

THE LEGISLATIVE ASSEMBLY OF MANITOBA
10:00 o'clock, Monday, June 10, 1974

Opening Prayer by Mr. Speaker.

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

ORAL QUESTION PERIOD

MR. SIDNEY SPIVAK, Q. C. (Leader Official Opposition) (River Heights): Yes, my question is to the Minister of Finance. I wonder if he can indicate whether the Provincial Auditor has provided him with a preliminary report with respect to his investigation of the co-ops supervised under the Department of Co-Operatives, and particularly the Southern Indian Lake Co-op, and has indicated to you any problems with respect to documentation?

MR. SPEAKER: The Honourable Minister of Finance.

HON. SAUL CHERNIACK, Q. C. (Minister of Finance) (St. Johns): Mr. Speaker, I think it was made clear some time ago that the Provincial Auditor started his investigation of the Co-op accounts before anyone had particularly asked him so to do. I do not know that he would be giving me a preliminary report because I don't think that I asked that he give me a report. I thought it was made clear that when I discussed it with him and indicated I was prepared to give him the authority and the instruction, that he informed me that he had already proceeded and was doing the work.

However, just at the time of the last meeting of Public Accounts he indicated to me that he had made substantial progress, that he was not having any difficulty, and that he was in a position to report to the committee. He was not asked any questions of that committee and therefore at this stage I know no more than what I've already reported. However, it would be possible to ask the Auditor if he has any comments to make at this stage. He certainly did not tell me he's having any trouble.

MR. SPEAKER: The Honourable Leader of the Opposition.

MR. SPIVAK: Well I wonder then if the Minister could indicate at the time that he spoke to him did he indicate that the documentation was available, particularly in the Southern Indian Lake Co-op?

MR. SPEAKER: The Honourable Minister.

MR. CHERNIACK: Mr. Speaker, I have no recollection of his telling me of any problems in relation to getting the documentation. That doesn't mean he may not have any. I'm just saying I do not recall his telling me any such statement.

MR. SPEAKER: Orders of the Day. The Honourable Member for Birtle-Russell.

MR. HARRY E. GRAHAM (Birtle-Russell): Thank you, Mr. Speaker. My question is for the Minister of Highways. I'd like to ask the Minister what program of restitution he has to reimburse truckers for part of their licence for the long period that they have been unable to haul full loads because of road restrictions in the Province of Manitoba?

MR. SPEAKER: The Honourable Minister of Highways.

HON. PETER BURTNIAK (Minister of Highways) (Dauphin): Mr. Speaker, this is a brand-new to me and I think to everybody because as far as I know that this has never been done and I don't think that - as a matter of fact I'm sure, Mr. Speaker, that restrictions have not been on any longer this year than they have ever been. As a matter of fact this morning at six o'clock we have taken off all 250 pound weight restrictions off all of our roads.

MR. SPEAKER: The Honourable Member for Birtle-Russell.

MR. GRAHAM: Could the Minister indicate when the other restrictions are coming off the roads in the province?

MR. SPEAKER: The Honourable Minister of Highways.

MR. BURTNIAK: Whenever it is reasonable to do so. But as the honourable member knows, that under the law, restrictions cannot stay any longer than 90 days and usually they're taken off sooner than that.

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

ORDERS OF THE DAY

HON. SIDNEY GREEN, Q. C. (House Leader) (Inkster): Yes, Mr. Speaker, I would like to take up where we left off on Saturday afternoon and go back into the Committee of the Whole House.

MR. CHERNIACK: Mr. Speaker, I beg to move, seconded by the Honourable Minister of Labour, that Mr. Speaker do now leave the Chair and the House resolve itself into a Committee of the Whole to consider the following Bill, No. 77, the Statute Law Amendment Taxation Act 1974.

MOTION presented and carried, and the House resolved itself into a Committee of the Whole, with the Honourable Member for Winnipeg Centre in the Chair.

COMMITTEE OF THE WHOLE HOUSE - BILL 77

MR. CHAIRMAN: (Clause 13.1(3) to 13.5(2) was read and passed). We're on Page . . .

MR. CHERNIACK: I'm right into the bottom of Page 31.

MR. CHAIRMAN: 32. This hadn't been passed before.

MR. CHERNIACK: Oh, I see, yes.

MR. CHAIRMAN: On Page 32. Section 7(1)(a) pass; (b) pass . . . The Member for Riel.

MR. DONALD W. CRAIK (Riel): Mr. Chairman, on Saturday we were dealing with 7(1)(a) and (b), primarily 7(1)(b), and I pointed out at that time that our primary objection to 7(1)(b) is the discretionary power in the hands of Cabinet to change substantial taxes by Order-in-Council and that we would much prefer to see if they could, as a matter of principle in the parliamentary system, it's a much better principle to have a fixed rate of taxation so that the taxpayer regardless of whether he's an individual or a corporation knows where he stands at the beginning of the year and knows what taxes he's going to have to pay on what extra earnings he has.

Now, Mr. Chairman, there have been examples pointed out to us that this procedure that the government is asking for has been done on occasion in other provinces and as far as any reply to that is concerned is that what has been done elsewhere doesn't necessarily make a good policy or good government for us to adopt here in Manitoba. So on those grounds as a general matter of principle our main objection here is that the discretionary clause in 7(1)(b) giving the Government the powers to reduce the taxation from 23 percent to some lower level is objectionable.

So, Mr. Speaker, if we're really forced into . . . our first request is that the clause be removed. Our second request is in lieu of that to have a condition in there, that if in fact it is there to dovetail Federal Government policy that may or may not be established in the near future, that a condition be put into this clause that would allow the Government to make that change.

