

THE LEGISLATIVE ASSEMBLY OF MANITOBA
1:30 o'clock, Saturday, June 8, 1974

Opening Prayer by Mr. Speaker.

MR. SPEAKER: Presenting Petitions; Reading and Receiving Petitions; Presenting Reports by Standing and Special Committees; Ministerial Statements or Tabling of Reports; Notices of Motion; Introduction of Bills; Questions.

ORAL QUESTION PERIOD

MR. SPEAKER: The Honourable Member for Riel.

MR. DONALD W. CRAIK (Riel): Mr. Speaker, I direct a question to the First Minister regarding the flood compensation on Lake Winnipeg. I wonder if he can indicate whether or not some reconsideration can be given to the restriction on the level of aid to those who are cottage owners around Lake Winnipeg.

MR. SPEAKER: The Honourable First Minister.

HON. EDWARD SCHREYER (Premier) (Rossmere): Mr. Speaker, that is one question upon which I doubt that I could shed much light to the Honourable Member for Riel largely because the treatment and procedure will be as it was in 1966 in similar circumstance - the honourable member is aware of the way in which it was dealt with at that time. It happens that the chairman of the board is the same person and we'll be proceeding in like fashion. So I believe that there have been already discussions with the federal representatives on the liaison committee, and we anticipate no problem in terms of covering some damage caused by high lake levels under the Pertinent Buildings Section.

MR. CRAIK: Mr. Speaker, I recognize the First Minister's reply in relation to the past history. I would ask him whether or not this year with the acknowledgement by the Government that Manitoba Hydro through the restrictions on the outflow channel have been responsible for part, even if it's a small part, of the flooding of Lake Winnipeg, whether this does not introduce a new consideration at this point?

MR. SCHREYER: Mr. Speaker, in that case one would have to calibrate the extent to which damage is caused by an additional three inches of water, or whether there would have been a complete of absence of damage were the water level three inches less. In any case, my honourable friend will recognize that under the terms of the Peacetime Disaster Agreement it is not up to the province to unilaterally proceed with respect to any modifications relative to eligibility for compensation.

MR. CRAIK: Mr. Speaker, my question really that I'm aiming at, by way of supplementary, is whether the province is not likely to head off a series of lawsuits this year in view of the fact that it has been acknowledged that hydro has artificially caused some change in the lake of natural lake levels?

MR. SCHREYER: Well, Mr. Speaker, that's open to debate. I can recall for my honourable friend's memory, for his edification, a statement that he himself made in this House about 13 months ago, at which time he was accusing Manitoba Hydro of causing abnormally low levels of Lake Winnipeg because of excessive ponding at hydro electric generation station forebays.

MR. SPEAKER: The Honourable Member for Fort Rouge.

MR. LLOYD AXWORTHY (Fort Rouge): Well, Mr. Speaker, I have a question for the Minister of Mines and Natural Resources. Can the Minister tell us whether the government is in possession of reports or analysis indicating that Dutch elm disease may be appearing in the Province of Manitoba this year?

MR. SPEAKER: The Honourable Minister of Mines.

HON. SIDNEY GREEN, Q.C. (Minister of Mines, Resources and Environmental Management) (Inkster): Mr. Speaker, I did hear some time ago about the possible encroachment of Dutch elm disease in Manitoba. I can't recall that it was this year, that is not my recollection but of course this was some years back. I can check that for the honourable member on Monday.

MR. AXWORTHY: A supplementary, Mr. Speaker. Can the Minister tell us if the Government has prepared any contingency plans to offset the disease and to provide for some reaction or preventative measures to take account of the intrusion of the problem?

MR. GREEN: Mr. Speaker, at the time of the reports that I'm referring to, the response, the technical response was very pessimistic with regard to averting the problems that could be

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(MR. GREEN cont'd). . . caused, and at the time we asked whether any further exploration should be made into the question as to what can be done; there were some responses and I'll give those to my honourable friend as well.

MR. AXWORTHY: Yes, a final question, Mr. Speaker, to the Minister. Has any meetings or discussions been held with different associations involved in the forestry field, like the Manitoba Forestry Association, and so on, to determine whether they are prepared to undertake any kind of action, or what their response will be in this respect?

MR. GREEN: Mr. Speaker, I can't verify that any such discussions were held; I know that the department was alerted, not only by myself but by their own knowledge and by others relative to the problem. I indicated that the response that I got was pessimistic in terms of what can be done to avert it, but certain things were suggested. I will take the honourable member's question, as to whether specific discussions were held with the Forestry Association as notice.

MR. SPEAKER: The Honourable Member for Souris-Killarney.

MR. EARL McKELLAR (Souris Killarney): Mr. Speaker, I'd like to direct a question to the Minister of Mines and Natural Resources, and ask him if the people with flood damage at Pelican Lake, the cottage owners, would they be eligible for flood relief?

MR. SPEAKER: The Honourable Minister of Mines.

MR. GREEN: Not to my knowledge, Mr. Speaker.

MR. SPEAKER: The Honourable Member for Fort Rouge.

MR. AXWORTHY: Mr. Speaker, I have a question for the Minister of Northern Affairs. Can the Minister confirm whether he has received notice from the residents of Anama Bay that they are virtually isolated in their village and that the road is cut-off, and that this will seriously impair their ability to fish this year?

MR. SPEAKER: The Honourable Minister of Northern Affairs.

HON. RON McBRYDE (Minister of Northern Affairs) (The Pas): Yes, Mr. Speaker, I have been aware of that matter for some time and the Water Control people, and the Department of Highways people, and the Emergency Measures Organization, are all aware of the situation, although it doesn't alleviate the hardship that will be suffered by the people there, especially through the lack of tourist trade which many of them are dependent upon.

MR. SPEAKER: The Honourable Minister of Mines.

MR. GREEN: Mr. Speaker, in response to a previous question from the Honourable Member for Souris Killarney, I said not to my knowledge. I don't think there is any harm in them submitting a claim, and if it falls within the category of flood relief, the board will determine it. Offhand I was not aware that they could get it; I know that they've had similar problems for many years and I don't think that they got it before. Perhaps this year with the flood program coming into effect, they shouldn't accept my statement without pursuing it further.

MR. SPEAKER: The Honourable Member for Fort Rouge.

MR. AXWORTHY: Yes, Mr. Speaker, I have a supplementary question for the Minister of Northern Affairs. Can he indicate whether the reports that he's received demonstrated that the residents of Anama Bay are in danger of running short of fuel for their hydro system, or of any form of other supplies, and is the government planning to take any corrective or additional measures to overcome that problem until the roads themselves are made passable?

MR. SPEAKER: The Honourable Minister of Northern Affairs.

MR. McBRYDE: Mr. Speaker, a week and a half ago when the road was officially closed, although they are still able to get through in pick-up trucks, the Emergency Measures Organization was made fully aware of the situation and indicated they would standby to give any assistance they could to that community. The community would wish that that work could be done on the highway to make it open but highway engineers inform us, and I can understand that, they can't do any work on the road of course while it's under water, and the water is extensive enough to prevent them from getting on to the road until the water goes down.

MR. SPEAKER: The Honourable Member for Fort Garry.

MR. L. R. (BUD) SHERMAN (Fort Garry): Mr. Speaker, my question is to the Honourable the Minister of Health and Social Development. I would like to ask him whether it is proving necessary to supplement the nursing staff at the Tudor Nursing Home in Selkirk with any additional staff directed from his department, or any additional help undertaken through the aegis of his department?

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MR. SPEAKER: The Honourable Minister of Health.

HON. SAUL A. MILLER (Minister of Health and Social Development) (Seven Oaks): No, Mr. Speaker, there is no staff from the Department of Health and Social Development. It's my understanding that the staff is being hired, or arrangements are being made by the management of Tudor Homes.

MR. SHERMAN: A supplementary, Mr. Speaker. Is it the Minister's understanding then that sufficient replacements are being found for the psychiatric nurses and help in that area who apparently were leaving their jobs at this time?

MR. MILLER: Yes, that's my understanding, Mr. Speaker. The Health Services Commission is apprised of this matter and I believe they'll be monitoring the situation.

ORDERS OF THE DAY

MR. SPEAKER: Orders of the Day. The Honourable House Leader.

MINISTERIAL STATEMENT

MR. GREEN: Mr. Speaker, could we proceed to the Committee of the Whole on the bill. But before doing so, Mr. Speaker, I wonder if I could project that by Monday night at 8:00 o'clock, we'd be ready to go into Law Amendments Committee on the bills that have now been given second reading, and that being the case, I would like the Clerk to alert anybody who he knows is interested in that meeting, and also if the media in their usually co-operative way would do the same thing. People wanting to make representations could appear before the committee. Monday night at 8:00 o'clock.

MR. SPEAKER: The Honourable Member for Morris.

MR. WARNER H. JORGENSEN (Morris): Only one question, Mr. Speaker, and I presume that what the Minister is referring to is those bills that will be passed by today. I wouldn't think that it would be fair to call bills that may be passed on Monday for Law Amendments Monday night.

MR. SPEAKER: The Honourable Minister of Finance.

HON. SAUL CHERNIACK, Q.C. (Minister of Finance) (St. Johns): Mr. Speaker, I beg to move, seconded by the Honourable Minister of Health, that by leave, Mr. Speaker, do now leave the Chair and the House resolve itself into a Committee of the Whole to consider and report on the following bill for third reading: No. 77, The Statute Law Amendment Taxation Act (1974).

MOTION presented and the House resolved itself into a Committee of the Whole with the Honourable Member for Logan in the Chair.

COMMITTEE OF THE WHOLE - BILL NO. 77

MR. CHAIRMAN: Bill No. 77, The Statute Law Amendment Taxation Act (1974). What is the will of the committee, page by page or clause by clause? Clause by clause. Fine, thank you. I'll just wait a moment here till we get the proposed amendments distributed. None till we get to Section 9. Can we proceed.

Clause 1--passed; clause 2(a)--The Honourable Leader of the Opposition.

MR. SIDNEY SPIVAK, Q.C. (Leader of the Official Opposition) (River Heights): The Minister has already indicated the way in which this particular section will operate, and I'd like to understand from him, is it the intention for the government to essentially provide an I.D. card for treaty Indians?

A MEMBER: No.

MR. SPIVAK: It will be their own card itself, that is their own registration number. And just for the information of the House, and for my own information, that is issued to them by the Federal Government as an I.D. card itself. If I'm correct the Saskatchewan Government refers specifically to I.D. cards, and I believe that they were provided by the government. --(Interjection)--You're not aware of that, no? So that the practice really then will follow the practice of Saskatchewan, although the section in the . . . --(Interjection)--Yes, but you are allowing purchase off the reserve. . .

MR. CHERNIACK: For delivery on reserve.

MR. SPIVAK: . . . for delivery on reserve. But in any case, you know, there still would have to be the establishment between the seller and the buyer that the buyer at that point is

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(MR. SPIVAK cont'd) entitled to, even if it's been delivered to the reserve, to be able to qualify as an Indian under this section. So that it will be the Federal Government's card that has to be used.

MR. CHAIRMAN: (Clauses 2 to 5 were read and passed.) Clause 6--The Honourable Leader of the Opposition.

MR. SPIVAK: Can I understand something? Was it not the intention of the original Sales Tax Act that in effect the property purchased outside of the province would in fact be taxed. In other words, is this really a new declaration of policy, or is this really reducing in writing something that was considered to have been the law before but may not have been enforced?

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Yes, Mr. Speaker, that's correct.

MR. SPIVAK: My purpose isn't delay, but if that was the case may I ask then, why is it necessary to reword this particular section? Has it come as a result of a particular set of circumstances or just a review by the Legislative Council of the wording of the Act itself?

MR. CHERNIACK: Well, Mr. Chairman, I'm informed that it was felt advisable to clarify the definition of railway rolling stock by limiting the exemption.

MR. SPIVAK: I'm sorry, I meant six.

MR. CHERNIACK: Six. Oh, this is a transfer from the regulations to the Act of the exemption, that's relating to the \$100.00 or less, and it was in regulations but under the recommendation of the Standing Committee on Statutory regulations it is being brought into the Act. It's the same procedure, but as the honourable member recalls, there are occasions when Legislative Counsel advises it ought to be in legislation rather than a regulation. I'm sorry, I misunderstood the point being made.

MR. CHAIRMAN: The Honourable Member for Riel.

MR. CRAIK: Mr. Chairman, with regard to the railway definition, if I can just ask about that. The Minister's reply this morning dealt with the matter of the--(Interjection)--Oh, we're actually on 4, the one that you were going to reply on.

MR. CHAIRMAN: We're on 6.

MR. CRAIK: We're on 6, Mr. Chairman, I agree with that. I wondered if I could ask the Minister a question with regard to 4. I think he answered the question this morning with regard to the motive fuel tax - We can ask it there too - but there is a section in revenue tax 4 that applies to the railroads as well. In the prior definition, as far as I could determine, the likes of the Prairie Dog Special did actually fall under the former definition, therefore were exempt from paying revenue tax. They now no longer are because they're--Mr. Chairman, the Minister this morning I believe was replying with regards to the motive fuel tax when he was talking about the Prairie Dog Express. What I'm really trying to find out here is, what railway would be now subject to the revenue tax? Does this imply that such as the Greater Winnipeg Water District are going to have to pay revenue tax, and only--Does all this do is exempt C. N. and C. P. from the revenue tax?

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Yes. This exemption is limited, or does limit the exemption to railway companies who are common carriers normally entering into interprovincial or foreign trade. The point is made is that under present wording, it could be argued exemption might be granted to anyone operating a railway for movement of their own goods such as a mining company, so the honourable member is correct in saying that this clarification includes any doubt that local railways within Manitoba are not exempt, as they are exempt.

MR. CHAIRMAN: The Honourable Member for Riel.

MR. CRAIK: Mr. Speaker, perhaps a technicality. The Greater Winnipeg Water District Railway travels down to Indian Bay, Ontario. Is it interprovincial?

MR. CHERNIACK: It doesn't go into Ontario.

