to impart misleading information. He is constantly, whenever asked to confirm that the majority of Canadians are still under succession duty legislation, is quick to note the border of Manitoba. Firstly, it was the western border to say that everybody west of Manitoba is free of estate taxation, and now he is proud to move that important border in his mind to the Ontario-Manitoba border in order to say "Now we are joining the rest of the west." —(Interjection)— Mr. Speaker, I wish he would make his speech on his feet, I have difficulty seeing him when he's standing, I have greater difficulty when he is seated.

**MR. LYON:** You'll get yours later, don't worry.

**MR. CHERNIAK:** Mr. Speaker, after Alberta decided to return a rebate, its share of taxation, and Wacky Bennett then started to talk about similar activity, it was then that the tax reform was being discussed federally, and it was then that Minister of Finance — I believe it was Benson at the time — said a pox on all your houses if you provinces are going to start competing amongst yourselves in a give-away program, and we get the blame for succession duty taxation because we administer it, then for our 25 percent it simply isn't worth it. We could make up our share very easily by giving up that succession duty back to the provinces and we will make up our 25 percent in other ways. And he gave notice that he would do that. Mr. Speaker, I remember we attended a meeting of provincial premiers, I forget the year, it was about 1972 or so in Vancouver, Victoria, rather, and Mr. Speaker, at that time, nine provincial premiers agreed to appeal to the federal government to retain estate taxation. The reason there were nine and not ten, as I recall it, was that the premier of one of the provinces had left shortly before that discussion took place. There was no doubt at that time that it was the desire of the provincial premiers and of the provincial finance ministers that estate taxation, which was recognized as being the most progressive form of taxation, should be continued.

But the federal government continued to take the position that they didn't want to have any more to do with this kind of legislation, and then they gave their notice that they would continue to collect it for a certain period of time but it would be necessary for provincial legislation to take place, which it did.

Mr. Speaker, there was then an erosion of the taxation, in estate taxation, in various other provinces. One of the interesting reasons, I believe, was that the poorer provinces, the provinces which had least to gain in estate taxation, nevertheless had a great deal to gain from the fact that Ontario and Quebec were still in it, because on the equalization of taxation agreements, they were able to collect from the federal government substantial revenues, because of the fact that they could not achieve that great a taxation.

Now, I don't know, Mr. Speaker, even today, because I have been away from it for a few years, whether even today it is not wrong to say that elimination of estate taxation will lose \$5 million. It may be more than that, because I'm not sure, I really don't know how much is now being paid by way of equalization transfer payments for the fact that our estate taxation may be less than that of the national average.

In any event, much of this is academic, except that I must draw to your attention, Mr. Speaker, the clipping that I cut from the November 17th issue of a newspaper, where the headline reads that the legislature session to begin November 24th, "PCs planning \$5.4 million dollars in tax breaks," and on the same page and immediately under that article, "MDC suspends loan program." You see, Mr. Speaker, the new government we have, rushing as it has to enact legislation which will benefit the rich, at the same time ensures that the efforts by the MDC will be thwarted in their efforts to encourage industry and to encourage employment. So we find that the \$5 million which this government is prepared to give up out of estate taxation, which could well be used to stimulate industry and job creation, is being denied in both ways.

In one way, the money is being given up. In the other way, the money is being denied through another instrument of government which could be promoting job creation. And why, Mr. Speaker? Clearly because the Conservatives believe that leaving the matter into the marketplace, encouraging the millionaires to come here, encouraging the people to feel that they can make their bundle here in Manitoba, will create jobs. It would be possible to discuss that on a rational basis if we were now in a position where our production was such as to strain the limits of our productive capacity. But Mr. Speaker, we know full well that in Manitoba, as right across this continent, there is a substantial under-use of the productive capacity. I have heard figures of 40 percent, 60 percent, as high as 80 percent, but not higher than 80 percent, as to productive capacity. So it is misleading to a very great extent to suggest that saying to people who are, in most cases, retired, to people who are passing gifts on to those who have not earned it and who are not really in need of it, is something that is an incentive to job creation. And yet, that is the program that they claim is the purpose of it. And I say the purpose is not that. The purpose is what the First Minister said on one occasion, and I want to try and remember it, something to the effect that the NDP wants to create the sort of equality but not he, he wants it to be more than equal. I remember that phrase, that the First Minister

wants to create an economy and a society where people are more than equal with each other, and that is something I have yet to tussle with because as he says, he is so knowledgeable that he must know the meaning of what he says.