But, Mr. Speaker, as I understand it, the main reason for bringing this in is for the Federal Government to make up its mind and if they do disallow royalty claims off income for these corporations, that the Government would have to reduce its rate below the 23 percent, otherwise the effective rate would be considerably higher than that.

So, Mr. Speaker, we have only one federal political party that has postulated this theory, the name of the Liberal Party, that they are going to change the regulations with regards to income tax deductions. I haven't heard any of the other two parties. And since there is a federal election under way I don't think we should be second guessing the outcome of it and tailoring our legislation to suit what may happen at the federal level.

So I would suggest that we, Mr. Speaker, make our move first of all on this section, to remove the discretionary power, and if the government is absolutely opposed to that at least write in a condition that makes the reduction conditional on changes that may be brought about through federal legislation following the current federal election campaign.

MR. CHAIRMAN: The Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I can't help but express some amusement at the fact that the argument is being presented that there's a federal election going on and we don't know what the results are likely to be --(Interjection)-- the Leader of the Opposition wishes to make a speech already while I'm on my feet . . . ?

MR. SPIVAK: That was your idea.

BILL 77

MR. CHERNIACK: Well then would you please have patience. Mr. Chairman, the interesting thing about this argument that's being presented by the Member for Riel is that when it was suggested that the Bank Act is going to be changed and therefore we should wait - there was the same kind of discussion, only in this case we don't even know what Mr. Stanfield and his group are talking about in terms of changes in the Banking Act.

Mr. Chairman, I am hearing comments from across the road that I stated that the reason for the change in the right to refuse the rate of taxation is related to federal policy. I deny that I said it and I would like to have that shown to me that I said it because I do not believe that I made that statement. And if the Honourable Leader of the Opposition wants to interrupt and tell me I did then he'd better get ready and show me where I did so I can withdraw my statement where I am saying categorically that I do not believe that I made that statement.

Mr. Chairman, the statement made by the Honourable Member for Riel, that because other jurisdictions do something is no reason for us to do it, is of course a very obvious truth. Nevertheless, the fact that other jurisdictions do it makes it incumbent on any jurisdiction to look into the whys of why other jurisdictions do it, because one would assume that they are not stupid, that they are not connivers, that they are not deliberately trying to sell out a position but that they have a reason. One would assume that it's a valid reason. I would start on that assumption with anybody's decision to do something. Then I would question what is behind it; then I would look to see whether there's a justification or whether there's enough there to make one feel suspicious of either lack of proper sensibility in regard to taxation policy or it can be there's something nefarious.

Well, Mr. Chairman, I believe that we looked into why other jurisdictions do it and we have satisfied ourselves that there's good reason for doing it. We also find that our own legislation in this province enables it to be done, and therefore we have come to a conclusion that it is worth doing, not because others do it but because we feel that there are reasons that justify it and at the same time there are no strong adverse reasons overriding that. As to the reasons themselves, I have stated them earlier. I apparently have failed to get them across. I believe at the time, and I certainly now acknowledge that the Minister of Mines has had a greater understanding or has become more familiar with the concept and will be in a better position to explain again if necessary to honourable members the reason for this. But it is not to vary the tax, it is the right to reduce it. The circumstances are circumstances which I have related that had nothing to do with return on investments or the endeavour or enterprise of the people involved but rather circumstances beyond their control or beyond those which they influence. But I did not say it had to do with federal policy. Now may I say this, however. There is that possibility. But that is not the reason because we don't accept federal policy in relation to that.

Now I do want to indicate that I will defer to the Minister of Mines in this connection because I do believe that he has greater familiarity with the problem than I.

MR. CHAIRMAN: The Leader of the Liberal Party.

MR. I. H. ASPER (Leader of the Liberal Party) (Wolseley): Mr. Chairman, to the Minister of Finance. When we put the Liberal Party position on this Bill we said that we couldn't consider 77 regarding mining taxes without taking into account the content of 82. The government has relieved us of that problem and this leaves us only to consider the wisdom of the clause in front of us, the discretionary tax power under 7(1). We would appeal to the Minister to withdraw the discretionary provision, as I indicated when I first spoke on the bill.

Now I appreciate what the Mines Minister seeks to accomplish and, Mr. Chairman, we're in the position when we ask him to withdraw this discretionary power we're asking him to withdraw the power to reduce taxes, something that no politician likes to have to do. But there's a greater principle, a principle that's so profound, so vital to fair tax law that I appeal to him to in effect overtax if necessary but to maintain a principle of law. If he puts this into the law - and this is not a modest little thing and I tried to make that point to him before, it's not some discretionary power to change the rates of admission to a park or some stumpage fees for cutting forestry products - this power involves many millions of dollars per year, so it's not a power that government should have discretionarily to tax, to change tax systems without reference to the Legislature.

It may be inconvenient, and I know that the Mines Minister has in mind a system which will allow him to adjust this rate once all the chips settle and the dust is cleared from the

BILL 77

(MR. ASPER cont'd) federal position, from the proposed percentage tax on what was Bill 82; but I have to ask him even at the great inconvenience it might cause and modest expense only, don't take the power to tax away from the Legislature. Don't arrogate the government the right to vary the tax system, which involves millions of dollars, which has tremendous impact on northern and mineral development in the province as a discretionary matter of Cabinet. It's just not worth it to accept this as a precedent. Because if we accept this precedent where there is no precedent in Manitoba law that's comparable, then we could be faced next year with this bill that said, well we're going to levy a certain tax but we want the right in Cabinet to alter that tax, dramatically reduce it, or change it by a major reduction retro-active, which this section permits the Minister to do - reduce it.