MR. CRAIK: Isn't Indian Bay in Ontario?

MR. CHERNIACK: It's the smallest railway in the world listed in the Railway Almanac.

MR. CRAIK: The railways of the mining companies are now taxable under the Revenue Tax Act?

MR. CHERNIACK: Mr. Chairman, I can't accept the comment that they are now taxable. I believe they always were, and this clarifies it.

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MR. CHAIRMAN: (6)--passed; (7) - The Honourable Member for St. James.

MR. GEORGE MINAKER (St. James): Yes, I have a question to the Honourable Minister. Is the Greater Winnipeg Railway now paying a tax under the present setup?

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I'll have to take that as notice. I don't know if that question is a valid one under the bill. But I don't mind taking it as notice to find out. The question was not "should they", the question is "are they?" I'll have to check that.

MR. CHAIRMAN: 7 4(12) (a) sub (i) - the Honourable Member for Riel.

MR. CRAIK: Mr. Chairman, in the second reading stage I asked the Minister whether the native communities themselves, or the Indian Brotherhood, had been pressuring to have this introduced; and secondly; whether or not this legislation, that provided the Treaty Indian residents with the exemption from sales tax, wasn't getting pretty close to a contradiction of the Human Rights Act, Bill No. 90, that we're looking at concurrently, and he hasn't commented on the government's position with regard, you know, to those two items, and I wondered if there was any answer, first, with regards to the Indian Brotherhood; and secondly, the Human Rights Act.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I think the Indian Brotherhood has not only this year but on several occasions asked for exempt status and pointed out, correctly, that Manitoba was taxing where British Columbia, Saskatchewan, Ontario, New Brunswick, Nova Scotia, were all exempting sales on the reserve. Most of those were also exempting delivery to reserve, and some were exempting sales off the reserve. We discussed it with them, we discussed it amongst ourselves, we realize there might be enforcement problems. The honourable member now raises the question of human rights, and the feeling was that we should not exempt sales off the reserves but we could exempt sales on reserve, or delivered to the reserve, on the basis that treaty Indians on reservations do have special status, as recognized by federal legislation, and that therefore they do have a difference in their liabilities, in both the advantages and disadvantages of Manitoba as compared with other Manitoba residents, and we accepted this principle in this legislation. May I say that I believe that this government has expressed itself frequently on saying to the Federal Government, we think it's high time that the responsibilities, the attitudes towards Indians should not be different, but we of course expect the Federal Government to honour the longstanding obligations in a continuing way through the province rather than on their own, in which case there might not be the problem raised by the honourable member.

MR. CHAIRMAN: 4 (a) sub (i)--pass; (ii)--pass; (a)--pass; (b) sub (i)--pass; (ii)--pass - The Honourable Leader of the Opposition.

MR. SPIVAK: I wonder if I can have - (b) (ii) - the tangible personal property, which in the opinion of the Minister is for commercial use. I would like to understand the application of that section if I may.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: The purpose there is to make it clear that if there is someone on the reservation that is operating a business, then the tangible personal property which is used in connection with the business, let's say a counter, a chair, a typewriter, whatever is used as a business operation, or in the business operation, is taxable because it's part of a business rather than personal use, and since it really proves very difficult to define it, then it was thought that we would have to do it in this way.

MR. CHAIRMAN: (ii)--pass; (iii)--pass; (b)--pass 4 (12)--pass; 4 (13) - The Honourable Leader of the Opposition.

MR. SPIVAK: I would like an explanation of this, particularly the question that the seller of the tangible personal property must provide the purchaser with a signed statement of exemption in a form prescribed by the Minister. I'm sorry. The purchaser must provide the seller of the tangible personal property with a signed statement of exemption in a form prescribed by the Minister. Now I gather they are going to simply provide the I.D. cards from the Federal Government. Now where will they have a form from the government of an exemption.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, already arrangements have been made with the

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(MR. CHERNIACK cont'd) various bands that there will be a form which the purchaser will leave with the seller so that the seller will have some evidence available to the inspector that a sale has been made under these circumstances, and that is the form which has to bear on it the identification of the purchaser. But the seller certainly has to be able to show to the inspector that either tax was collected, or it was exempt, and the basis on which it was exempt. And that form has already been prepared, and the bands already have it, and I understand that they're prepared to operate in that way.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: . . . so that I can understand it, that means that a treaty Indian at the time, or an Indian defined under this Act, at the time of purchase will have to produce a form from the government for all purchases which he provides to the seller, and that form will be the authority and the identification of his number for sale by the seller and the exemption of the sales tax. I assume that that you're suggesting is that that would be in all cases or this would only apply off reserve--(Interjection)--off reserve, so that's all the cases off reserve for anything that's purchased. Now again the experience of the other provinces in relation to this, is this the way in which they operate, and in many respects is this a feasible kind of operation, both from an auditing point of view and for the number of transactions that are likely to take place in any given year?

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, that is the very point of the flexibility that's provided by this section because it would be unwieldy I'm sure to provide for every dollar sale on the reservation. So it is really designed as a protective measure, and it's something we will probably have to change from time to time as we live through the experience of administering this exemption. I would think that we will have to study it and watch it. I think the main purpose is when it's purchased off the reservation for delivery on, then clearly that has to be watched carefully and changed as circumstances require it. Now I did mention earlier in response to a question from the Member for Riel that I can see enforcement problems, and I do, because you can't have an inspector sitting there all the time watching it, and there will be problems.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: The point that I make now with respect to this specific section, recognizing the government has not worked out the details of it and that there's probably some experience that is required, is that in effect a seller does not have to sell to a purchaser who says that there is to be delivery to a reserve and therefore the sales tax is not payable, unless this form is provided, and as a matter of fact there will be an obligation on the part of the seller not to sell. And until this is really worked out, bearing in mind a situation where there would be a reserve very close to an organized community and the purchasing would be done in the normal way in any town or city, there can be just, you know, a multitude of purchases on any given day, and it would seem to me that it's not only a question of the enforcement in one case or the other, the seller really cannot legally sell, even if the assumption is that the person is entitled, unless that form is produced, and I wonder if the government is really prepared for the kind of administrative problems that are really going to arise in this particular section as it is worded now.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, firstly I was in error when I said that bands have the forms. I have seen the forms and that's why I assumed they had them. I have seen a draft of the circular sending them out but they have not yet been distributed, and when distributed they will be discussed with the bands on that occasion.

In answer to the major point being made by the Honourable the Leader of the Opposition, I would point out that that is why we are providing that this section will come into force on proclamation, because we still have to work out all the mechanics, and I'm sure that we will not have them completely worked out because there will be the problems such as suggested by the Honourable Leader, and which we will continue to have to examine and vary as circumstances require it.

MR. CHAIRMAN: 4 (13)--pass; 4 (14)--pass; (b)--pass; (c)--pass; (d)--pass; 4 (14)--pass. 4 (15) (a)--pass; (b)--pass; 4 (15)--pass; Section 7 in its entirety--pass.

Clause 8 12 (5) (a)--pass - The Honourable Leader of the Official Opposition.

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MR. SPIVAK: This is really a substitution of the--(Interjection)--8 12 (5). This is a substitution really of a previous section and I wonder, and it would appear from our reading to indicate that this would not only be for provinces within Canada but really for governments outside of Canada, including state and federal governments. Is that correct?--(Interjection)--The Minister indicating. I wonder as a matter of practice, and I gather from discussion with the Legislative Counsel prior to this committee meeting that these arrangements are really made as a result of an exchange of letters, that is, there are no formal agreements that are arrived at with respect to this. I wonder if the Minister can confirm this.

What we're really dealing with is essentially confidential information obtained by the tax division which is released to another jurisdiction, another taxing jurisdiction, and I am concerned about a principle involved here and I'd like to deal with that, but I'd like to understand specifically if there are formal agreements, or is it just a clear understanding, or does one ask for reciprocal legislation to be able to know that they're his right; and then, Mr. Chairman, I'd then like to deal if I could just with the principle involved in the releases of information in which I believe the taxpayer and the public should be protected.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I'm going to wait until I have received more information. I think I have the answer - and I'll have it soon. I would point out that the proposed subsection (b) makes it incumbent on the Minister to be satisfied that the information when given will not be used for any purpose other than the proper administration, so that there is a responsibility placed on the Minister whether it be by letter or by agreement, or otherwise. But I will expand on this question and if the honourable member wishes to wait until I have an answer we can skip to another section, unless Legislative Counsel has something.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: Mr. Chairman, what I'd like to do is talk about the principle. If there is a reciprocal arrangement . . .

MR. CHERNIACK: May I just add this one thing.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: That to my recollection up to now there's always been an agreement but Legislative Counsel points out that under this legislation it could be by letter. But as I recall it - I just signed one recently I believe with the Province of Quebec - it was an agreement.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: The point that I would make would be that the agreements, or the exchange of letters with any province or state or Federal Government - I'm thinking particularly of the United States - should be such that it would be automatically available and filed in the Legislature to be a matter of record. It would seem to me that with respect to the matter with what we're dealing now that it's important that at least the principle be established, that these agreements with respect to the exchange of information, and I appreciate and understand the reasons for it and I'm not questioning the authority of the government to do that, or to be able to have the power to do it, but as a matter of right, or as a matter of the normal course, that they be tabled in the Legislature and as a matter of record, both for the members of the Legislature and for anyone who desires that information, and I wonder if the government could see its way clear to provide that, and that would be a very simple provision here. So that the information would be known and there would be no way in which this agreement could be used to go beyond the purpose, because it's all-encompassing in a very real sense, and while in any way there's not a suggestion that this will happen in the case of this government, or in the case of another government, it could happen, and I think it would be important to place a clause or a provision that it be tabled and be a matter of record.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, is the honourable member suggesting that it will not be effective until after it's filed? Well, then, what is the protection that it will be filed, and to what extent does it encumber the Legislature? I'm not sure--would it then be--is the honourable member suggesting that every agreement entered into would be filed or would be tabled just like annual reports of various companies are tabled? Or would it not make more sense that somehow or other there'd be a report made that it is filed, or possibly an Order-in-Council. I'm not rejecting the suggestion but at the same time I don't think we want to encumber

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(MR. CHERNIACK cont'd) the procedure of this House or the good administration of the government. I have no objection to notice being given, to having it made available; possibly it should be done by Order-in-Council; but other than that I don't think that it's of that kind of magnitude that it has to be brought into this House, otherwise there could be so many documents that keep filtering through the House that I know will never be looked at.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: Well, Mr. Chairman, as a matter of procedure, there will be no objection to it being completed by Order-in-Council so that as a matter of fact it would be a public record. That's one way. I indicated in the House, or on the matter of being on the record--or a matter of being a public record, I think that the principle involved here is the question of privacy and the question of confidentiality, and the fact that the state should not be in a position to in any way unnecessarily molest - and I'm not suggesting that's the intent of the Government - molest any taxpayer under any given situation.

Now, having agreed that the power to be given should be given as a check, and only as a check, that there would not be an abuse of a reciprocal arrangement which could occur in connection with these clauses, there should be some public declaration available to the members of the Legislature or to anyone who is concerned, or anyone acting for anybody in his behalf, to know the arrangements in which the information could be given back and forth. And so, Mr. Chairman, if the government, you know, and if the Minister would agree that this should be done by Order-in-Council so that it becomes both approved by Cabinet and documented in a public way, I would agree as well. I'm not concerned that it be put in the Legislature for the sake of the Legislature debating it. I am concerned that so far as this particular section is concerned that there should be some matter of record of what information is to be communicated and the essential procedures in which it's to be followed.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I have sympathy with the point being made but I would feel it irresponsible for me just to accept it and change the legislation without consideration and consultation of my staff. I think I'd better have that precaution because what I agree to now will affect future years and I think we ought to be careful. I will undertake to discuss that, but then I don't promise as to what will be done. But I am in sympathy with the question raised.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: Well, I accept the fact that the Minister requires a consultation. I'm not in any way suggesting there shouldn't be and I think we should finish the Act, and that before we deal with it it's possible that this matter can be held until he has the confirmation, or a discussion, and the confirmation one way or the other. I think this is a pretty important principle.

MR. CHERNIACK: Leave it in committee?

MR. SPIVAK: Well, I'm simply saying I'd like to--I don't know how much progress we'll make today. I make the assumption that we'll complete the study today and this is fine, but I would hope that there'd be an opportunity for him to review it before there's any definite--yes. Well, on the subject of the ability of being able to amend if we can.

MR. CHAIRMAN: Do you wish to proceed with Clause 8?

MR. CHERNIACK: Well, Mr. Chairman, let's get it clear. Is the honourable member suggesting we do not pass this section, or we pass it with the understanding that I will be coming back to report, either privately to him or otherwise?

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: I accept the fact that it has to be discussed with the Minister's staff. I think that the principle is a very important one and I would hope that it be set aside and we deal with it . . .

MR. CHAIRMAN: Agreed? Clause 9 13 (4) (a)--pass; (b)--pass; 13 (4)--pass; 9--pass? The Honourable Minister of Finance.

MR. CHERNIACK: Sorry, Mr. Chairman.

MR. CHAIRMAN: I believe you have an amendment.

MR. CHERNIACK: Yes. I guess I have to read it all into the record, don't I?

I move that Bill 77 be amended by adding thereto, immediately after Section 9 thereof, the following section:

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(MR. CHERNIACK cont'd)

Subsec. 17 (7) rep. and sub.

9.1 Subsection 17 (7) of the Act is repealed and the following subsection substituted therefor:
Copies as evidence.

17 (7) Where any book, record or document has been seized, examined or produced in accordance with this section, the person by whom it is seized, inspected or examined, or to whom it is produced, or any officer employed under the minister, may make or cause to be made one or more copies thereof and shall, upon request by the person from whom the original book, record or document was seized, or by whom it was produced, in any case where a copy thereof has been made pursuant to this section, send a copy thereof to the person or, if no copy thereof has been made pursuant to this section, allow the person, at any reasonable time, to have access to the book record or document so seized or produced, and a document purporting to be certified by the minister or a person so authorized by him to be a copy made pursuant to this section of any book, record or document seized, inspected, examined or produced is admissible in evidence and has the same probative force in any court or inquiry as the original book, record or document would have if it had been proven in the ordinary way.