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Mr. Speaker, there is not the slightest doubt that the principle we are discussing in this bill is one which will tend to create a greater disparity amongst people's economic status, amongst people's opportunity to attain a greater equality of opportunity. The mere elimination of estate taxation, in itself, automatically creates a greater disparity between the rich and the poor, and that is what this Conservative Government and this Conservative Party believes in. No doubt about that, Mr. Speaker.

Now I want to make reference to the suggestion of the Minister of Finance, who unfortunately is not present with us this evening, that our leader had stated during the election campaign that his own party was either going to change the limits or get out of it completely. I want to recall that our leader, at the time, commented about the fact that there was a move on the part of several governments, several governments indeed had given up estate taxation, and I think he said that it would only be logical that if the vast majority of Canadians are no longer under estate taxation, that it would not be possible for Manitoba to continue to tax. Mr. Speaker, if the Province of Ontario were to get out of estate taxation, I think it would be very difficult for a province like Manitoba to continue to tax. But that is not the case. Ontario, which has been quoted and referred to time and again as intending to get out, has not gotten out of the estate tax field. Oh, true, some people say, properly, I mean rather correctly, that the exemptions under the Ontario system are greater than ours. Well, if it's the exemptions we want to debate, then by all means. Let us debate the size of the exemptions, let us debate the rates, and let the government, which is the only one in power to bring in amending legislation in tax

matters, bring in suggestions for changes in the exemptions. Indeed, we brought some in as recently as the last session, and at no time did we say that we would not consider bringing other variations in the estate tax field, because there is no question that we cannot stand alone.

We have stood alone, very much alone, for some time in progressive social legislation. We have stood alone, and very much alone, in the field of benefiting those who are less capable to pay in terms of taxation of a personal nature, and I'm glad that the Minister of Public Works appears to be listening to me now, because he is the one who did indicate in the House here some time ago, at the last session, that it may be that the Conservatives were not telling the whole truth when they talked about personal taxes because income taxes, he agreed, were the ones that he said were the highest. But it is true that there are other personal taxes which would reduce the burden of taxation on those of limited and middle income. No, I'm not quoting him, but clearly, that's what he said. Mr. Speaker, that's where we stood alone. But where it comes to taxation of this nature, our former Premier, our leader, said, and I agree, that there could be a time when it would be necessary to reconsider the exemptions, the rate, and/or the continuation. But then, Mr. Speaker, it would be very much like the Conservatives were when Medicare legislation was brought into this House, dragging their feet, unhappy about it but nevertheless doing it. This might well be the reverse if our government, if we were in government and were bound to consider this legislation being withdrawn.

It is clearly a wrong thing to do; it is clearly regressive to do; it is clearly reactionary to do; it is really conservative to do; and Mr. Speaker, it is much premature to do this. Because the fact is that in Ontario and in Quebec, where the vast majority of Canadians live, there is still estate taxation being imposed on those people of Canada who live in those provinces. And I believe that this is a wrong measure to be taken. It will be done, there's no question about it, it will be passed.

I want to comment only in one other respect, Mr. Speaker. I think it was the Minister of Public Works to whom I give credit for participating in the debate so far in the House, unlike the majority of people on his side of the House, who suggested that only the necessary legislation was being brought at this session. When there was an agreement that the Anti-Inflation measures had to come through in legislative form, he then suggested that we should be letting the legislation come through. Why? — because it was a pledge of the Conservative party.

Mr. Speaker, in this legislation before the us today, there is no urgency. The government could, as it did this morning, make a declaration that it will bring in legislation at the next session — at the first session, not the special session as they call it, and this is not a special session — but at the regular session, that they would bring in legislation then which would retroactively affect estate taxation by removing it as of the date that they pick. That would have been easy. And then, Mr. Speaker, instead of our debating this matter today, and for the next few days, we could indeed do, what he himself suggested would be preferable, and that is to get the important business of the House done — when I say important, this is important, but I really meant urgent business of the House done so that we could proceed to . . . no doubt, that they would proceed to prepare for the regular session of the House, where they would be bringing in their estimates. And of course, the fact is the only difference between this session and the one that as yet to come is the estimates process. Other than that, it is a regular session. We are debating the Throne Speech and we are debating bills that have presented to us.