I know, Mr. Chairman, I'm in a difficult position having to ask the Minister to give up a power to reduce taxes and yet the principle is too important. Now there is a compromise. The Progressive Conservative suggests complete elimination. That's what I would like to see too, Mr. Chairman. And I would ask Government to accept the inconvenience that that would cause if to preserve the principle that the Legislature and the Legislature alone will set the tax rates in this province, not the Cabinet. That's critically important and I appeal to the government to accept the inconvenience that that might cause. It might require - in order for the Government to do this and to be able to respond quickly to changing events in the Federal tax system or bringing in a new concept to replace what was Bill 82 - it might even require a one-week session of the Legislature. Mr. Chairman, that is the cost of \$50, 000 or \$75, 000 or \$100, 000, and that's a lot of money. But the principle that the Legislature shall set the taxes, not the Cabinet, I am prepared to go to the people of Manitoba and say, yes, I am prepared to see you blow, waste \$100, 000 calling a special session, because the principle is too valuable to our system of democracy.

If there's no willingness on the part of government to change then may I propose a compromise?⁷ Would the Minister at least add that this discretion can only be exercised if the Legislature is not in session?⁷ That is a reasonable compromise, Mr. Chairman. I don't like to compromise, it's not what I think should be the law of this province, but for heaven's sake at least say that the government can't while we're in this Chamber debating law the government is making law in the Cabinet room. So I appeal to the Minister and I will of course - I am committed to support the bill now with some terrible pangs of conscience because I have to vote, and I'm going to vote for Bill 77, but I have to vote for a bill that offends every principle of taxation that I have believed in and advocated for 15 years; that taxation must never be discretionary, it must be firm, certain, clear, non-negotiable. I point out to the Minister that the public must look at the tax system and say it is neutral, it's objective, it is not political. And if I were a cynical member of the public, Mr. Chairman, I would read that and say, what this allows the government to do is to have mining companies troop into the Minister's office and bargain and say look, you've got a 23 percent tax, you've got a 23 percent tax, you have the power to reduce it; we'll do such and such if you'll do such and such. I don't ascribe an improper motive, I'm just saying that it allows taxes to be bargained.

Now, Mr. Chairman, I'm not suggesting that there would be an abuse of this section by anybody, much less the Finance Minister. I don't cast any aspersion on his integrity. What I do say is that this kind of thing shouldn't be on the books. No one should want that power. I don't want it; I don't want you to have it. I don't want the Honourable Member from Riel to have it. I don't want the public looking at this section saying, hey that's pretty cute. Anybody can walk into the Cabinet, make a case and without us ever knowing about it until we see some regulation or Order-in-Council. If we bother to search, the mining law tax has changed.

So, Mr. Chairman, if the government will listen to the Member from Riel and to the Liberal Party they will take out the discretion; they will live with the inconvenience of having to call a session to change the mining tax. That's how we do everything in this country. But if they won't do that then at least let us add to the Act: No. 1 - that this cannot happen while the House is in session. And No. 2 - that if it happens, if there is a change in the tax, that there shall be, two weeks before the change in the tax, a notice of suitable size published in the media across the province so that people will know it's coming, and so that there will be no suggestion of some kind of a private clandestine thing being done. Now, Mr. Chairman, that surely, at a cost of \$2, 000 so that at least the public would be alerted and we members of the House would be alerted and we could come in and make submissions to the Minister, but at

BILL 77

(MR. ASPER cont'd) least - or a month or a week - some reasonable notice that this is happening, so that nothing can appear to be done in secret.

Now my compromise doesn't make me happy. It makes me happier than I would be if Bill 77(7)(1) went through as is, but I ask - and I'm not trying to score a point here, I'm appealing for a principle of law that I think is vital to all of us. And I know the Minister's intent, I know the Mines Minister's intent, I know it's a valid intent, but to accept once that millions of dollars of tax can be levied or reduced, even reduced, by Cabinet discretion, I think will lead to a disrespect for the system amongst, not necessarily members in this Chamber, but certainly the public, and all I ask is that the Minister inconvenience government by requiring them to call a session or if he, and I appeal to him to do that, but if he can't do that at least accept the two changes to make it publicly advertised and only applicable while this House is not in session.

MR. CHAIRMAN: The Minister of Mines.

MR. GREEN: Mr. Chairman, I believe that all of the points that have been made have been made in such a way as to be constructive. I have no argument here that there is an attempt to embarrass the government, there is an attempt to obstruct legislation. I think that the honourable members are attempting to be constructive. I also believe that the government is entitled when it expresses a firm policy commitment, to have that given some weight, and I agree that it is not legislation, but I also believe that a firm policy commitment is something which unless one has had reason to suspect such a commitment, or unless the commitment is then broken, that that kind of commitment has to have some validity. And the fact is, Mr. Speaker, that in the past four years, the Province of Manitoba has had the right to fix by regulations, oil and mineral royalties. We have the right now. It is contained in the Mines Act. It's existing law not old law. It is existing law and it is new law. As a matter of fact, you know, that the Federal Government, unless I can't conceive of the sophistication of the legislation, the Federal Government started to tax an export tax on oil and that export tax went up as the price of oil went up and I venture to say that they must have regulations which permit them to tax the increased value of oil.