So, Mr. Chairman, if I ever saw a section which is so clear and apparent from the reading of it, this is it. However, it's true that my voice may have been so dull as not to give the full import.

Mr. Chairman, what was added is the provision, the point that was raised by the Honourable, the Leader of the Liberal Party, who talked about the problem of books and records being seized and then the taxpayer, whose records they are, having difficulty of access to them. And therefore the middle portion that appears in this amendment was added by Mr. Tallin to provide that copies may be made available to him, or access given to him, so that he is not encumbered or frustrated in the normal operation of his business by not having access to his own books. Now, Mr. Tallin is explaining it in more detail to the Leader of the Opposition and I trust that he can straighten it out.

MR. CHAIRMAN: The Honourable Member for St. James.

MR. MINAKER: Thank you, Mr. Chairman. A question to the Honourable Minister. Not being a lawyer but reading this for the first time, would it not be in order that if the Minister or the person so authorized has the power to certify this document as correct, would it not be in order for the individual who the document was taken off of, to also have the opportunity to certify it as correct on that copied document, possibly in the presence of a lawyer or a proper attorney to safeguard the individual and also to safeguard the Crown? That if a document is seized and copied, and the Minister or his designate has the authority to certify it's correct, should the individual who the document has been taken from have the authority or the right to also signify on that copied document that it is correct?

MR. CHERNIACK: Mr. Chairman, the explanation I've received is that this provision is in evidence and is subject to challenge, such as could be done by any person who questions whether or not it indeed is a proper copy, but it is evidence only which can be challenged and rejected, and Mr. Tallin believes that it may create too much cumbersomeness if on every occasion it is necessary to obtain the other. But this is straight out of the existing section, is it not? This portion is not new.

MR. CHAIRMAN: The Honourable Member for Morris.

MR. JORGENSEN: Mr. Chairman, I wanted to raise a point of order. I note that the section that is now before us for amendment, Subsection 17 (7), is not contained within the bill, and I question whether or not it is in order to introduce an amendment to a section that is not contained in the bill that's before us. Now, I don't want to impede the progress of the committee and I don't want to make things more difficult for the Minister, and we're prepared to grant him leave to introduce this section, but I don't want it established that it is possible for a Minister, at any time after a bill has been introduced in the House, to then subsequently come into committee and introduce amendments that are not contained in the bill. But I say now that we're prepared to allow him leave to introduce this section as long as it is not accepted as a precedent that can be followed at any time that the Minister chooses.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I will accept the comments made by the Honourable the House Leader of the Conservative Party, my understanding being that his statement that it

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(MR. CHERNIACK cont'd) is not admissible is also not accepted as a precedent, and that therefore the question as to whether or not to do this is yet to be debated at a time when there may not be agreement. But I am not prepared at this stage to say he is right in challenging the admissibility of this; I'm just prepared to say that it's a moot point and, since there's no quarrel about it being admissible in this particular case either by leave or otherwise, then by all means let's proceed.

MR. JORGENSEN: I don't want the impression to go unchallenged that a Minister at any time after introducing a bill to amend a bill, can, after second reading and the principle of the bill has been introduced and passed, then introduce amendments that are extraneous to the contents of the bill to amend. I think that is a principle that has been well established and one that should be unchallenged. I think that a decision on this point must be rendered by the Chairman right now before we proceed further and, as I say, we're quite prepared to allow this thing to go, by leave, and I think that's the only condition under which it can be acceptable.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, if it is done that there is no objection raised to this being presented, then it still leaves that question to be debated at another time, but I do not think that it would be proper for us now to say that the Minister cannot bring it in, because the fact is that this bill before us does provide for the right to seize the books and records of a taxpayer, and that is the principle. The Leader of the Liberal Party said, "Well, all right now, you have the right to seize. I think there ought to be a requirement that you make the books available once having seized them." And to me this amendment that we brought in is in accord with the point he made relating to the principle of the bill. Therefore, I am satisfied in my own mind that it does not fall--or it actually falls within the category of what is an admissible amendment at this stage, but there's no real disagreement apparently as to whether or not it goes in, and I don't think it's right for us to debate now a hypothetical situation where under other circumstances the House may not be in agreement as to whether or not an amendment is admissible. I'm suggesting that the debate on whether or not it's admissible can only take place at a time when there is a disagreement about whether or not it should go in.

MR. CHAIRMAN: The Honourable House Leader.

MR. GREEN: Well, Mr. Speaker, I think that the Honourable Member for Morris raises a valid point and I think that what we're saying is we're prepared to accept his magnanimous attitude at this point to have it done by leave, but we don't want to exchange, the attitude to be a matter of exchange. And I do not think that it is a wise course to sort of accept that a ruling now on a future argument, on which I think that the honourable member has a good point, should be made. I think the honourable member will have an opportunity, if the time ever arises that an attempt is made to do something which he objects to and is extraneous to the bill, that that's the proper time to get a ruling, and in the meantime, rather than arguing whether it is or is not extraneous, that the honourable member has indicated that he'd like to give us leave, and I think that when the time comes, that a ruling should only be made when there is an issue as between the parties. What I think the honourable member was sort of hoping for at this stage, that we can get a ruling and leave then be given, and I would prefer if he would give us leave, as he seems prepared to do, and we'll fight it out when the time comes. I think that the honourable member is making a strong position but the position should be ruled on when it is being made on an issue where it is not a moot point.

MR. JORGENSEN: There's only one further comment I want to make and that's in response to the statement made by the Minister of Finance in which he said that the Leader of the Liberal Party had suggested that this could be done and should be done. I don't want him for one minute to think that I recognize the Leader of the Liberal Party as an authority on the rules under any circumstances. (Laughter)

MR. CHERNIACK: Mr. Chairman, since I agree with the honourable member, I point out that the Leader of the Liberal Party made the point as to what is missing in the Act. I don't think he had the nerve to suggest how we could bring it in. All he pointed out was a valid point in relation to administration of the Act.

Mr. Chairman, I'm having a bit of a problem in my mind. I wonder if we could revert back for a minute to the section we left in abeyance, which is just preceding the one we're dealing with. Oh, well, we'd better deal with this first and, yes, I've . . .

MR. CHAIRMAN: Can we deal with the new clause that you have moved by leave? 9.1, 17 (7)--Pass? The Honourable Minister of Finance.

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MR. CHERNIACK: Mr. Chairman, I just want to clarify something. I'd feel awfully foolish if I were wrong. One of my colleagues suggests that I could have my staff present here to respond, but that's not my understanding. I thought it was not acceptable.

MR. CHAIRMAN: It is my understanding that any time that the House is in committee. Committee of the Whole or Committee of Supply, that the staff are permitted to be in here, and I would suggest that if the Minister has some difficulties, that he invite his staff to come down and take part.

MR. CHERNIACK: Oh, well then, that would certainly speed it up. I thought it only applied to the Estimates review and therefore I was wrong, and they'll be coming down and it'll speed up. Well let me start while they're on their way. I kind of sort of miss looking up at them, but I'll look down at them. I still look up at them even when I look down. Mr. Chairman, let me . . .

A MEMBER: You look up to a higher authority.

MR. CHERNIACK: Yes, but I look up to them when they're physically below me.

Mr. Chairman, I would like to go back to Section 8, if I may, which has been left open, and point out the problem apparently which is that as compared with Canada, where there is no problem, a formal agreement with a U.S. state can only be drafted between External Affairs at Ottawa and the United States Department of State, but that it is quite possible and has been done, that informally agreement can be arrived at and terms can be stipulated - but it would be informal. Now that is the reason why I had received the signal saying that it would be difficult to tie it down to an agreement. However, I'm still prepared to discuss a means whereby we can make public the fact that we have entered into an arrangement, be it formal agreement or otherwise, and I'm not sure what is the best way of doing it - maybe the Manitoba Gazette, maybe O.C. I don't want to make it difficult--(Interjection)--Well, there's a valid point. The Honourable Leader of the Opposition was a member of Cabinet and knows how you can get bogged down with O.C.'s that possibly could be Gazetted. Possibly Mr. Tallin can suggest another form.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: There are a number of amendments to this Act which basically contain the same section, so what we're really talking is some uniformity in tax legislation with respect to that. And Mr. Chairman, what you're really talking about is arrangements that may be arrived at even verbally, or in addition to or in furtherance of the formal agreement between External Affairs and the State Department, and it would seem to me that there should be some kind of publication, and while I appreciate the fact that Cabinet have Orders-in-Council to sign, I think that the recognition--it was the Minister's suggestion, the Order-in-Council. I don't care whether it's tabled in the Legislature, I don't care where it is, it's a matter of record, that's all. Gazette is fine. I have no objection to Gazette.

MR. CHERNIACK: Well, Mr. Chairman, let's agree that it could be done in the Manitoba Gazette by way of a notice, and maybe that's the best way. That's public and the public knows that we now have a reciprocal arrangement. The question then is, does it go into legislation or does it go by the staff knowing it, and if so . . . ? I don't care; I just don't care how it's done as long as it is done to the satisfaction of the principle of public information.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: I would accept the Gazette as a reasonable basis and I would only hope that the Legislative Counsel in a few words can put it into this clause and the others.

MR. CHERNIACK: Well again, Mr. Chairman, if we can't do it during committee, then if the Legislative Counsel could signal to me that it can be done, given time, then I could bring it in on third reading. All right. Then may I suggest, Mr. Chairman, that for the purpose of the committee we could pass this section on the understanding that at least, or at latest by third reading, we'll bring in an amendment for all the sections relating to this. The Legislative Counsel has indicated that this is possible.

MR. CHAIRMAN: Just before we proceed, I would like to draw the honourable members' attention to a section of our rules to the gentlemen who are already here, that the rules are quite explicit it would be by leave. I'll read you the pertinent section. It's in Rule 65 (5) of our House Rules: "When Departmental Estimates are being presented by the Minister in Committee of Supply, such officials of the department as required by the Minister may be admitted to the Legislative Chamber and be permitted to sit at a table placed on the floor of

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(MR. CHAIRMAN cont'd) the House, in front of the Minister, after the first item in the Minister's salary is passed." So really what we have, these honourable gentlemen are here. Now if the House wishes to give them leave to stay--by leave? (Agreed)

MR. SHERMAN: Just give me that rule number again, Mr. Chairman.

MR. CHAIRMAN: 65 (5).

MR. SPIVAK: Mr. Chairman . . . leave that aside and I would hope that this would be referred to the Rules Committee so that it will be formally placed . . . that this can occur again. It would be a mistake not to correct it this way.

MR. CHERNIACK: Well now that's fine, Mr. Chairman. I will be not pleased, but satisfied that I was right in the first place, but it's good to have them here.

MR. CHAIRMAN: Clause 8, 12 (5) (a)--pass; (b)--pass. (Clauses 10 to 22 (d) were read and passed.) (e)--The Honourable Member for Riel.

MR. CRAIK: The Minister has replied, in closing second reading, to the questions that were raised here with regard to where the moneys are payable to, and with the Legislative Counsel here I wanted to clarify a point at this point. I gather from the Minister's reply that money paid to the Consolidated Revenue Fund means the same thing as "for the use of the Crown." There is no distinction to be drawn between the two wordings?

MR. CHERNIACK: . . . the note that I have, that the Legislative Counsel believes that to be the case.

MR. CRAIK: Well, Mr. Speaker, a specific question then: With this wording then, "for the use of the Crown," if moneys are collected through what normally would be considered revenue to the Government, is it possible for the Government to direct that money to one of its agencies? And let me use a specific example. If Manitoba decides that it's going to divert or wanted to divert part of the tax on gasoline directly into the Public Insurance Corporation, is it possible with this wording to do that without asking for a special Act of the Legislature?

MR. CHERNIACK: Mr. Chairman, the right so to do would have to be under either legislation or by an appropriation in the estimates; that's the only way you can get money out of the Consolidated Revenue.

MR. CRAIK: Well, Mr. Chairman, can I use that specific example then just to get it narrowed right down? If the Government decided that it wanted to divert part of the gasoline tax, rather than into Consolidated Revenue, if it wanted to designate part of that gasoline tax to the Manitoba Public Insurance Corporation in order to reduce insurance rates on automobiles, such as has been done in Saskatchewan and B. C., could they do that as it is now or was in the past, without coming back to the Legislature and asking for authority?

MR. CHERNIACK: Mr. Chairman, this gives me an opportunity to say that I favour the idea of assessing the cost of insurance against users to the extent that they are users, and one of the good ways of doing it is by a mileage charge related to gasoline tax, so that where the Honourable Member for Riel seems to say "in order to reduce," to me it's another form of paying premium, one that I personally like and hope we'll have a chance to discuss it. The answer to the question itself is that we will have to have an opportunity to discuss it before we do it, because it would either have to be in the appropriation under the estimates or it would have to be by legislation, which does not now exist to my knowledge--well I'm sure it doesn't. Therefore the answer to him is no, we cannot do it without coming to the Legislature, and frankly, I informed the Honourable Minister responsible for Insurance that I would support his investigation of that very idea, which I think makes a lot of good sense.

MR. CHAIRMAN: The Honourable Member for Riel.

MR. CRAIK: Mr. Chairman, I'm not attempting to debate whether it's a good idea or not; I'm simply using it as a specific example to clear up the wording. The normal procedure, as I recall, is that you designate moneys coming in to the Consolidated Revenue of the Province as opposed to the Crown, and I'm not debating whether it's a good idea to divert money to one agency such as MPIC or to another one, I'm simply trying to ask for guidance here as to whether or not this wording does anything different than the rights that existed before.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I think it's good policy not to debate a verifiable fact or opinion, and I would think that the opinion of the Legislative Counsel is more valuable than mine on the interpretation of Statute, and therefore I can only repeat that I'm informed that Mr. Tallin believes that this puts the money into Consolidated Revenue and that the wording

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(MR. CHERNIACK cont'd) is traditional and clear, and I think he nodded his head and if he didn't--yes, he's nodding his head. I can do no more than that. I'm not going to debate with the Honourable Member for Riel or anybody else whether the Legislative Counsel is right or wrong in this point. I accept his interpretation and his word.