Mr. Speaker, they really need the time to prepare for the estimates process because, Mr. Speaker, they have been very busy giving up revenue at a time when they are the ones who have been caught crying doom and gloom and they are the ones who have been exaggerating the deficit and they are the ones who have been frightening Manitobans with a terrible debt burden as they describe it. They are concurrently reducing taxation. From whom? From the rich, Mr. Speaker. They are reducing taxation in the two most the Income Tax and the Succession Duty Tax. Their progressive forms' are thus forcing a redistribution of the burden of taxation of those who are less capable of paying — not the slightest doubt about that, Mr. Speaker — and they are heading into a session where they have to draw estimates, where they are already preparing us in advance for a deficit budgeting, by saying we are changing our presentation of budget, we are now lumping capital and current, because when you

lump both naturally you will end up with a deficit, and they will thus try to hide from the people of Manitoba any efforts that they could be making to create a balanced current budget. So they are now proceeding to lower taxation, which means to reduce income, and are using phrases such as "benefits" — in this morning's statement by the minister of finance, he said, a further benefit will be \$2.5 million in a certain form of taxation. It may be a benefit to taxpayers, Mr. Speaker, it is a benefit to those taxpayers who are the supporters of the Conservative party. It is a burden, an additional burden on the average taxpayer of Manitoba of low and middle income. I know the Minister of Public Works is going to be speaking when I sit down, and then he will have every opportunity to speak, and I hope I will try to avoid the temptation of interrupting him in a way that he is attempting to do now. I mean, he is now attempting to suppress his own desire to speak, and I honour him for that effort.

So, Mr. Speaker, we have before us, we've now entered into the debate on a very important piece of legislation in principle. I cannot say it is a very important piece of legislation in terms of the amount of revenue involved. But, Mr. Speaker, \$5 million is a lot of money; \$5 million is an amount which it will take a long time for the committee charged with cutting staff and cutting program, and cutting budget to find, without damaging the social programs which have been instituted over the last eight years. Nevertheless, Mr. Speaker, it is legislation which the Conservatives pledged to bring about. It is in line with all the other regressive legislation they've already brought before us. It is consistent with Conservative philosophy. It is consistent with the Conservative efforts to manage the economy their way, and it will be necessary for the people of Manitoba to see what it is that they brought about by deciding that it may have been time for a change. There are so many people, I admit, who said, yeah, you people in the NDP did pretty well but you know after eight years it's really time for a change. Well, Mr. Speaker, we are now seeing evidence of the nature of the change, not the time of it. And nature of it is a consistent approach, one we had expected, one which we are now seeing, and one which we will continue to see over the next four years.

**MR. SPEAKER:** The Honourable Minister of Public Works.

**MR. ENNS:** Thank you, Mr. Speaker. The hour is getting on but I usually can say what I want to say in ten minutes. If I am called upon to use forty minutes, I can do that too. But I stand by my first statement.

Mr. Speaker, I welcome the opportunity of entering the debate at this particular time and on this particular subject. I welcome it for several reasons, because I think that when the opportunity presents itself, where clear and ideological differences between yourselves and ourselves can be debated and demonstrated, then that usually brings about an opportunity for somewhat less heated debate than we have on other occasions in this House and that usually brings about, I would like to think the best in those that participate in that debate. Whether I can live up to that will be judged, Mr. Speaker, by yourself and others.

Mr. Speaker, I must indicate to you, Sir, that I am disappointed that a former minister of finance, who is very knowledgeable about taxation matters, has chosen to speak on this subject and was capable of doing so, without mentioning the word Carter once — not referring to that peanut farmer that lives south of the border, now the president of the United States. I am talking about Carter that reformed the federal income taxation laws in this country, in the mid sixties. — (Interjection) — I also want to remind the honourable member that the minister of finance, of course, takes it as a personal offence just about, that when a government chooses to return back to the taxpayer some of the monies that we collect from them from time to time. He looks upon that as a personal offence when we do that. You know we who pull out of the pockets of our people monies and dollars and dollars and when a government finally has the courage to return some of that money, that is viewed as an undesirable regressive . . . Well, I will refrain from any further adjectives because, Mr. Speaker, I want to approach this matter in a rational way.