The honourable member says it's an emergency. Well I'm not even disagreeing that it was an emergency. All I'm indicating is that the power that is sought here is sought essentially for one purpose, and the government is making a commitment that it is not going to - the government is not anxious to reduce mining revenues. The government is anxious to increase mining revenues. The government does not want to reduce mining revenues. The only reason for this particular section when it was first conceived was that there was going to be a new tax which we said would be a fairer tax and what we've said is that when we bring the new tax in we don't want it to be cumulative. We don't want to pile one tax on top of another tax and therefore, --(Interjection)-- we are not, right. We said that we want the right to, when the new tax comes in, to bring the other tax back to where it was before. We raised the mining royalties from 15 to 23 percent. The 8 percent addition was to be covered by a new form of taxation. That was in the policy statement. If the new form of taxation came in we were going to reduce the previous taxation to the extent that the new moneys were realized, from 23 back to the 15. Well, Mr. Speaker, that is what we have said. --(Interjection)-- Well I do not know, Mr. Speaker, I repeat, I do not know why there cannot be both legislation, plus an understanding that the government is making a firm policy commitment. And the policy commitment has already been expressed; it has been indicated, and I think that we would be foolish to be running around reducing mining revenues, which is what this Bill gives us the right to do, and nobody wants to do it. What I said on Saturday is that the point that seems to have been overlooked in the fact that we are not proceeding at this point with a new bill, is that it is not absolutely necessary in terms of dollars, because we have increased the royalties from 15 to 23 percent and anything that we were to get under the new bill we are now getting under the royalty tax.

When the new taxation comes in, and it may not coincide with the next session again, it may not coincide that when we bring in the legislation that the machinery will be ready to collect the taxes, we will still need the power to reduce the tax and if we are arguing the principle, which is apparently what honourable members are arguing, I cannot concede that we are doing something horrendous here, when the very same position may be necessary next year and the increase in legislation, and by the way, will be necessary with the oil taxation, because the oil taxation is based on an oil price, and if that oil price goes down - that legislation should be coming in this afternoon - if that oil price goes down or goes up, it may be necessary in order

BILL 77

(MR. GREEN cont'd) to capture the spirit of what is intended by the legislation, to pass a new regulation either reducing the mill rate that's going to be set under the oil royalty or increasing it. And, Mr. Chairman, it is not such a new thing nor is it such a horrendous thing. The Act now, both with regard to mines and oil, gives the Government the power by Lieutenant-Governor-in-Council to set royalties. Now that's up and down, and the very suggestion that we're going to be bargaining with some type of intimidation with the mines companies is destroyed by the fact that if that was the intention of the government, it could do it without this legislation. It could do it right now. And we are not doing it right now because we have expressed our intention of what we want. We are wanting the mineral royalty tax to go up - and I'm not talking about this tax. I'm talking about the power in the Mines Act to set royalties. That is this --(Interjection)-- the fact is that you could get the money through a royalty, and we do get the oil money through a 12 1/2 percent royalty. --(Interjection)-- That the law is in force, it is in existence. --(Interjection)-- Well, Mr. Speaker, it is an existing law. I am only referring to it, not because the honourable member says that if it was here we would be able to debate it, but to dispel the notion that somehow the Government has the power to and may, even may, use this power in such a way as to condemn itself to all of the people of the Province of Manitoba.

One thing that the honourable members should understand is that the government doesn't wish to condemn itself to the people of the province. The government tries to commend itself to the people of the province. --(Interjection)-- Pardon me. Well that is a fact, that is a fact, and therefore not only do we want to use this in the way which it has been described, but to use it in any other way, or in a manner which is being suggested, would be a suicidal type of use and that is not what is intended.

Now, we have the power now, under the Mines Act to set royalties. We do so in the oil industry. We don't do it on freehold, and that will be explained later this afternoon. We can do so with regard to minerals. It's right in the Mines Act. Is the Mines Act available? Well I have a copy of it. Well I don't know it by heart - the honourable member says I should know it by heart, but I don't know it by heart, but I do have the Act and if members will bear with me, I'll get to the - here it is under Section 7.1(1) "The Lieutenant-Governor-in-Council" - I'm not reading the beginning - "fixing the royalties fees, dues or charges to be paid for any leases, permits, mining or mineral rights, applied for under this Act, or for any other privilege, granted in pursuance of this Act." And we have set royalties on oil under that section, and can set royalties on mineral rights, but it's never been done because there is instead a Mineral Royalty Taxation Act - that's where the minerals are collected - but if one wanted to do it, if we wanted to ignore this legislation that we brought in the other week and decide on a complicated system of royalty, I am convinced that it could be done, or at least I am persuaded it could be done under this Royalty Act.

Well the honourable member says, maybe. Well oil royalties are now done under this Act --(Interjection)-- Well the honourable member says, maybe; I say, Mr. Speaker, that my reading of it is that we can do it.

A MEMBER: Why do we need it?

MR. GREEN: Why do we need this? Because, Mr. Speaker, we have not decided to fix royalties under this Act; we have decided on a Mineral Royalty Taxation Act because we have indicated that we are putting on another tax, that we have also indicated that when we put on the one tax we are going to reduce the second one. We need it because we indicated the manner in which we wish to proceed under this taxation.

Mr. Speaker, I read to you the - this is the Federal Government Act, and this is with regard to all minerals under federal jurisdiction which is the Yukon and the Northwest Territories, and off-shore mineral rights. "The Royalty which shall be levied and collected by the Crown on all products of any location acquired under this regulation or under regulations" - excuse me, I don't have the right Act. I know that I have a copy of the federal Act some place here. Well I had it, Mr. Speaker; I don't appear to have it handy. "The Governor-in-Council may make regulations for the leasing of mining rights in or upon territorial (?) lands and the payment of royalties therefor, but such regulations shall provide for the protection and compensation to the holders of the surface." This is in the Federal Act. In Alberta and in Saskatchewan, it is the same way.