MR. CHAIRMAN: The Honourable Member for Riel.

MR. CRAIK: Let me narrow it down again, Mr. Speaker. I gather then the answer is that if a decision such as that was going to be made, it would have to show up in the Legislature either in the Estimates or as legislation, one way or another.

MR. CHERNIACK: That is my belief, yes.

MR. CHAIRMAN: (e)--pass. 17 (4)--pass. Clause 22 in its entirety passed. (Clauses 23 and 24 were read and passed.) Clause 25 (1) (a)--pass--(Interjection)--Clause 25, the section that is being amended is 21 (1) at the bottom of Page 10. The Honourable Leader of the Opposition.

MR. SPIVAK: Mr. Chairman, I spoke on this on second reading and in dealing with this I did not deal with it in the way that I should have as the honourable minister realized, I had to leave and as a result I made reference to it but not to the extent that I would like to have.

I would think that the government would have to have a substantial case to warrant this side approving of the change in the present Act, because as I understand it, under the present Act the Government cannot enter the premises--they cannot enter the private dwelling for the purpose of inspection, nor can they a premise where business records of any person are kept if they're not in the normal course of the audit, unless there is a court order. And, Mr. Chairman, I would like the Government to indicate why this additional power is required and why the procedures in the present Act are not sufficient for the proper auditing and investigation by the Department and in the carrying out of their responsibilities for the collection of the tax revenues.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I have explained the desire, which I think is a valid one, to have a uniformity in legislation, and when I read this, I checked with my department as to the reason for its inclusion, and I was informed - and that I didn't check specifically but I accepted the statement - that this is the same provision as in the Revenue Tax Act which was passed in 1967, and to my knowledge has never been abused or come up for review or comment as being an undue hardship. The department feels that the ability given to it under the Revenue Tax Act (1967) was one that made it better able to deal with these matters and has therefore picked that one as the one to be applied as uniform in the other bills, and that's why it is in this section which deals with the Gasoline Tax Act. As a matter of fact, having had some experience acting as Minister in the administration of the Gasoline Tax Act, I see some valid need of being able to go into a service station, or wherever the records are kept of the gasoline used, consumed, purchased, sold, and make a pretty quick study, but I can only say that this is not new to the department, it's new to the Gas Tax Act; if it is the same as the Revenue Tax Act - and I accept the statement that it is - then I have not heard of any abuse and I therefore believe that, as in other tax statutes which give the Crown considerable power, it has been said here previously that one of the best ways to protect people against abuse by the State is the vigilant and diligent work of MLAs and the Ombudsman, and I think that there is less chance of abuse by government than there is by any other agency or society.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: Mr. Chairman, I think that the question here relates, going back to revenue tax, to the interpretation of how that's given, because the wording isn't identical. We are not talking about identical wording now. No, it's not identical; as a matter of fact I think the Legislative Counsel would indicate. There was an exception here of "other than a private dwelling house", and if anything, Mr. Speaker, for uniformity I would have thought that the revenue sales tax should have been exempted other than in the case of a business that is operated out of a private dwelling house. I don't think that again there is any intent on the part of the department to become involved in molesting any particular taxpayer, but I think as a matter of general principle that where the government has to in the course of its investigation go into what would be an extraordinary situation that there be some check and balance on their ability, and this is why the court is set up and this is why there is the possibility for exparte applications to be made, so that there at least is some overseeing of the actions that have been undertaken.

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(MR. SPIVAK cont'd)

Now in the particular section in the gasoline tax it said "other than a private dwelling" and this has particular application with respect to the operation of The Gasoline Tax Act and the reasons for that exception I think were understood at the time that this was introduced and the Section 21 (4) of the present Act would allow for the court order to be provided and then for the government to proceed on the basis that there was some prima facie reason for them to believe there was reason to inspect a private dwelling or another business. But it would seem to me that if you examine 17 (1) of the present Revenue Act it indicates that an officer for the purpose of enforcing this Act may at all reasonable times without warrant enter upon the business premise of any person or any premise where business records are kept. Well that, Mr. Speaker, I think has to be interpreted on the basis that in the normal course of events that business records were maintained. If for some reason you were investigating someone with whom the department had some suspicion that there was some criminal aspect to it, where business records were being hidden, where business records were not available in the normal course, you certainly would have the right to be able to proceed by going to the court and receiving permission to enter and to seize and to investigate as you saw fit.

The point here is that the uniformity that's required sounds very simple in the sense that the request is for the uniformity of all legislation; but I wonder if there isn't a much more fundamental principle involved and that is some check on the investigatory process, which is not a serious check, which really from an administrative point of view is not so difficult but at least is a degree of protection for those situations in which there can be, or there could be - I'm not saying there can be - there could be an abuse. And I wonder if it shouldn't mean uniformity in the other way that a private dwelling house that is not used in the normal course of business should not be immediately available to an auditor or a peace officer operating under any of these sections of the Act without first having, Mr. Chairman, having proceeded to the court first.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I agree that one doesn't do something just for the sake of uniformity but one does do something on the basis of what one learns is a sensible and adequate manner of handling it. Now what has been added here - and the honourable member I think he was here when I responded specifically to that this morning - was that this section now reads "at all reasonable times" and excludes "day and night or any time at all entry": it applies to business premises or any premises where the business records of any person are kept. So that the point I made earlier was that I would think that if the business records are kept in a private home that private homes is no longer a private home in the sense that the business records are there. And, Mr. Chairman, it doesn't say may enter a private dwelling; it says "may enter business premises or any premises where the business records are kept." It would be up to this department to be accountable, or the inspector to be accountable that when he tried to enter those premises either they were the business premises or they were the premises where business records are kept and they would be accountable, and if access were denied to them then that person would have to say the records are not kept here, in which case it would be necessary to get a warrant because they couldn't get in otherwise.

Mr. Chairman, I'm really not trying to protect the revenue officers, the revenueurs of the Crown to do unreasonable and undesirable things. It's really not in my interest or my desire so to do. But we deal with people who are in a reasonable need to be able to get information, who have never abused it, who I don't believe ever would abuse it, but that doesn't mean we shouldn't have protections, that I think that's by saying "at all reasonable hours." Now I don't know who is going to say that two a. m. is a reasonable hour but there are times when it may be. So that everything here is to be interpreted by the courts in the end and there is accountability and I would say that if an inspector or a person authorized enters into a private home, without warrant and without invitation, and is unable to prove that he had good reason to believe that - and I quote the section - that these are premises "where the business records of any person are kept", I think he'd be guilty of trespass. And I give that as free voluntary legal opinion.

MR. JAMES H. BILTON (Swan River): Why go that far? A man's home is his castle.

MR. CHERNIACK: Now this former policeman here is talking about the man's home is his castle. He sold me his home in this Chamber a couple of years ago without even consulting

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(MR. CHERNIACK cont'd) his wife and his wife's castle was endangered when he openly in this House sold me his home and accepted a cheque from me for that. That kind of a castle is one that I don't have that much regard for if he did not even consult his wife when he made the sale. However it's her castle if it's anyone's.

But, Mr. Chairman, he asks "why give them the opportunity" and I would suggest to the honourable member who spent probably more years of his adult - I didn't say mature, I say adult life - in the enforcement of the law would know very well that every so often one runs across a person who is not an honest citizen, who is one who does use means whereby he evades the proper accounting to society of his duties to society and that there should then be an opportunity to go at him. But to have that mythical thought about a man's home being his castle and being something separate and inviolate takes us back to the middle ages where he liked his horse and chariot with his rifle by his side. And the trouble with the Member for Swan River is he sees nothing wrong with going back to the middle ages--and as pointed out behind me, he has never left the middle ages, therefore he must recognize the value of it. Having dealt in that respect I don't want to take up more time.

Mr. Chairman, I don't know really how important a principle we're fighting here. The principle involved is always violated when you give the right to anyone to search, and if one has the right to search business premises, one would have the right to search a dwelling house which is used by the business. Now the Leader of the Opposition is still making his comments, he'll keep saying "only on a court order." And I would say if the business, the books, the records of the business are kept in a home it is not a private dwelling, it is not a castle in the sense of the middle-aged supporter across the aisle. And it is accountable before the courts and I have indicated my opinion as to trespass. I don't know whether Legislative Counsel or any other policeman would disagree with me.

I really have no particular interest in protection, as I say, the revenueurs from that but I'm not convinced, I am not convinced that this is something that is necessary because the fact is--the Member for Swan River keeps yelling warrant and waving papers at me. He knows that he has no right to assault me, and it is an assault to make a threatening gesture, and I interpret what he did as a threatening gesture and I don't need a warrant to call the Sergeant-at-Arms to arrest him for making a threatening gesture because that is an assault. But aside from that he is making a noise and making a noise is even worse in this Chamber.--(Interjection)--I am on my feet officially recognized to make the noise. Mr. Chairman, let's get back to it.

Don't we recognize that if the Minister feels that a warrant is necessary he toddles down to the Court House and he says, Judge, could I please have a warrant, and he gets a warrant, Mr. Chairman, and he gets a warrant. Now it may be that it might be difficult to get the proper officer available at Swan River, I don't know, there may be a problem. Now if honourable members in all sincerity feel there is a terrible invasion of privacy then I don't see why there should be the right to enter onto business premises. Privacy is inherent to a person wherever he is, not just in his "castle" because that medieval approach is one that I can't subscribe to. So if we're going to make a big issue of it let's debate it and let's find out the extent to which this is a transgression of the rules we've had before.

I don't know what has changed since 1967 when the previous government enacted similar legislation, I don't know what the change is. I don't know what the circumstances are; I don't even know whether the same department was in existence at that time, but I am not aware nor has the Ombudsman indicated nor has the Law Reform Commission indicated that there is something wrong about this, and I would not like to jump just because it is suggested that there could be theoretically some interference with the civil rights of a person. I would like to fight on behalf of civil rights as much as anyone else, but I also would like to have a reasonable enforcement provision.

MR. CHAIRMAN: (25)--the Honourable Member for Riel.

MR. CRAIK: Mr. Chairman, there's really two points of concern here as far as we're concerned in looking at these bills. First of all we recognize that there was a provision in the former Revenue Tax Act that didn't spell out a provision for not entering dwelling places. Our concern is twofold really. First of all is that if the exemption of dwellings is brought in and that the dwelling can be entered even where the books are kept this is an extension of rights of government to inspect. That's one point. Regardless of whether even in one Act,

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(MR. CRAIK cont'd) the Revenue Act, the exemption was excluded before.

The second point is that under the Gasoline Tax Act we're concerned - we don't know for a fact but we're concerned that the number of cases where this could happen might be expanded several fold. Under the Revenue Tax Act you have revenue tax collected by businesses. Under the Gasoline Tax Act the question that we have is that people who are able to avail themselves of a lower priced gasoline through the colouring of gasoline includes a whole host of people, a whole multitude of people that far outnumbers many times the number of people affected by The Revenue Act. In fact, Mr. Chairman, the way we would read it without knowing the details of it is that every farmer who burns purple gas, who is suspected of burning more purple gas than his tractors could burn and was thought to be burning it in his vehicles and shouldn't be, this would allow the right of a person to go into his home where he naturally keeps his books and say, show me your books, without the prior right of entry through a court order. So that's our concern.

Now we raise the concern because we don't know if the Act would be applied in that manner. I would gather from one of the officials that perhaps this has not been done and will not be done, and if the government can say in effect that this has not been a problem, they don't foresee it being a problem and the Act is not directed towards allowing extra rights to go into those homes without a search warrant then it would certainly allay some of our concerns on the second point.

So that's the main reason under the specific Gasoline Tax Act that we raise it because the number of people that would be open to this right or provision would be many many times greater than the people that would be affected under the Revenue Act which are exclusively you know just businesses that collect it. You're now opening it up to farmers, fishermen and everybody else that maybe come under the Gasoline Tax Act provisions.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I'm satisfied, especially after talking to the senior officials of the department that they have no intention or desire to enter into premises of farmers to check whether or not they're using purple gas. I asked them the question, why shouldn't they if there's a suspicion that there is abuse of the law and that there is misuse of the privilege given to them to have tax exempt gas. I don't know where the business premises of that farmer are. I would think that they're in his private homes, in his castle, and if that's the case then there shouldn't be any objection to the right to go to his private home, which is his business premise and say, let's have a look at your books fellow.

But, Mr. Chairman, since I really don't have a desire to inflict harsh enforcement procedures against a citizen, at the same time I have no desire to assist a citizen who may be the one in a hundred that is a transgressor. I don't want to just weaken the powers already given; and I do make the point again that this is practically a copy of the Revenue Tax Act and to that extent has not been abused in some seven or eight years. However, what I would do, and I'll do that regardless of whether members present will be satisfied with my suggestion, I will ask the Attorney-General to refer these enforcement sections to the Law Reform Commission for comment. And if that is done then I feel that there will be a report after a proper investigation of the law which has been on the books in similar form for seven or eight years, and then let's see what is said; that I don't think that I should just arbitrarily at the spur of the moment make any changes from what I interpret to be law that has not been considered unreasonable to my knowledge in the last seven or eight years. But I am asking the Attorney-General and I'm sure that he will refer this enforcement procedure, I'll write him a letter asking for that, to review this procedure, to have the Law Reform Commission review it and comment, and then of course members know that their reports or their opinion will be made public and a year from now we can consider it again.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: Mr. Speaker, when there's always a question of choice I guess the government would always choose on behalf of the government and make a reasonable presentation as the Minister does. We would choose on behalf of the taxpayer to make the same kind of reasonable presentation. You know the fact is that that probably was an oversight with respect to the Revenue Tax Act, that in any case if uniformity is to occur the uniformity should be that there should not be a possibility of them being able to proceed into an individual private dwelling that is not normally used for the normal course of business and be in a position to investigate

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(MR. SPIVAK cont'd) and search without a court order. That's a check and balance. That's written in The Tobacco Act, it's written in the Gasoline Tax Act. So what is happening is that uniformity is being required and requested, and I have no objection to the uniformity but I think the uniformity realistically has to relate to the reasonableness of the government action. I accept the fact that the Law Reform can deal with this matter and I would think that they may very well come back with a recommendation afterwards that the private dwelling house not used for business purposes should be included. But I would suggest to the government that for the purpose of uniformity and because of the reasonableness of the position and because of the necessity of there being some check on government action--and we went through this with the whole range of snoopier clauses that the government introduced several years ago and a whole host of matters in which boards and commissions were given the opportunity, including the Directorate under the Consumers Affairs Branch dealing with a number of acts, was given the right to be able to search, to be able to investigate where a request had been made or a complaint had been filed with him--that there should be a provision which in effect would exempt--and it could be done, Mr. Speaker, by simply adding, and I would hope the Minister would entertain this, with respect to the particular subsection 21 (1) by adding after the words "are kept" before (a) "other than a private dwelling house that is not used for business purposes." And that would read, Mr. Speaker, "The Minister, or if duly authorized for the purpose, any officer appointed by the Minister under this Act, or any peace officer, may from time to time at all reasonable times without warrant, enter upon the business premises of any person, or any premises where the business records of any person are kept, other than a private dwelling house that is not used for business purposes."