But, Mr. Speaker, perhaps the most important objection that I take, and the reason that really points out the differences between us is this; that nowhere in the former finance minister's remarks did he have the slightest regard of the labour, of the love, the dedication, the work that a son will provide to his parents in building up an estate. He regards that and writes it off as simply "windfall benefits." Well, I can tell that minister of finance that any half decent farm in Manitoba took two or three generations to build up. There was no windfall benefits in the first generation to most second generation farmers. But the honourable member for St. John's, of course, would not appreciate that. He thinks that farmers just walk into two section or one section farms, paid up buildings, hundred head of cattle, paid off at the bank. He thinks that when that is passed on to a son, particularly when we have gone through the period of the thirties and difficult marketing problems, that that's just windfall benefits. He is not prepared, he doesn't even understand, Mr. Speaker, the mentality of the number of young Manitobans — and I say young with some quotation marks around it, because I say young at the age of 25, 35, and 45, who are still working side by side with their father in building up a farm enterprise. But when that son happens to inherit that farm and has denied himself the fast wages on a Hydro project or as a professional person, or in the big city, that then is to be construed by honourable members opposite as a windfall benefit. Well, Mr. Speaker, let me just tell them simply, that is why the farmers in this Chamber are sitting on this side of the House and that is why you are sitting on that side of the House. Because you have never understood rural Manitoba, and you never will. And your Minister of Agriculture, despite the fact that no government in the recent history of Manitoba has done more, has poured more money into agriculture than your government did, but no government of Manitoba has received less support from rural Manitoba than your government has



done. And that has to hurt the First Minister, pardon me, that has to hurt the Leader of the Opposition, the present Leader of the Opposition, who I believe has an understanding for rural Manitoba, and I would have to say, and I say that not in an unkindly manner, but I would have to say that he would have to, whenever another book is written about his memoirs of political life, another book is written about his objective view of his past eight years, that that would surely have to be entitled to a chapter of itself, as the single greatest disappointment in his political life. The fact that he has attempted to, and indeed put dollars where his mouth was, in the hands of his Minister of Agriculture, and indeed poured a very substantial amount of money, the Public Treasury, into agricultural constituencies that did not support him, he could have been excused not to put that money in there. Certainly not to put into the hands of the beef growers that rejected him and his ministry of Agriculture by a 77-23 vote as late

as last year. But what I am trying to say, and I don't want to get overly-excited, but the Honourable Member for St. Johns, whom I can forgive, because after all there's a reason why he doesn't understand, and he mentioned some of the reasons today when he suggested that every farmer's son in Manitoba who has worked at one-half, nay, indeed one-tenth of minimum wages for twenty years of his adult life, and I can name you not one, not ten, but fifty, a hundred young farmers. When I say young farmers, I'm talking about my age. I can take you to Manitoba farms today, where I can point out to you men of my age, forty-five years of age, raising a family, that are working for \$100. a month and less, and have done that for the last twenty years. And when you categorize them as receiving windfall

benefits when that family farm is turned over to them, then, Sir, you are badly misreading, badly misreading, the whole understanding of rural Manitoba.

And that, Mr. Speaker, is of course the reason why, without grandiose promises, without 34 million dollars of infusion into beef stabilization programs, why we in the Conservative party promising little, promising little other than work and initiative, can bring into this

Chamber an overwhelming support from rural Manitoba. And gentlemen, that lesson the New Democratic Party ought to be learning just about now.

Mr. Speaker, the other question of course, that I remarked in my initial few opening comments, is the former

Minister of Finance does know. He may tell me from his seat from his seat that the reforms that were envisaged by one Mr. Carter in the mid Sixties with respect to the federal taxation program weren't completely implemented, and I agree with him. But, Sir, certainly the capital gains tax was implemented. Is he denying that? The capital gains tax was implemented, and it now becomes a double form of taxation. That capital gain and the appreciation of land, that capital and the appreciation of a business, is being taxed today. And it is for that reason, and that reason only, why the federal government chose to back away, to back away from the estate taxation field. And for the honourable members opposite not to recognize it, to be able to speak on the subject matter of estate taxes without mentioning the entre, the intrusion, the addition of capital gains into our taxation system is simply wearing blinkers, Mr. Speaker, of the very narrowest description.