Now we are asking for a limited right under this Act, a very limited right to not fix the

BILL 77

(MR. GREEN cont'd) royalties, but reduce the royalties, and we have indicated why it is necessary. It is necessary because we have the intention of coming forward with a much more equitable tax, equitable for the people, and in my view equitable for the mining companies and which the mining companies, by the way, have said that we agree with the Minister's intentions with regard to this new Act. They have not objected to the principle of the Act; they have objected to the fact that they believe that it contains within it things which do not realize that principle, and that has to be studied. But if the new Act comes into existence, then we intend that the amount of money that is collected under the new, will be reversed under this one, and having given that as the intention and having - the Honourable Minister of Finance tells me that he has never used the federal sort of ambiguity at the present time as being the reason for this, but I would have to say that if the federal does have some effect, then it will also be useful to have that power in the interim to be able to deal with it, but that's not the essential reason, the essential reason is as stated --(Interjection)-- the essential reason was the mineral policy statement which clearly set it out. --(Interjection)-- Well the honourable member says make it certain.

I believe that he has some valid points. I believe that he is making a good position. I believe that the Government is entitled to have some reliance placed on its policy position, and the fact that what is contained in this legislation is not dangerous, that it can be done under existing legislation, and that if the sort of speculative injustices that are being suggested, and of course that can come under any type of regulation where its government has the power to make regulation, but if that speculative thing were something which we actually had in mind, or wanted to do, it would not be necessary under this section. We would have the right to do it under other legislation which is presently valid and in existence and we would not have to make a fight about it.

So I appeal to the honourable members; there are situations now with regard to the taxation on minerals, on mineral resources, which requires the kind of minimum flexibility that is being asked for here, that the Federal Government has done much more with no complaint, with absolutely no complaint. The export taxes on the prices of oil must be flexible; they must be flexible because the price of oil has been changing, and I gather - I don't remember any of those things coming before the House of Commons, except the fact that they were entitled to levy it, and then it changed from time to time with the price of oil, and I may be wrong but it seems to me they must be using a form of Legislative Counsel control which they have in other sections. In our case, we want it for a limited purpose. We have no intention of reducing royalties. It seems to me I should not have to argue it with members on the opposite side to give us the power if necessary to reduce taxation, that that seems to me that is something that they would want to give us the power to do, and certainly the argument that the Leader of the Liberal Party uses with regard to uncertainty, there can be no uncertainty with the mining companies vis-a-vis this legislation. The only thing that they know is that they could only be better off, not worse off. In other words, the way the Act is written and without Bill 82, the only certainty is that they will have a better position. Now to me that can't be a problem to them, because it's indicated that the only thing that can be done is to reduce, so, Mr. Chairman, having made the point that the policy is one which has been stated, that the government gives its commitment with regard to that policy, that the government doesn't wish to take actions which would not commend itself to the people, that the power that the members so fear is there, if it was wanted to be used by a government now, and will be used, Mr. Chairman, with regard to the oil royalties, there are freehold and Crown lands, and on the Crown lands we are going to use the Lieutenant-Governor-in-Council's power to change the taxation on the Crown Lands. We are going to do that, we are going to do that concurrently with the passing of a bill with regard to freehold. --(Interjection)-- Well, Mr. Speaker, the minerals are ours too; the minerals are ours too. The minerals that are taken from the ground belong to the people of the Province of Manitoba - they are taken on a royalty tax. There is no freehold in those minerals. And we wish to do this because it is necessary, and the honourable member says we can argue it again next year; it seems to me that the principle that we are arguing is not such as would require a second debate on it next year.

MR. CHAIRMAN: The Leader of the Official Opposition.

MR. SPIVAK: Mr. Chairman, I'd like to deal with the Honourable Minister's statement and the statements of the Minister of Finance, and basically restate our position - and would

BILL 77

(MR. SPIVAK cont'd) hope that there will be an opportunity later on for the Honourable Member for Riel to present what I think would may be a compromise to the positions that have been established. And I think this is important. But before we do this, Mr. Chairman, I think it's important to understand our position.

To begin with, without in any way becoming involved in motives because motives are not an issue at this point, we understand very clearly what the government's intention is; and we understand that they've now - for all intents and purposes - withdrawn the Principal Mining Royalty Tax for this session, but will be coming back by next session with it. --(Interjection)-- I beg your pardon? --(Interjection)-- Well we're not proceeding with it - but by withdrawal I meant withdrawal for the purpose of the session, I didn't mean any other purpose. The announced intention is to bring that in at the next session. Now we understand that. We also understand that this particular section of this bill is really related to the operation of the other Act as well - and it's very clear that the Government intended to reduce, as the Minister indicated, the maximum of 23 percent down to 15 percent once the mechanics of the other Act were in operation - we understand that very clearly. Our concern at this point is where possible, as a principle - and there may be some disagreement at this point, but I think we've reached the point where in our society and in this Legislature, in other Legislatures, in the House of Commons, we have to start talking about this, that where possible discretion should not be given to Government with respect to taxation matters. Now that's an argument the other members opposite may argue against. We say that because, while valid reasons can be brought forward as the Minister of Finance attempts to do, the same arguments are used for the exercise of police power. Valid reasons are always presented for police power. But, you know, Mr. Speaker, in arguments against the excesses with respect to police power, speculative injustices are brought forward in those arguments. So I advance that to the Minister to indicate that when the speculative injustices are suggested it's not been suggested by the Government in their presentation, and we're not doing this on the basis of imputing motives but to raise the concerns that have to be raised. And I think we have to come down to that in dealing with this. Therefore from our point of view, recognizing that in this particular situation it will not be dealt with until the next session, and at which point the mechanics will be such - assuming that the Government's proposal is adopted by the House, there will be a period of time between the reduction from 23 down to 15 with the operation of the new Act. That in effect for the period of time between this session to the next, the 23 percent is going to remain, there will not be a reduction - therefore that capacity for the Government to reduce as a matter of principle, because it gives the discretion, in this case a reduction admittedly should not be given. --(Interjection)-- Well, should not be given until the House has dealt with this matter and has approved the new operation, and with the provisions in the Act of its application. Now I don't believe that there's administratively any difficulty - and what we are essentially saying is that the House will have had proved the basis on which this will be dealt.