Mr. Speaker, it would seem to me that this clause is contained in a few other sections and many other Acts, if we could get agreement on that and then, Mr. Speaker, by leave agree to amend the Revenue Tax which is going to be called, I believe, The Retail Sales Tax Act, so that that provision is there and the uniformity that we're talking about would be there. I think it's a reasonable basis, and if it was ignored before it was in error, and I think that at this point in terms of opting for the complete authority of government or of the enforcement officers to be able to do everything without any check on their activity or on the control, we have to opt for some check, and in those situations, and I don't think they'll be that numerous; where the government finds it necessary to go into a private dwelling, then I would think some court order should be required and some prima facie case should be established. And I do so, Mr. Speaker, not to protect the government, I think the government has a great deal of power, but to protect the individual and to provide at least some kind of check on the actions of government.

And so, Mr. Speaker, without moving it at this time as an amendment, I wonder whether the government would consider this as a reasonable proposal, and if they would, I think we then could proceed very quickly on agreeing to this section.

MR. CHAIRMAN: The Honourable Leader of the Liberal Party.

MR. I. H. ASPER (Leader of the Liberal Party) (Wolseley): Yes, Mr. Chairman, I think the Minister would find the suggestion for amendment which I would endorse in principle to be a little more acceptable to his earlier stated concern if the words included "private home where business records are not customarily kept." I think that might be your only objection to adding the Leader of the Conservative Party's amendment.--(Interjection)--Yes.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, firstly, I assert that I have the same right and the same obligation to speak on behalf of the taxpayer as does the Leader of the Opposition. I have the additional responsibility of protecting every taxpayer who is adversely affected by the evading taxpayer or the one who avoids paying tax.

Secondly, Mr. Chairman, I'm happy that I as a member of government have been able to make the life of the Honourable Member for Fort Garry much more pleasant in that he knows he is living in an environment and in a province which worries about those who are less fortunate than he and shows their concerns in that way.

Mr. Chairman, dealing with the specific suggestion being made by the Honourable Leader of the Opposition, who of course is making it with temerity in the absence of the Member for Morris who might object to his suggestion, but he did say "by leave". He suggested that we add after the word kept, "other than a private dwelling house that is not used for business purposes."

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(MR. CHERNIACK cont'd) --(Interjection)--I know, I accept the Leader of the Opposition's position in preference to that of the Leader of the Liberal Party, because the problem that I see with the words of the Leader of the Liberal Party is, unless it is a place where the business records are not normally kept. And really what bothers me is that they may well be in there discreetly, secreted there, and the Leader of the Liberal Party says, "by all means, if they're secreted there, you can't get in."--(Interjection)--All right I understand that. And therefore I would say that possibly he's right because I interpret the proposal as being the same as in the original wording because it says "where the business records are kept."

Now if we are in agreement now that if in that private home the business records are kept, we have access, that's really all we ask for, and I accept the thought that if they are secreted and we don't know they're there but we suspect it, then we should get a warrant. I agree with that. So that I don't think there's a problem but . . . is there a problem?--(Interjection)--Well I think probably - my Assistant Deputy Minister asked, what about the words "purported to be kept" and I think it's still the same sense and therefore I think we have arrived at an agreement which seems to satisfy our mutual desire to have practical, enforceable legislation and yet a protection for that mythical castle.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: The mythical castle is not mythical to some people. I wonder if then the Minister would agree that it would be worded: "other than a private dwelling house that is not used for business purposes or where in the normal course the business records are kept." (inaudible)

Well can I put on the record, and I appreciate the problems of the enforcement section and I understand that there is concern and I wonder if we can agree that the wording would be such to state that it would remain as it is, and I know he wants to put the words "purported" but I want to provide this afterwards, "where the business records of any person are kept other than a private dwelling house that is not used for business purposes or where it is purported - other than a private dwelling house that is purported to be the place where the . . ."

--(Interjection)-- I'm sorry . . .

MR. CHERNIACK: Start again after "business purposes."

MR. SPIVAK: "Other than a private dwelling house that is not used for business purposes but not including a private dwelling house purported to be where the business records are kept." Because my understanding of the example that Mr. Perry is referring to, and I think this is the important aspect is that their business records are maintained say by a bulk dealer in his home and he files with the department information indicating that my records are at my home. And that under normal circumstances I would assume that that would be his place of business but in order to clarify it, the fact that he purports that his business records are kept there would mean that there would be no question of the ability to be able to go without a warrant. And that's really the protection that he wants and I'm quite prepared to give that and this then would I think meet the enforcement requirements and the concerns that we've expressed. I doubt whether the . . . --(Interjection)-- Well I don't profess to be a legislative draftsman but I'm hoping that our Legislative Counsel will put it in better language. --(Interjection)--Where the business records are kept.

MR. CHERNIACK: Mr. Chairman, there's no problem providing the Legislative Counsel can put it into English language, if I can use that expression - understandable language.

I'll read it out, Mr. Chairman: "Other than a private dwelling house that is not used for business purposes or that is not a place in which business records are purported to be kept." So that exempts a place, and that--"other than a private dwelling house that is not used for business purposes and that is not a place in which business records are purported to be kept." All right, then that's acceptable. Then this would be carried through in all legislation including The Revenue Act. Is that okay?

MR. CHAIRMAN: You're so moving . . .

MR. CHERNIACK: The only problem then is that of the Legislative Counsel to prepare the necessary amendments. --(Interjection)--Fine, well then I move that, Mr. Chairman.

MR. CHAIRMAN: Clause 25 21. 1. I'll read the section and the amendment here so everybody is clear in their mind. "The minister, or if duly authorized for the purpose, any officer appointed by the minister under this Act, or any peace officer, may, from time to time, at all reasonable times and without warrant, enter upon the business premises of any person,

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(MR. CHAIRMAN cont'd) or any premises where business records of any person are kept." And the amendment, after the word kept - "other than a private dwelling house that is not used for business purposes and that is not a place in which business records are purported to be kept."

21 (1)--The Honourable Leader of the Liberal Party.

MR. ASPER: Mr. Chairman, I wonder if the Finance Minister would indicate whether he's prepared to amend further by taking into account the concern I had expressed for the common law rights of privilege. And if he would, it could be done simply by adding at the end of 21 (1) a sentence that says: "nothing herein shall be deemed to abridge the common law right of solicitor-client privilege."

Mr. Chairman, the point I'm making is that the way the section is worded it would allow the officer to enter a lawyer's office and seize the lawyer's client's business records that may be there for examination for a court case or what have you during a trial--this happened in Quebec, Mr. Chairman--and then the common law right of privilege has been ruled by the Supreme Court not to obtain. Now what normally happens under the Income Tax Act when this occurs, Federal Act, is the solicitor is then entitled to claim privilege, take the documents, they're seized all right which is to preserve their integrity should they be required at trial, but they're seized and put in a box and sealed and taken to the court and then the client or the solicitor has the right to go before the court to explain why the solicitor-client privilege exists and should be upheld; the court examines the documents and then decides whether there is indeed a privilege to be protected.

I would accept from the Minister because I don't want to redraft his Act, but I would accept from him an assurance that next year an amendment to that effect would be brought in; because it's an amendment really that belongs in every one of these search and seizure provisions. But because the courts have said that because the statute specifically says, "any person", you can seize from any person, there are provincial courts that have ruled that solicitor-client privilege is abrogated by that kind of a provision.

MR. CHERNIACK: Mr. Chairman, I'll see to it that a transcript of this afternoon's Hansard is sent through the Attorney-General to the Law Reform Commission. I think that the point raised by the Honourable Leader of the Liberal Party should be looked at by them. It's too technically complicated for me, even though I've only been in the law business for some 30-odd years.

. . . . continued on next page

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MR. CHAIRMAN: 21(1)(a)--pass, (b)--pass, (c)--pass, (d)--pass. 21(1)-- as amended --pass. Clause 25 -- pass.

MR. CHERNIACK: Yes, pass. Mr. Chairman, now, I just want to clarify the procedure. It is my understanding that there is agreement that all other relevant sections in the bill and in the Revenue Tax Act will be amended in exactly the same manner. Is that -- (Interjection) -- at the report stage, whatever that means. As long as it's done, then I'm satisfied. I believe the same was done in connection with that gazetting of the agreements or arrangements, yes.

All right then, Mr. Chairman, I move in accordance with the distributed sheet -- I move that Bill 77 be amended by adding thereto immediately after Section 25 thereof the following section: Subsection 21, sub (5) rep and sub 25 (1), Section 21 (5) of the Act is repealed and the following subsection is substituted therefor•

Mr. Chairman, is it necessary for me to read it? It's identical with what I read when dealing with 17(1) Section 9, subsection 1. I move it as if read.

A MEMBER: It is identical, too.

MR. CHAIRMAN: The new subsection -- Pass. (Clause 25 to 29 were read and passed) Clause 30 pass. The Honourable Member for Riel.

MR. CRAIK: Mr. Chairman, just before leaving this Tax on Gas Act, I wonder if the Minister could indicate why -- originally the amount of money to be directed towards the gasoline tax changes. Originally it was indicated to the House it would be in the order of 12 or 12-1/2 million dollars, and I believe he indicated now that the amount to be diverted for the purposes of reducing the Gasoline Tax Act is now of the order of \$7 million.

MR. CHAIRMAN: The Honourable Minister of Finance. No, the Honourable House Leader.

MR. GREEN: Mr. Speaker, there were representations relative to problems of low producing wells, things of that kind, and initially it was felt that the Province of Manitoba would be taking substantially the entire price increase from \$4.00 to 6.50 that had previously been paid to the Federal Government through the export tax. Let's recall that that was being taxed. It's not something that's being taken now for the first time, and I believe that Saskatchewan is taking substantially all of it. There is a modification in what the province is now proceeding with and that, of course, I expect it will be introduced on Monday.

MR. CHAIRMAN: The Honourable Member for Riel.

MR. CRAIK: Mr. Speaker, I would gather that from 12 or 12-1/2 down to around seven it means that the differences . . .

MR. GREEN: Well, it's some place between eight and nine.

MR. CRAIK: Between eight and nine . . .

MR. GREEN: Between eight and nine.

MR. CRAIK: Between eight and nine, it's gone into the change in the gasoline tax . . .

A MEMBER: Say three-quarters of those.

MR. CRAIK: . . . from 17 to 15 cents plus the motive fuel tax. That accounts for the eight or nine . . .

MR. CHERNIACK: No, no, no, no.

MR. CHAIRMAN: The Honourable House Leader.

MR. GREEN: Mr. Chairman, there are two different concepts here. One is how much money it's costing us to subsidize with the two percent decrease; the other is how much revenues are expected from the increased oil tax.

The Premier initially said that the possible revenues from increased oil taxes would be \$12 million. There were representations made; there were low producing wells; there were considerations, and as a result of that we are bringing in a bill - which I hope will be here for introduction on Monday afternoon, maybe tabled on Monday morning, and try to get it to the House on Monday afternoon - in which the estimated revenues will be between eight and nine million dollars because there is a modified form of tax.

A MEMBER: So this is why I . . .

MR. GREEN: We're not taking as much as was taken before.

A MEMBER: Right.

MR. CHAIRMAN: (Clauses 31 to 40 were read and passed) Clause 41 -- pass. The Honourable Leader of the Opposition.

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MR. SPIVAK: Mr. Chairman, just as a matter of record. My understanding from the government was that the particular alteration that we made in the previous section would apply to this and the others. That this is similar to the section . . .

A MEMBER: He mentioned it when you were out.

MR. SPIVAK: Oh, I see. I'm sorry, okay.

A MEMBER: It's all done.

MR. CHAIRMAN: (Clauses 41 to 44 were read and passed) Clause 45 -- pass - Clause 45, 21(1), The Honourable Minister of Finance, would you make the same motion that you made previously after the word "kept" in the last line.

MR. CHERNIACK: Please repeat that amendment. All right, then, we're dealing with Section 45 21(1).

MR. CHAIRMAN: Right.

MR. CHERNIACK: Then I move that the following words be added after the word "kept" which appears on the fifth line.

MR. CHAIRMAN: Take it as read.

MR. CHERNIACK: All right.

MR. CHAIRMAN: Agreed? (Agreed) Clause 45 as amended -- pass. The Honourable Minister of Finance.

MR. CHERNIACK: I move that Bill 77 be amended by adding thereto immediately after Section 45 thereof the following section, subsection 21(5) rep. and sub. to 45.1 subsection 21(5) of the Act is repealed and the following subsection is substituted therefor. I assume we can take it as read as being identical with the previous amendment I moved.

MR. CHAIRMAN: Agreed? (Agreed) Subsection 21 -- or new Clause 45.1 -- pass.