So, Mr. Speaker, if honourable members are suggesting that the capital gains tax is not yielding sufficient revenue, isn't being equitably and fairly applied, then let's talk about that. But what concerns us, and what I give my leader red star — pardon me, let's cross that out — gold star marks — I have an aversion to that particular color — gold star marks for is that this government is one of the few governments in Canada today that has the intestinal courage and the guts to reduce and to take away a measure of revenue support, a taxation measure, that all governments, of all political description, find so easy to live with. And I ask people not only in this province, but across Canada, when have you heard of any government, anywhere in this country, taking away a taxation measure lately? —(Interjection)— Well, now, Mr. Speaker, if the honourable former Minister of Finance is suggesting that we should pursue and follow the example set by Saskatchewan —(Interjection)— Well, I'm not allowed to Mr. Speaker, because really for a moment I thought maybe he was suggesting that we from time to time listen, as I think all people in public life ought to listen, even if the advice and the example come from people other than our own political persuasion; in this case, I think the listening that we were doing had eminently good reason and good sense and good logic. We were listening to what was happening in Alberta, we were listening to what was happening in British Columbia, yes, and we were listening to what was happening in NDP-dominated Saskatchewan. And we said to ourselves that if we hope to attract our fair share of capital investment, if we hope to at least pull down some of that capital that is flying over us from the east and landing predominantly in Alberta.

**MR. JORGENSEN:** And being taxed on the way over.

**MR. ENNS:** and being taxed on the way over, although that's a question that we now find that we are being faced with, and my honourable friend the Minister of Finance is having trouble with in terms of the collection of that tax. But nonetheless, if we want to pull and draw some of that down to create some of the jobs that we speak about, then this measure was necessary.

Mr. Speaker, just in the few moments left to me, let me simply point out perhaps really the most fundamental differences between ourselves and yourselves on the question of responsibility of government. Yes, you don't have to remind us and tell us that the removal of the estate taxes, succession duty taxes, affects directly some four, five percent, perhaps even less, of our population. The percent — two percent, whatever. Those figures are available to you, they're available to us, we

recognize them.

But, Mr. Speaker, what it underlies — and I believe it's to be a deep-seated belief on the part of honourable members opposite — they believe that only they and only government can and ought to, and should, be they involved in motivating the economy in a very direct way or in the creation of jobs in a direct way. We don't hold that belief. We don't hold that belief. And we believe that we can show and point out, and use by examples, sufficient jurisdictions where that belief that we hold to is being exercised, that the job opportunities, the employment opportunities, the job creation opportunities, happen to be —(Interjection)— eminently better, and at least —(Interjection)—

The Honourable House Leader is suggesting, "like the United States", Mr. Speaker, I will not even be so arrogant as to suggest that our way is better, but I will tell you one thing. If we can be as good as the United States, then what are we doing with that tremendous overburden of taxation on them? You know, if our level of performance and job creation in this country is to be matched with the United States, and we say well, we're at least on par with them, then really, Mr. Speaker, what are the additional benefits. I know I can think of some immediate ones that our citizens are retaining. But in terms of job creation, and in terms of employment, and let's restrict it to that particular area, then what are we really succeeding in terms of surplus and oppressive taxation? Well, Mr. Speaker, the Honourable Member for St. Johns suggested that this legislation could have waited. Certainly, it could have waited. And I can tell the Honourable Member for St. Johns and repeat what I said last night, it was not the urgency of the passing of this legislation that this session is being called. It could have waited.

**MR. SPEAKER:** Order please.

**MR. ENNS:** —(Interjection)— Or indeed, we could have carried out promises . . .

**MR. SPEAKER:** Order please.

**MR. ENNS:** Mr. Speaker, I conclude my remarks. I have no desire to continue on another occasion—I thank you for the opportunity to speak.

**MR. SPEAKER:** The hour of adjournment having arrived, I declare the House adjourned until ten o'clock tomorrow morning.