MR. GREEN: May I ask a question?

MR. SPIVAK: Yes.

MR. GREEN: Would the honourable member - because I don't want to be arguing about it next year - would the honourable member agree to an amendment in the bill that this power to reduce shall not be exercised until March 31, 1975?

MR. SPIVAK: The problem we have at this point in dealing with it would be --(Interjection)-- Well the question is, the Minister does not want to argue about this next year. Well our problem will be - and I'm going to advance the concerns right now - that when the Principal Mining Royalty Tax is brought forward next year, we are going to want to understand the mechanics of that Act very very well and we are going to want as much detail in the Act, rather than by way of regulation, the Government having had the time, and I think this is necessary in order for certainty with respect to the taxation Act.

Now our position essentially is that ministerial discretion or Cabinet discretion should not exist, and if the effect of it would be, Mr. Chairman - if the effect of elimination of ministerial discretion or Cabinet discretion would be to leave the tax as it is until the next session, then it's obvious the next session will have commenced before March of next year if we follow the normal procedure. --(Interjection)-- Well you're not going to change it until the next fiscal year in any case. That's fine. Then we accept that the discretionary parts should be taken out, and I think this is really what the position of the --(Interjection)-- No, we have a

BILL 77

(MR. SPIVAK cont'd) compromise. --(Interjection)-- Capitulation on whose part, capitulation on whose part? On our part? --(Interjection)-- Well, all right, but where are we - let's understand, what's the disagreement with us? What's the disagreement? The disagreement is that in effect we are not giving to the Cabinet the authority they may very well want next year. That's really what the disagreement is - and we say that (a) in principle - and we have to be concerned about it - is every Government, as every Legislature has to be concerned about it, as every Opposition Party has to be concerned about, is the giving up of part of the legislative authority to Cabinet - and our concern has been --(Interjection)-- But it has nothing to -- I go back to the issue of police power. There are, you know, limitations that Legislatures and the House of Commons are basically applying to police power. Okay. --(Interjection)-- I beg your pardon? --(Interjection)-- Well, we don't want to compromise. --(Interjection)-- Yes. Well, all right, I think we have a proposal which is a compromise - and I'm going to allow the Honourable Member for Riel to develop that, the opportunity to give it. --(Interjection)-- Well, possibly after the Liberal Leader has spoken. But I want to indicate to the Honourable Minister of Mines and Natural Resources that, eliminating any debating points that may occur for the sake of debating, in terms of solid argument once the Government admits that they're not going to use this until next year; once the Government really admits that what they're doing is trying to enact now what they would have to enact next year - and they want to avoid the argument - then I suggest to you that that's no justification for the kind of discretion that Cabinet's been given, even if Cabinet had the power before under other Acts. I think our concern, and I think their concern must be to put limitations. There has to be - otherwise, Mr. Speaker, the Legislature, this forum, this committee becomes irrelevant, and I don't think they want it and I don't think we want it. And so I would commend them to recognize that they having announced their position, that there is no justification for Cabinet discretion to be given in this particular clause if in fact the flat rate of 23 percent is going to remain until next year.

MR. CHAIRMAN: The Leader of the Liberal Party.

MR. ASPER: Mr. Chairman, the Liberal Party did put forward a proposed compromise - and the Minister did not deal with it in his comments - that was, that at the very minimum that the discretion not be exercised while the House is in session, and that before it be exercised that public notice be given. That was one form of compromise.

MR. GREEN: Can I ask the honourable member a question?

MR. CHAIRMAN: The Minister of Mines.

MR. GREEN: Would he agree to some suggestion that it can be exercised if the House is in session, if upon its exercise it immediately comes forward for debate and is debated, that the regulation is approved by the Legislature within let's say two days afterwards.

MR. ASPER: Yes, Mr. Chairman, I intended in my comment now to broaden that concept by saying that even if the House isn't in session -- well I'll come to that.

First of all, I want to put it clearly that if there is law on the books that is bad law and it's an existing law, that's no reason for compounding it. And the reason there's been no outcry is that it's been a nominal tax, and it's been like a license fee - like changing the rent on a building you own.

MR. GREEN: I would agree that you do not perpetuate bad law that is on the books. But would the honourable member agree that the existence of the law and the fact that the Government did not do what the law says can be done, is at least an indication that the speculative motives that are being suggested are really irrelevant because if we didn't have this thing, we could do it.

MR. ASPER: Mr. Chairman, I thought I'd made that clear. I certainly concur with the Minister's statement. There is no speculative motive that we're ascribing to this Government, we do not question your motives. I point to the federal situation with oil was crisis - and I agree that in time of crisis when billions of dollars were challenged as being windfall profit to the oil industry, that there has to be under those circumstances a suspension of normal law, just as there is in time of war, in time of flood and so on. So I certainly didn't protest the Federal Government stepping in to prevent the oil companies from in effect looting this country, and that's why we sat by and allowed Federal Government's discretion on setting oil taxes, because the situation had to be dealt with on an hour by hour basis, day to day basis. It was inconceivable that Parliament could deal with it. But we don't have that here.