MR. CHERNIACK: Pass.

MR. CHAIRMAN: (Clauses 46 to 52 inclusive were read and passed) Clause 53 -- pass. Honourable Leader of the Opposition.

MR. SPIVAK: Mr. Chairman, this section - I wonder if the Legislative Counsel . . . is this section incorporating sections in other Acts, or is this particular to this . . . This section would be 53 and it would be the . . .

MR. CHAIRMAN: Clause 53 on Page 20.

MR. SPIVAK: It will be the addition of 14.1(1).

MR. CHERNIACK: Well, let me read my notes. We're dealing with the Tobacco Tax Act, "This section provides for mechanics relating to control and sale of seized goods; previously although the Act gave permission to the Minister to issue warrants to the sheriff to seize goods, no provision existed as to their disposition. It is similar to existing provisions in the Mining Royalty and Tax Act and the Queen's Bench rules. The section also provides for the Minister to demand payment from a debtor whom he suspects is leaving the province, and similar provisions to those noted previously for the seizure of goods, Mining Royalty Tax Act."

"The section further provides the Minister with the right to issue a third party demand similar to the current revisions contained in the Revenue Tax Act and those proposed through other taxation statutes." Reading that, it becomes apparent that there's nothing new. It's just a uniformity aspect.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: The only great uniformity was the demand for payment clause. Is this a clause taken from other Acts, or is this written as a new Act -- a new section, a demand for payment if the debtor leaves Manitoba?

MR. CHERNIACK: Well, Mr. Chairman, I'm told that the new portion is what I read, the disposition aspect and the provision for the seizure of goods on the suspicion of leaving the province, and the other as to the right to issue a third party demand. Now I would have to do an exact comparison with the old Tobacco Tax Act, but I understand this is a revised portion.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: Again, the concern that I have is whether this was a particular section that's been in application or is in existence and it applied in other Acts, or whether this section is really 14.2(1) -- (Interjection) -- That's in the Mining Royalty Tax but not in the Tobacco Tax Act. No. Fine. But let's understand --

MR. CHERNIACK: It's probably in the statutes under the Revenue Tax Act, earlier in this bill.

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MR. SPIVAK: This particular section?

MR. CHERNIACK: . . . it's on Page 10, the top one, 17.2(1), It is identical, I think it is.

MR. SPIVAK: But I don't think it was discussed in committee. It may have been discussed . . .

MR. CHERNIACK: Well, I thought it was.

MR. SPIVAK: You know, I may be wrong but I don't think it was discussed in committee. It may have been mentioned when we talked about the other section, which has to do with where the Minister's informed or suspects that a person is about to become indebted. There's a distinction between that in following through on Page 22 of the Act, 14.3(1). The point that I want to make is that the Minister if he suspects that a debtor is about to leave Manitoba may for that, or any other reason, by notice sent to the debtor demand payment of all taxes, penalties, or costs, for which the debtor is liable, and that the debtor shall pay them within 10 days from the date of the mailing of the notice, notwithstanding any other provision of this Act, and the enforcement section would go in once the demand was made and there's a refusal within 10 days.

Now, again, I'm sorry? -- (Interjection) -- This was discussed in committee?

MR. CHERNIACK: Oh, under Pari-Mutuel this morning.

MR. SPIVAK: Oh I'm sorry, I was away for that. This same section?

MR. CHERNIACK: The same thing.

MR. SPIVAK: I don't know the particular approach that the members here made on that, but I point this out: In the enforcement sections with respect to this Act after the demand is given for execution, for garnishment in advance, or for seizure, or what have you, would apply where the Minister only suspects that he's to leave Manitoba. And I wonder again if in this particular provision there should not be the court requirement as a check. This has to be an exception and unusual situation; it's not a normal case and should there not be at least again, some check on the action of government with respect to this?

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I see no harm done in the notice being given and the 10 days being available. Again, I don't think that it's necessary to encumber the process of the courts, aside from that of administration, because there's no harm done, it's just that notice shall be given that payment be made within 10 days, and I repeat, Mr. Chairman, what I said this morning, we're dealing here with trust moneys. We're dealing with moneys that are not a debt due but rather an obligation to remit moneys collected as trustee for and on behalf of government. I think that there is that right to step in and say, "We want our money." It's not what is owing to us but what is actually ours. But I don't see any harm done by stepping in and giving the notice.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: No, but the demand for payment amounts to an assessment at that point, subject to procedures, but the first thing that has to happen is that the Crown has to be in a position to have that security, or take whatever action's required to secure it if there's failure of payment within a prescribed period, and all the taxpayer does at that time . . . has the defence at that point, of defending his position, would be to the assessment, when the basis for it was that he suspects the debtor is about to leave Manitoba. That's the basis. The belief that the Minister has, that the department has, that the debtor is about to leave Manitoba and therefore the protection that's required to put this in motion to protect the taxpayers, I'm not quarrelling with that. It's a very different situation. Now once they've established the assessment, he may be able to argue against it, he may be able to argue that he wasn't about to leave Manitoba, but the fact is in 10 days he's going to have to pay the assessment, it'll be secured or you'll take whatever action is required, and it would seem to me that if you're going to apply this particular section where it is on the basis of suspicion of the Minister, really, rather than the basis of the investigation that's been conducted, and again I respect the necessity of protecting the taxpayers in the province and the Crown being in a position to be able to act where there is an attempt to in any way evade, nevertheless in this particular case, if there's suspicion, should it not be a court order as well?

And again, the officials are here, I wonder how many situations you've really had under this particular section, whether they're numerous or very few. If they're very few and we're not talking about a great inconvenience, it would seem to me again that protection should be that

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(MR. SPIVAK cont'd) the court order should have to be given.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I'll respond as I did before in reference to the Law Reform Commission. I don't want to make that change at this stage, but I'm certainly prepared to look at it after I have advice from the Commission.

MR. CHAIRMAN: Clause 53 - pass. Clause 54 - pass. 55 - pass?

MR. CHERNIACK: Mr. Chairman. . . . you've completed 54. I move that Bill 77 be amended by adding thereto, immediately after Section 54 thereof, the following section:
Subsection 17(4) rep. and sub.

54(1), Subsection 17(4) of the Act is repealed and the following subsection is substituted therefor: (and the form is the same as in the other cases)

MR. CHAIRMAN: New Clause 54.1 - pass?

MR. CHERNIACK: We waive the reading of it.

MR. CHAIRMAN: Oh, we missed a

MR. CHERNIACK: Mr. Chairman, again, for the record, 54 which has already been passed, I think honourable members would agree, that we note for the record 17.1, the amendment, following the word "kept", and the same wording as the amendment provided earlier about private dwelling house which is not used for the keeping of the books. Would that be agreed that that amendment has been approved?

MR. CHAIRMAN: 54, 17.1 heading

MR. CHERNIACK: Following the word "kept" that

MR. CHAIRMAN: . . . the word "kept" as amended -- passed.

MR. CHERNIACK: Right.

MR. CHAIRMAN: 55 - pass (Clauses 56 to 62 were read and passed) 63 - I believe there is an amendment.

MR. ASPER: Mr. Chairman, before we get to the amendment which the Minister proposes to add to 13 subsection (4), I wonder if he would reconsider the provisions of Section 13 (2). Section 13(2) is known in Tax Acts as the most vicious of all search-and-seizure types of provision. This provision is: (a) discretionary; and (b) not answerable to any court; and (c) abrogates all of the rights or privilege and a number of other basic civil liberties of the taxpayer. Mr. Speaker - - (Interjection) -- No, he's not amending. He's amending 13(4). My suggestion -- This section, Mr. Chairman, says that the minister can, if it appears to his satisfaction, not on probable grounds or not to the satisfaction of a Judge, but if "he" is satisfied, which is discretionary, he can enter any premise in the province and search and seize; and I would ask him to, first of all, include in his reference to the Law Reform Commission the suggestion that this section have added to it, the standard solicitor and client privilege of privacy and confidentiality, but second, I would ask him now to add to that, words that require the Minister, before exercising that discretion, to have the approval of the court.

Now that's the way we've been moving in all of our federal legislation and taxing statutes, and certainly Mr. Turner, the federal Minister, has made a number of amendments to the federal taxing legislation that have been in response to civil liberties associations, the legal, the accounting professions and so on, saying that no minister should ever have the discretionary power without probable cause to be able to abrogate the fundamental right that this section attacks. I'm sure the minister has no intent of that kind, and in fact I recall condemning the Conservative Government that preceded this government when it brought in the Revenue Tax Act, when I filed a brief on behalf of the Manitoba Bar Association condemning this kind of provision throughout the taxing statutes of Manitoba. So when the opportunity comes to review that legislation, I would urge the Minister to make the kind of changes that almost all taxing jurisdictions are being urged to, and many are doing. What he could do to cure the complaint with 13(2) is simply say that "Where it appears to the satisfaction of the minister or of the Deputy Minister of Finance, or of an Assistant Deputy Minister of Finance, or of the director, or assistant to the director or of any other director or assistant director of the Taxation Division of the Department of Finance, or of any other officer etc. - upon approval of the Court, that the waiver of legal rights occurs only upon approval of the court.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I appreciate the honourable member drawing this to my attention. I frankly accepted the fact that this is uniform with other Acts and I did not look

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(MR. CHERNIACK cont'd) into the aspect of it. I shudder to think that for the last five years I have had the kind of power - not only I, but other members of my department, assistant to the Director, etc. or any other officer; since I've lived with this now for a period of time, under the Motive Fuel Tax Act, Tobacco Tax Act and the Gasoline Tax Act, I'm only happy that it's never had to be brought to my attention before. Nevertheless I certainly accept the suggestion that it should be brought to the attention of the Law Reform Commission, as it will be, as will the entire transcript. Frankly, looking at it just casually, I wonder if that 13(3) doesn't really take care of the point made by the Leader of the Liberal Party, but he says no. All the more reason for me not to jump quickly to accept the suggestion, although I'm inclined so to do, but this, as I say, this transcript will be sent on and I think they should look at it, because reading on first blush it is a very strong power which, fortunately, I believe has never been used or I'm sure we would have heard about it if it had been.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: I wonder, and I appreciate the position we're in today and I appreciate the reference to the Law Reform Commission, but I wonder if we're being too easy on ourselves and too easy on the Minister. This section realistically is very similar to the snooper clauses that we had before, seven of them, I think, or eight of them, that were changed in committee when it was recognized that, with respect to the consumer protection legislation, with respect to the whole series, well various . . . there were a number of Acts which really provided, and I'm not suggesting it's the same way, but provided in principle the same situation. Now the degree of taxation, or the degree of information or the situations, are not comparable to the number of transactions that the Minister's department are involved in in inspecting and investigating and in normal auditing, but the problem was a problem of one of principle, and you know, I just wonder whether, it now having been raised and there sort of being a general agreement even by the Minister that, you know, he doesn't want this power, that we shouldn't, should not spend the time - I don't think it would be a great deal of time - to at least correct it in a way that would be satisfactory to all of us - with reference back to the Law Reform Commission for more serious consideration and possibly, as a result of debate, for a further recommendation.

Because the Minister doesn't want this power. Frankly, if there is any question that it really is contained in 13(3) - there may be - then the Legislative Counsel is here, we can work it out. What I'm saying, I think the easiest way is to opt for going to the Law Reform Commission. I think the harder way is for us to deal with it, but I think that the principle involved is one that we should be concerned about and I think there is general concern; and with respect to the whole range of the snooper clauses that were provided in the consumer legislation, we were prepared to amend and amend it very quickly, and I wonder whether the Government would consider entertaining that possibility now, agreeing that with the Legislative Counsel we work out an amendment that would express the concerns of everyone and the agreement that everyone has here. There is a consensus.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, the honourable member says I don't really want that power. The honourable member must realize that power is often thrust on one who may not even want to have it, and I will not assert that I wanted the power, or particularly wanted to get involved in this entire aspect; nevertheless, Mr. Chairman, it is important that one relates the rights of individuals with the need to have the power to enforce legislation such as this. We know the problem with taxation; we know the fact that information is in the hands of the taxpayer or tax collector, our agent, and let's bear in mind that we deal in the main with collections of moneys due from our agents, not to that extent from the taxpayer himself, and therefore we do have certain extraordinary rights that anybody has in dealing with a person to whom he's entrusted a task.

Now I really don't think that it would be responsible for me in my capacity to quickly make a change without a proper investigation. It has been suggested to me that the power to do this avoids the necessity to do it, and we all know that that is true in many legislative features. I don't think that it would be right for me at this stage to just say to the Legislative Counsel "Change it. Take away that power of the department." I think that it's not only a question of the Law Reform Commission, it is also a question of enforcement problems, and usually the enforcement problem is a serious one.

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(MR. CHERNIACK cont'd)

The Leader of the Liberal Party has indicated that there have been changes in federal legislation and there have been changes. That has to be studied in relation to our tax enforcement people to make sure that they can't convince us that it's wrong. I'm not prepared to do it. I'm informed now that it had to be used recently in connection with one of the large tax collectors and payers of this province -- it's not right for me to reveal the name but it was a large one and it actually had to be used on one occasion. Whether it should have been used or whether there was another way of doing it, is something I'm not prepared to waive at this stage, but I am satisfied that the debate has been sufficient and has been recorded sufficiently that it will be reviewed when we have time to review it and when we have time to obtain comments of the departments concerned. Therefore, although I've expressed my sympathy with the point of view, I will not take the responsibility of just automatically agreeing to a change and what may have ramifications of which I am not aware at this moment.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: Mr. Chairman, we should, you know, follow through the procedure that the department must undertake in a normal investigation. They enter the business premise, or they go to the premise where business records are kept. They examine, investigate, ask questions, and make certain determinations. They may have to go to another premise, another business premise, to be able to see documentation there and the records there, and make comparisons to see whether the records of the company investigating or the person investigating is correct, and we have already provided in 13(1), in the other sections as well, the right to examine records and documents and the right of a peace officer, acting on behalf of the minister, to go in. So we move, Mr. Chairman, from the auditor into the peace officer who is investigating, and so there is no way in which the government is not in a position to be able to examine, to be able to audit, to be able to investigate. 13(2) refers to the ability to be able to seize, and documents that are seized are seized for the purpose of confirming the preliminary investigation or, in the case of someone who's absconding, to be able to protect the records that are available. And the problem, Mr. Chairman, is to distinguish between the ability to be able to seize, which is very different from the ability to be able to examine without restriction, the records; and the only restriction is the one we've just put in, other than a private dwelling home that is not used for business purpose as the place to enter and to be able to examine the records.