BILL 77

(MR. ASPER cont'd)

Now I was impressed with the Mines Minister's statement that what he really seeks is this 23 percent royalty, which will then drop to 15 percent, it will drop to 22, 21, 20, 19, 18, 17 down to 15. He indicates that his plan is to put the 23 percent in, bring in a new concept of price sharing in effect, or profit sharing, and at that point he will be able to reduce the tax to 15 percent, to go back to the basic. Well the bill doesn't say that, and it seems to me he could readily accept a provision that (a) removes the discretion completely because he has no intention of exercising that discretion - out of his own mouth he says; he has no intention to exercise it until he brings in a successor to Bill 82. Well at that point, Mr. Chairman, when we pass the successor to 82, the quasi price taxation, then at that point he can reduce his royalty without ever having a discussion. The two laws can be passed concurrently. And if he at that time still needs discretion, we can debate it then. But from his own statement, he has no intention of exercising any power under that section until a new bill is passed. Why then can't the new bill contain a clause setting the royalty under this section down from 23? Now - so that he loses nothing. And again, Mr. Chairman, this has nothing to do with "capitulation" - was his word; has nothing to do with compromise. What it has - and it has nothing to do with any ascribing of furtive motives - what it has to do with a very - and I'm not worried if this law passes, I'm not worried that the Minister is going to fiddle around with it, I just don't want to be forced to vote on a law that is offensive to everything I've said for so many years as a student of this subject of taxation. It is wrong. There are times when this is necessary, this is not such a time.

Now inasmuch as his own statement indicates he does not need this at least until after the next session of the Legislature, he can simply withdraw it, simply withdraw it and put it in as the successor to Bill 82. Secondly, he wouldn't want a weak Cabinet - not his Cabinet perhaps - but a weak Cabinet, to be forced into a negotiation with a powerful mineral lobby who can then point to him and say, "look you can reduce this tax, otherwise we're going to close this mine, otherwise we're not going to explore this." No government would want to be in a position, I wouldn't think --(Interjection)-- Well, Mr. Chairman, there may be some day a weaker government that could succumb to that kind of pressure. I know that if I were the Minister of Finance or the Mines Minister in a government, I would want to be able to say to the powerful lobby leaning on government, you know that I can't do that, you know I have to take it to the Legislature and you know that there will be ample opportunity for debate, and public opinion will form and we may or may not be able to do that. But a weak government, Mr. Chairman, would be forced to respond to the fact that they do have this power, it's there to be exercised, exercise it. And that's one of the reasons why I dislike discussion so much. Because I've seen the oil lobby, I've seen the mineral lobby, I've seen the retail stores lobby and I've seen the lobby of the C.A.'s and the lawyers, I've seen them effectively lean on government to change law in back rooms as opposed to the Chambers.

Now other options for consideration, for finding a solution to our philosophical dilemma here, Mr. Chairman, consists of the following. First of all, perhaps the Minister would agree to putting some ceiling on the length of time that he can reduce the royalty before it receives ratification from the House. He may have to act in an international price change, he may change the royalty if he needs that discretion. But some feeling that such royalty must be ratified if the House isn't in session, that it must be ratified by the House within 90 days or 60 days or 30 days, or it lapses, in other words the discretion is a limited discretion for 90 days. --(Interjection)-- No, no, it wouldn't lapse retroactively. The government would have that power, but it would have to come to the House within 90 days and get it approved, or 60 days or 30 days, whatever the government is prepared to do on that.

Now one more thing. I don't know how to read section 7.1. I hope I read it correctly, but I fear that it may permit the Minister to reduce the royalty as implies, but it may also permit the Minister to raise the royalty back to the 23. Now I don't know that. That would give us yo-yo taxation; that would give the Minister the power to set it at 23 today, reduce it to 15 tomorrow, 18 next month, 16 next month, 23 next month - and, Mr. Chairman, that kind of law is bad law. So if my fear, my legal interpretation is too literal, then the Minister shouldn't object to an objection saying that the power to reduce but not re-escalate, reduce but not re-escalate. Finally I wonder if he would consider even softening the discretion, to say that there will be a discretion which is valid until approved or rejected by the Legislature but--(Interjection)--

BILL 77

(MR. ASPER cont'd) But, Mr. Chairman, the Finance Minister accuses me of bargaining - you bet I'm bargaining. Foward bargaining, yes, because --(Interjection)-- No, I'm trying to improve the position.

Mr. Chairman, the reason I'm doing this and taking the time of the House on really something that is philosophically important as opposed to economically important, is that the Mines Minister and the Finance Minister twice in this session have showed something that have made me a little more comfortable being a member of the Opposition. I had the view that it was the most frustrating thing in the world. But I've seen two things this session. One has just been put on my desk. It's called an Act to amend The Mineral Taxation Act. There was no loss of face. The Government did what it should do. It consulted; it debated and it made changes. The same thing with Bill 82. I simply, without any attempt to score Brownie points, without any attempt to say, aha, we've bludgeoned the Government into submission - which I don't think anyone would say, because it isn't possible, I do ask the Minister to respond to a validly felt concern. I've given him seven options and he can take any one of them. Now I'd like to hear from the Minister as to what he really intends to do.

MR. CHAIRMAN: Just before I recognize the Member for Riel, I would remind members - and I interfere reluctantly because I don't want to disturb the mood of the House - but one of the difficulties is - and Hansard only records the speaker and oftimes the questions come back and forth, I don't want to disturb them. The Minister for Riel. The Member for Riel.

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BILL 77

MR. CRAIK: Mr. Chairman, I think all sides of the argument have been placed. The one outstanding concern I had was that the Mines Minister was interpreting the present Mines Act and reading more powers into it than was intended I think when the Act was written, because the section he refers to giving the Government powers to regulate and set royalties under 7 (1) (11) of the Mines Act is fixing of royalties, fees, dues or charges to be paid for any leases, permits, mining or mineral rights applied for under this Act or for any other privilege granted in pursuance to this Act.