Now I appreciate that there's been one case, you know, one recent case, and without getting involved in the name, I don't think that's particularly germane at this point, but the fact is, should we really allow the government the opportunity to go to the procedure of seizing without some check and balance? Now when the Liberal Leader spoke, he talked about the solicitor-client privilege, and that I understand and appreciate is going to be referred to the Law Reform Commission. I think that's important and I don't see any disagreement on that, but I really wonder whether we should pass the opportunity by to correct something that may have been ignored before, giving the government a power that I don't think the Minister particularly wants -- and one that could be corrected very easily because we are talking of few cases rather than many -- of the ability to be able to seize, and shall we not provide the kind of protection that we've provided consistently in all the Acts that have come up, that there at least be the application to a court so that there at least be a court order given, so that there is a warrant and there is the opportunity given for the person to proceed, and at least a prima facie case is being maintained, or is being established, before the government proceeds. And I wonder whether the Government cannot in all seriousness entertain the possibility of that part of an amendment or that portion of an amendment coming in with respect to seizure, because there is a very different kind of power than that of investigation. The Government literally does not have to answer anybody now to be able to investigate. It can proceed. And so therefore, in terms of its investigation, it can channel or it can follow the information right through, and it can audit right through and its investigators can proceed, and the peace officer on their behalf can, but with respect to the seizure of books, should it not go before a court before that seizure takes place?

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, the contribution by the Leader of the Opposition has almost convinced me that I do want that power. The Leader of the Liberal Party thinks I don't but now I'm beginning to think of this kind of a circumstance, and that's what -- Now I see that

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(MR. CHERNIACK cont'd) under 13(1) I, or someone representing me in my official capacity, enters onto the business premises and says, "Let me see your books," and he starts checking the books, and he comes across something which he says, "Now, this is a transgression of the law," or let me use the words that "You are not complying with this Act. You are actually stealing from the people of Manitoba by the Queen. I want to take this with me and I want to copy it. I want to have it available to prove that you are breaking the law." And he then says, "I will take this with me." And you say, "Oh no, no, no. You go and get a court order. Take three or four days; find a Judge; get a court order." -- (Interjection) --

Well, Mr. Chairman, 15 minutes isn't that long if one wants to destroy or change a record, and I think that we are now talking about the need to make a decision, an immediate decision, to freeze certain records, and I see the value in freezing certain records because they can't be changed. May I tell you, Mr. Chairman, of a case in court that honourable members here may be aware of, where somebody, an officer of the company, came to the secretary of the corporation and said, "I want to see that minute book," which he had every right to do, and he said, "I'll take it for an hour and read it over." When he came back his signature was struck out of that minute book, and he then gave evidence in court that he had signed something and immediately changed his mind and crossed it out, and the only way that they could prove that he had done it subsequently and not as he said at the same time, was that the lawyer handing over the minute book went to all the trouble of photocopying the entire book before he turned it over to the officer, and had he not done that, then that evidence that was available of the signature would not have been available. Now I'm beginning to worry about the time element involved, and don't anybody fool us by saying 15 minutes because the judge doesn't travel side by side with the inspector to give him a warrant when the inspector needs it, and it makes me all the more cautious not to agree to a change in something which has been - and I don't know how many years - it's been in the Motive Fuel Tax Act, the Tobacco Tax Act and the Gasoline Tax Act. I don't know how many years it's been there. I do not think -- I am too conservative to be prepared to change it just as a result of this brief discussion.

MR. CHAIRMAN: The Honourable Leader of the Liberal Party.

MR. ASPER: Mr. Chairman, the concerns of the Finance Minister I think are unwarranted, his last expressed concerns, because the section is aimed at preserving, I would think, incriminating evidence. Now under the Criminal Code and other quasi-criminal statutes, the way we do it - at least I think we do or we should do it - is we should be saying that where on an inspection - now that isn't what this section says though - that where on an inspection, and the inspector is on the spot, and finds incriminating evidence, which if he were to go get a judge might otherwise be destroyed, what he is allowed to do under most taxing statutes is make a seizure or make copies - either one. And that is the greatest protection the Crown has, the fact that records can't be altered if they've been copied. So if the on-the-spot inspector - which is not what this says - but if the example that the Minister gave were his real concern, the inspector who is on the spot who discovered incriminating evidence, should have the right to do two things: (1) copy it. Or (2) where that isn't available, where copying isn't available, to make a seizure, but a sealed seizure. Not a seizure that deprives the taxpayer of his records but a seizure under seal. Just an impounding. Nobody gets the records. Then they go to court. -- (Interjection) -- But so is the revenue. The Finance Minister says that the taxpayer is denied his records. Quite true. But so is the revenue, until he goes to court and proves that he had probable cause to make a seizure.

Now the second aspect is that this section doesn't deal with anything you're saying. This section deals with where the Minister is sitting in his office -- (Interjection) -- Well yes, Mr. Chairman. This says that where the Minister is sitting in his office and he hears that a member of the Legislature, who runs a filling station, is about to go on holidays and he'd like to keep him pinned down here, he goes and makes a seizure. Period. No damages if you're wrong, no redress if you're wrong. Absolute seizure. And all I'm saying is that that's -- I recognize this language. It comes from the old taxing statutes which modern thinking is wiping out. We're simply encouraging the Minister: we're not suggesting for a second that the right of the Crown to collect tax be impaired, but we are saying consistent with the civil rights of the citizen. And if he would simply deal with the section as it says here - because there are other sections of the Revenue Act, Mr. Chairman, that allow an inspector on the job to make an absolute seizure and we make no complaint about that - in the Act - I don't have the full Act

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(MR. ASPER cont'd) in front of me but I remember when the Act was presented I protested some of the language, I guess it was in the Sixties, 1967, but I remember distinctly being there -- (Interjection) -- Well I think the Associate Deputy Minister was there in those days. We fought it out then. But this doesn't, Mr. Chairman, this does not deal with an inspector on the job finding a glaring criminality. This deals with the Minister sitting in his office, saying, "I'm going to get that guy. Nail him. Seize everything." And all we're saying is, let him have probably cause or let him at least go to a judge.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, the Honourable Member, the Leader of the Liberal Party, said he can do two things. He can make a copy, which means carrying a Xerox machine in his brief case, or he can do what he calls a sealed seizure. What is the advantage? Well, it still takes it away from the tax collector, from the person who is liable for transmission of the tax, so there's still a hardship on him, but he says he can't look at it. But that's nonsense, Mr. Chairman. He's already looked at it. -- (Interjection) -- No, but we've given him the right. We've already passed the right for him to enter on business premises to examine the books, so he has the right to look at it. So when he seizes it, he suddenly has no right to look at something which he has the right to look at when they're in the possession of the . . . Mr. Chairman, I'm sorry, I just don't see that I should be prepared at this stage to make a change in what has stood up for some length of time, which may be desirable but should not be changed just on the spur of the moment.

MR. CHAIRMAN: The Honourable Leader of the Liberal Party.

MR. ASPER: . . . explain to the Finance Minister the circumstances that concern me. Under the Act, the inspector has the right to examine all books and records. Mr. Chairman, I wonder if the Finance Minister would -- I would like the Finance Minister to hear my remarks. Under the Act, the inspector goes into the premise and he has the right to examine, and during the course of his examination he finds something. Now the taxpayer says, "You can't look at that. That has nothing to do with you. You can't look at it." Therefore under this Act, given the right to seize, that's what the right is. Throughout the Act the inspector has the right to seize.

MR. CHERNIACK: Where?

MR. ASPER: Well I don't have the full . . .

MR. CHERNIACK: . . . the one you're trying to deny him.

MR. ASPER: No, no. No, no. Mr. Chairman, if somebody will bring the Sales Tax Act, I believe you'll . . . (Pause)

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: While the Leader of the Liberal Party is working with Mr. Perry, can I just point out that I think the distinction is really in terms of a specific investigation where, in the example the Minister has suggested, one of the officers, accountants, realizes that at that particular time that there has been an evasion or believes there to be a situation where there has been an evasion and the necessity of the seizure of the books immediately for the protection. That's one situation, and I think that the Liberal Leader has indicated that in that situation he should have the power to be able to do it. But it's another thing to go into another premise to be able to see documents to support the investigation being undertaken in another area, and I think that there is a distinction from that, and I think that -- so that it would seem to me that it may very well be that this can be amended to take care of the Minister's situation and at the same time provide that before the Government proceeds in the next situation, that there's a court order undertaken.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Well, Mr. Chairman, I do agree with the Leader of the Opposition that there can be two different circumstances, and one he recognizes as being valid and the other he says should be under warrant. I don't know, and I'm jealous of securing that right under the one circumstance which I do not know is in the Act at all, and I therefore feel that we can't just withdraw this one section because it may be that this is the very section that is needed for that inspector who sees the evasion and does it. Mr. Chairman, I'm still bound to say that I'm pleased with this discussion because it is being recorded. I don't think I should take the chance of changing what could be an important section until there's been review, and I repeat for what it's worth and I have said it before, it has not been badly used or improperly used, to my

(MR. CHERNIACK cont'd) knowledge, and I think I would know if it were, so would other members, in all years it has been there. It is in the Revenue Tax Act (1967). I think the words appear to me to be identical. We've lived with it now for seven or eight years under the Revenue Tax Act. The Leader of the Opposition will say it was a mistake then, and it may have been a mistake but there is no evidence of the mistake in the use of it. Therefore I feel another year where we do have the - or less than a year - where we do have the benefit of the advice of the Law Reform Commission is a desirable thing but one beyond which I think it would be dangerous to go.

MR. SPIVAK: Mr. Speaker, maybe the Liberal Leader is jumping up on the same point. It would seem to me - and I wonder if the Legislative Counsel would -- I wonder if it isn't a fact that what we really are talking about, is it contained in the Act, and is really contained in the Revenue Tax Act, but there is one part of it that is not explicit? And what I am suggesting to the Honourable Minister is that in effect what we are talking about is really contained, and that Section 13(2) read with Section 13(3) really distinguishes between the two situations. That refers back to the Revenue Tax Act of 17(2) and 17(4). If you go back to the Revenue Tax Act of 17(2) and 17(4) and examine it in relation to 13(2) and 13(3), that we really are talking about the same thing, in which case, that in other words the Revenue Tax Act really provides that the only thing that is lacking in all of this is the limitation that 13(2) really relates to an inspection, whereas 13(3) really relates to the ability to go beyond the inspection and that's the power that you're asking for in this amendment, and if we go back to 17(2), 17(2) really is an inspection and 17(4) was to take care of those situations other than the inspection. In effect, the way in which the Act is operated has been as the Minister has suggested and as we have been talking about, and in effect the amendments you are proposing are consistent with that and so what we're really talking about is probably a clarification of one or two words. And I think that that probably would satisfy everyone and in effect is really the effect of the amendments that are being introduced.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, now I'm worried that the honourable member isn't confusing the fact - or is not aware that we're talking about two separate Acts. We're talking about the Revenue Tax Act as being 17(2) and 17(4) and this is the Revenue (1964) Act, and it's two different Acts - but the intent was that what we are looking at now, Section 63 to the amendments to the 1964 Revenue Act is the one which is being brought in accord with the Revenue Tax Act of 1967 and so we're not talking about it. We're talking about two different Acts. -- (Interjection) -- Yes we are. We're talking about - we're comparing the change which it is purported to bring in to the 1967 Act. Mr. Chairman, it therefore does not change the position of my concern that I don't quickly agree to making a change which it may be difficult for the department to live with over the year. I believe - I sincerely believe that there's been no difficulty, no injustice done having lived with this provision for some seven, eight years at least and therefore I just don't feel it's responsible to agree to a change now without a proper study and review, and I don't think it's getting that now. It's getting good cogent argument, but I think it needs more than that when one deals with tax statutes.

MR. CHAIRMAN: The Honourable Leader of the Liberal Party.

MR. ASPER: Mr. Chairman, I'll just conclude my observation on it by saying that it is in the 1964 Act - the 1967 Act rather, the Sales Tax Act, and it was the subject of a very strong protest by the Manitoba Bar Association in 1967 when it was drafted. We sought a change, we didn't get it. We're simply saying - and the language at that time was identical to this or virtually identical and what we said then was, you can under this section - it isn't the Minister, the Deputy Minister and all the people down the chain, it's anyone designated by regulation -- (Interjection) -- Of that class. Yes. -- (Interjection) -- No. It's any officer of the Department of Finance of a similar class. -- (Interjection) -- Well all right. But we don't even know who this man is who has this terrible power, who has this terrible power and we're saying that - and I think you're right, we've lived with it for seven years and I've been mad about it for seven years and I hope you'll change it. What you should do with the thing is say, where the taxpayer involved objects to the seizure there shall be a sealing of the documents and they'll go to a judge.

MR. CHAIRMAN: There are - 13(1) you have to move the "other than a private dwelling house."

MR. CHERNIACK: Then the amendment to 13(1) the same as the other ones after the word "kept" as it appears in the fifth line of 13(1). I move that.

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MR. CHAIRMAN: 13(1) as amended -- pass. 13(4) -- The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I move that the proposed subsection 13(4) of the Revenue Act, 1964, as set out in Section 63 of Bill 77 be struck out and the following sections substituted therefor and the balance follows as before, Mr. Chairman.

MR. CHAIRMAN: 13(1) as amended passed. Amendment No. 6.13(1)(2) - Mr. Minister.

MR. CHERNIACK: Yes, I'm just seeing that. It was in a different order. I move then No. 6 on Page 4 of the proposed amendments. I move that the proposed subsection 13.1(2) of the Revenue Act, 1964, as set out in Section 64 of Bill 77 be amended by adding thereto, immediately after the word "otherwise" in the second last line thereof, the word "account".

MR. CHAIRMAN: Section 13.1(2) as amended passed. (Clauses 63 and 64 were read and passed). Clause 65 - pass - the Honourable Member for Riel.

MR. CRAIK: Mr. Chairman, I think at this point it would be the proper time to ask the Minister to explain in more detail this Clause 65 reduces out of the definition all those items pertaining to depreciable assets. I think in a nutshell what we want to know at this point is, quite apart from changing the royalty rates, if the royalty rates were not changed but changes were made in the depreciable assets that were going to be allowed in calculation of the tax, what sort of implication this has for the tax income from mining.

MR. CHERNIACK: The note I have is that Section 65 repeals a definition of "department".

MR. CHAIRMAN: Clause 60. Clause 65 -- pass. Now, Clause 66.

MR. CHERNIACK: Now may I read my notes because I don't quite see if that applies. All that does is transfer the approval of expenditures re processing equipment other than expenses allowed under 3(3) for the mine assessor to the director because the term "mine assessor" is no longer utilized.

MR. CHAIRMAN: (Clauses 66 to 72 were read and passed.) I believe there's an amendment to 73.

MR. CHERNIACK: I move that the proposed subsection 3(5) of the Mining Royalty and Tax Act, as set out in section 73 of Bill 77 be amended by adding thereto, immediately after the figure "(3)" in the last line thereof, the words and figures "and subsection 2(2)".

MR. CHAIRMAN: (Clauses 73 to 76 were read and passed.) Clause 77.

MR. CRAIK: Mr. Chairman, this is the section that deals with the changes in the mining royalty rates of taxation and there are two or three items or matters that should be dealt with at this point. Mr. Chairman, first of all, we have dealt with these matters very briefly at second reading stage but at this point we'd like to get some further discussion at this point.

For a start, the question has been raised by the Opposition as to whether or not it is correct and good procedure for Government to be imposing a rate of taxation that is discretionary at the will of the Lieutenant-Governor-in-Council. Mr. Chairman, some reference has been made to other precedents for this purpose, but this being as major as it is, Mr. Chairman, our position is that the rate should be fixed and not at the discretion of the Lieutenant-Governor-in-Council. Now I know, Mr. Speaker, that in here the assurance has been given us by the Government that the rates as indicated here will apply to all the mining companies, there is no discretionary power being added in this Act that would change and allow a variable rate for the different mining companies, although this was going to be asked for in the other bill that has been withdrawn from the House. In that particular case it would have been possible for the Cabinet as we read it to define the different mines, break them down, on an individual basis. So, Mr. Chairman, I think that first of all the Minister has given us the assurance that the interpretation of this clause - even though to the layman I don't think it's absolutely clear in reading this clause that's in 77, or the changes that are being brought about, would imply that the Cabinet may have the discretion to set different rates for different companies. Now that has been indicated by the Minister at second reading and I wanted just to be sure on the record that that interpretation that he has corrected is the one we were given assurance is going to be the one that is in effect, that is the same rate to all mining companies, regardless.

MR. CHAIRMAN: The Honourable Minister of Mines and Natural Resources.

MR. GREEN: Mr. Chairman, I wasn't going to ask a question, I wanted to comment on his first observation in two minutes. The honourable member is suggesting that under the legislation that was not proceeded with that there could be a different rate for different companies, and I have heard that suggestion before and perhaps some have thought it in that way.

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(MR. GREEN cont'd) What was intended is that the base mining year would be calculated for each company, and once the base mining year is calculated, then the rates would apply - the 50 percent rate would apply following that base mining year. So that you would have a tax which would apply differently to different companies only because the formula included in it a factor which was variable as between different mining companies. But the rate - and I'm saying this knowing that perhaps different people had thought about it differently, the rate was -- (Interjection) -- No, you see the base year would have to be determined, and in the Act it was fairly clear that it would be an average of five years or the average of the number of years they've carried on, or a base rate as determined by the Minister. Now that is a concept that it's no use talking about at this point because we're going to try to sophisticate that concept. But once that base mining year was established, you'd pay 15 percent on the base mining year, 50 percent on the profits beyond the base mining year.

MR. CHERNIACK: Mr. Chairman, may I just -- (please, the page) I want to send over to the honourable member. Oh, Section 4(4) top of page 6 provides the definition of a mine. And, Mr. Chairman, I've had the advantage of talking to the Legislative Counsel just a moment ago, and he points out that in order for there to be any opportunity by regulation to differentiate as between different classes of people, that could only be if the Act gives that right. But if the Act does not give that right, then it's got to be across-the-board to all - and not having checked it, but I have his assurance that this Act does not give the right to a Lieutenant-Governor-in-Council to discriminate or distinguish - and I don't want to use a pejorative word - to distinguish as between different mines and different companies. Therefore his interpretation, which I believe is correct and which we undertake is our intent, is to have one rate apply to all as it does at this time. And I accept the statement, we wouldn't have the right to do it otherwise because it's not given in the legislation.

MR. CHAIRMAN: The Honourable Member for Riel.

MR. CRAIK: Mr. Chairman, we appreciate that explanation, that's one of the major points we wanted to have clarified and on the record. Might I suggest that the definitions of "mine" that are in the Mines Act, and the definition or explanation given in section 4(4) of the Mining Royalty and Taxation Act, the different Act, do lead to some confusion and it might clear it up somewhat if in the Mining Royalty and Tax Act reference was made when you say "mine"; rather than use that, use the term "mining company" so that we know that it applies to all the operations of a mine, and I don't think in Manitoba that's going to lead to great confusion. But I'm suggesting that perhaps for the Legislative Counsel, that there might be some assistance in terms of people reading the Act if rather than use the word "mine" m-i-n-e in the sections we're dealing with in 77, if we would know in reading it rather than going back finding out which definition we're talking about, that it says rather than "mine" - "mining companies" or "mining operation" or something that would categorize the operations of a company. So Mr. Chairman, that point is clarified.

The next major point is that we would much rather see, but we realize now from the attempts that were made this morning to change the mining rate on the Pari-Mutuel Tax Act, that it's impossible for us to in committee make a suggestion of a mining rate and a procedure that would be different from the section that's in 77. So let us just say that we would much prefer to see the Government state a mining rate that has no discretion to it by Order-in-Council, no discretion other than discretion that is given to the Legislative Assembly to change that rate and fix it at a rate that will produce the revenue to the Province that they expect to get, need to get and have planned to get and can justify; and to remove the clause that says, "or such smaller percentage as may be fixed by the Lieutenant-Governor-in-Council." We would very much like to see that section removed - that we can advocate in committee - but we cannot advocate in committee the joining requirement, the auxiliary requirement to change 23 to some other number that gives the same amount of money. So, Mr. Chairman, we're caught in the difficulty in discussing this in committee, that if we move at this point to change "or such smaller rate percentage"; to remove that from it, we're automatically saying to the Government, it has to be 23 and that's it, we can't change that. Now that's just a little bit unfair as far as the committee procedure's concerned unless 23 realizes the amount that the Government is setting its objective to claim from the mining companies.

Now, Mr. Chairman, the explanation that the Government may - or the justification for this discretion that the Government may claim, which is to dovetail with any decision made by

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(MR. CRAIK cont'd) the Federal Government with regards to whether Royalty Tax is allowed or disallowed as a corporation tax exemption, I don't think is a problem that can't be overcome by coming back to the Legislative Assembly next year if it's required and saying, our rate was too high, it brought in an amount that was injurious to the operation of the mining companies and we therefore are passing legislation to set that rate at 15, 17 or 19 or whatever it is - to dovetail with the federal legislation whatever it may be, because at this point we don't know what the Federal Government is going to do. We know that it's announced by the former Liberal Government that they are not going to allow royalty deductions by the provinces to be taken off as a deduction from corporation tax. Now if there's another government elected, their decision may be quite different from that. Well, Mr. Chairman, what we say is that in the interest of passing good tax laws that the discretionary power - the rate should be set if necessary at the 23 and left at that; and if that is wrong, if the Federal Government does not allow the deduction to come off from their calculation, the Government should come back at the next sitting of the Legislature and say, this has not been allowed, it has worked to the disadvantage of the mining companies, the province, etc., and we ask for change - and make it retroactive, make it a retroactive change, Mr. Chairman.

Now I ask the question because the taxation people are here and perhaps they can advise, do the payments under this tax come in on a progressive basis or does it come in at the end of the fiscal year of the mines operation? Now if it does, that probably means that even the retroactivity would not be necessary; in other words, the next sitting of the Legislature will be in the early part of 1975, and at that time it can be looked after. But in the meantime it's not good legislation, it's not good tax legislation to collect this amount of money, \$30 million, with so much of that discretionary at the decision of the Cabinet. And so we would ask that this clause, that discretion section, be removed. We cannot by virtue of the procedures of the House ask you that it be reduced, otherwise we would. We would say, set it at the figure, at the rate that will give you the return you expect assuming the federal laws remain as they are, and that would be good legislation. That we can support and would support. But you realize the dilemma that is created here by having powers to change one sentence but not the other.

Now I don't know if this makes our position clear but we are on a matter of principle; it is bad to leave this discretionary power for the Cabinet to reduce that rate. If you want to reduce it, bring it back in the 1975 session, and then if necessary make it retroactive if that's necessary.

MR. CHAIRMAN: The Honourable House Leader.

MR. GREEN: Mr. Chairman, I think that the honourable member does want to make his position clear and does indicate his dilemma - and the Minister of Labour is suggesting that their position is best made clear by speaking against and then ultimately opposing the clause. I think that honourable members should go back a step and see how this clause was brought in. The mineral policy statement indicated that we did not wish to change the basic Royalty Tax as now exists, that we were going to try and go along with 15 percent. We also indicated that any surplus to go from roughly 18 million to roughly 30 million, was going to be accomplished by means of a surplus profits tax or a windfall tax or a tax on economic rent

MR. CHAIRMAN: Order please. The hour of adjournment

MR. GREEN: I wonder if I can just spend four minutes.

MR. CHAIRMAN: Does the Honourable Minister have leave?

MR. GREEN: . . . that we are going to leave the 15 percent where it was, we are going to raise the additional money through a tax on economic rents. In the same policy statement we said that - knowing that the economic rents tax is going to be a problem, and at the same time knowing that we feel that there is justification for more money to be received from the mining industry, we said that we are going to provide some flexibility so that we will be able to collect that money while the new tax is being perfected. By the time we came to the Legislative Chamber we knew that the new tax would not be effective until 1975, so we put in the figure of 23 percent, which is the amount that is necessary to get that money - and some people seemed to have overlooked the fact that the - despite the fact that the other bill is not being proceeded with, the province of Manitoba is proceeding to impose higher taxation on the mining industry.

Well I am suggesting - I am glad that the Leader of the Opposition is aware of it - I am saying that that appears to be overlooked by some people, because some people are of the

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(MR. GREEN cont'd) opinion that the Province of Manitoba has withdrawn its intention to realize greater revenue from the mining industry -- (Interjection) -- Well I'm glad that the Leader of the Opposition sees that, and I'm glad that the Member for Riel sees that, that that has not been our position. Our position is that we will get the increased revenue, but we will get it in the traditional form of tax, and that instead of substituting the additional form of tax for the other tax, we will leave it with the additional form of tax until the other tax comes into being.

Now the Minister of Finance has indicated that there is now several considerations. One is with regard to what the Federal Government is doing; a second consideration is that we still intend to have a tax on economic rents and that tax on economic rent is to be part of the moneys that are paid to the Province for mining royalties - and when that tax on economic rent is to come in, we don't mean it to be cumulative to the existing tax, and the only way it can not be cumulative is if we are to reduce the existing tax. That can be done in two ways. One way can be by legislating again next year a reduction, and the other way is to provide that the Lieutenant-Governor-in-Council can do it. Now, Mr. Speaker, I'm not sure that next year, that the new tax will be passed immediately; that it will also not require some time to be brought into effect, and the flexibility will still be necessary - so we have gone to the least form of flexibility. We've gone to a 23 percent tax, which can be reduced by the Lieutenant-Governor-in-Council and I submit, Mr. Speaker, that that is completely fair because it means that the person who is being taxed knows that his rate is at 23 and the only thing that can happen is that it can be less. Now I'm not going to go over the whole procedure again, the honourable members are making a big point of it. I think that various jurisdictions have seen to it that in the field of royalties you need greater flexibility. The Province of Manitoba has it now with respect to mineral royalties. The mineral royalties are now set by the Lieutenant-Governor-in-Council, not reduced, but they can be increased by the Lieutenant-Governor-in-Council - and as part of the oil legislation, the Cabinet will be regulating an increase in the royalties now paid on oil. I think that the territorial legislation provides the same thing, other provincial legislation provides the same thing, and the minimum degree of discretion provided here in light of the policy statements is, Mr. Speaker, I submit very reasonable.

MR. CHAIRMAN: Committee rise and report. Call in the Speaker. Mr. Speaker, the committee of the Whole has considered Bill 77, directs me to report progress and asks leave to sit again.

IN SESSION

MR. SPEAKER: The Honourable Member for Logan.

MR. WILLIAM JENKINS (Logan): Mr. Speaker, I beg to move, seconded by the Honourable Member for St. Vital, that the report of the committee be received.

MOTION presented and carried.

MR. SPEAKER: The Honourable Member for Radisson have an announcement?

COMMITTEE SUBSTITUTIONS

MR. HARRY SHAFRANSKY (Radisson): Yes, Mr. Speaker, by leave I wish to make two substitutions on the Law Amendments Committee; Pawley for McBryde, Miller for Johannson.

MR. SPEAKER: Thank you. The Honourable House Leader.

MR. GREEN: Mr. Speaker I would move, seconded by the Honourable the Minister of Industry and Commerce, that the House do now adjourn.

MOTION presented and carried and the House accordingly adjourned and stood adjourned until 10 a.m. Monday morning.