Now that has usually been a pretty small part of the return, or it's intended to be a very small part of the return to government in relation to the actual production of the minerals themselves, which of course is where the royalty tax comes in and that's what we're dealing with. So under the royalty tax, I think the argument still boils down to a large amount of money, in the order of \$30 million, coming in to the provincial coffers, and our argument is whether or not this should be discretionary. That size, that amount of money which is a major source of taxation for the Provincial Government should not have the sort of discretion that is allowed in the more minor amount of money that's allowed in the Mines Act for the rents of the land itself, the leases and permits and so on, which are minor. So I think our argument still stands that we want to see this more rigidly set along the normal lines of taxation that are imposed on industry and on individuals.

So, Mr. Chairman, the resolution that I propose, the amendment that I propose would essentially leave the government the discretionary power to set the rate below 23, subject to approval of the Legislature. Now the legislative counsel advised me here that the original motion I had may cause some difficulty in the wording. I said it had to be approved by the Legislature if it was in session or at its next sitting. He pointed out some difficulties here and perhaps it would operate better if it were to say in Section 7(1)(b) that the third -- Mr. Chairman, just a moment until I find where this starts. This adds at the end, okay, that Clause 7 (1) (b) of the Mining Royalty and Tax Act be amended by adding thereto at the end thereof the words "but unless a reduction in the percentage under this clause is ratified by the Legislature within 90 days of the date, the percentage is reduced, the reduction ceases to have effect on the 91st day after that date." Have I got the wrong word in there again?

MR. CHAIRMAN: Order please. The member has moved the motion.

MR. GREEN: Mr. Chairman, I don't think he can move an amendment, but I think he's asking us to change the Act, and I just wonder whether we are you know getting very close to having this type of thing acceptable. I understood that the Leader of the Liberal Party said that if the Legislature is not in session that we have a right of bringing this thing down and we only want to bring it down, and I agree that we can change it so that we don't have the right to then bring it up again. So the first principle that we could bring it down between sessions, that if the Legislature is in session -- and this is the second proposition that was advanced by the Leader of the Liberal Party, a little different than the one that was advanced by the Member for Riel -- that if the Legislature is in session, that it must be ratified by the Legislature within let's say a period of two days, that the regulation has to be affirmed by the Legislature. Now that would be a little different than the Member for Riel, who is saying that really the regulation has no effect because it has to be a legislative enactment . . .

MR. CHERNIACK: In effect for 90 days. For 90 days only.

MR. GREEN: Would we have to call a session within 90 days of doing it?

MR. CHERNIACK: Yes.

MR. GREEN: Can't it be at the next session of the Legislature?

MR. CHERNIACK: Within 90 days after the beginning of the next session.

MR. GREEN: Okay, Excellent. Excellent. If it is being suggested that we can bring it down but it has to be ratified within 90 days of the commencement of the next legislative session; if the House is in session, then it has to be ratified within two days let us say by a debate which would ensure its ratification. In other words, that we have to have the power to debate it similar to what the Minister of Finance was attempting to introduce with regard to Special Warrant. So let's get this again. I shouldn't have said that. I said a no no. If what is being suggested is that if it is done it has to be ratified within 90 days of the commencement of the next legislative session or if it's done while the Legislature is in session it has to be ratified within two days by a special debate. --(Interjection)-- Down only. And down between 23 and 15.

BILL 77

MR. CHERNIACK: We're willing to say never below 15, if that's going to give comfort to anybody.

MR. GREEN: Yes. Never below 15. Unless, except if you have a new Act. That the discretion is limited from 23 percent to 15 percent. If we want to change it to below 15 we have to - you know, I can tell the honourable members that we don't want to change it below 15. We don't want to change it below 23. But if he can get the legislative counsel to draft that out, I think that that is agreeable.

MR. CHERNIACK: Mr. Chairman, I'm just wondering - I think we've reached agreement but it's a question of refinement of wording and approval. I am wondering if I can suggest that we don't push the legislative counsel to give us an immediate answer. Like I think he should have ten or fifteen minutes, that's not immediate. And meantime I want to point out that he has already handed me certain changes that we had agreed to but had not been amended, dealing with the Manitoba Gazette publication - and we'll have to go back to that as a routine and possibly we could deal - I don't know if we can deal with other sections of the Act in the absence of the legislative counsel, and that would be that we'd go through the mechanics and at the same time have him draft and submit for approval the wording for this very important section and thus take advantage of the time. If there is agreement . . .

MR. CHAIRMAN: The Leader of the Liberal Party.

MR. ASPER: There is complete agreement with what the Minister said. I wonder though if the Minister would agree once we're starting the amendment, to include that last suggestion of ours which was that there be immediate publication, given widespread attention.

MR. CHERNIACK: I understand what the Leader of the Liberal Party is saying. I am going to suggest that for the other matters that we have to deal with I can excuse the Minister of Mines, and I think I can excuse the Leader of the Liberal Party. That suggestion has not yet been fully clarified between us, but I think it's acceptable. I'd like to suggest, Mr. Chairman, that if it meets the I suppose unanimous consent, we would go back to cleaning up the rest of the bill. Meanwhile leave it to the legislative counsel to make the amendment and discuss it with the Minister of Mines and the Leaders of the two opposition parties, and they can come back to us. And I'm not ignoring the point mentioned by the Leader of the Liberal Party.

INTRODUCTION OF GUESTS

MR. CHAIRMAN: If that's acceptable to the mood of the House, may I digress just a moment while I introduce two schools. The St. Jean Elementary School. They have 29 students of Grade 6 standing under the direction of Mrs. Fillion. This school is located in the constituency of Rhineland. And we have 29 students from the Happy Thought School of Grade 5 standing, and these students are under the direction of Miss Rozak. This school is located in the constituency of Lac du Bonnet.

On behalf of the members I would welcome you here today to your Legislature.

BILL NO. 77 Cont'd

MR. CHAIRMAN: Then if we have agreement we will proceed, by setting aside for the moment Section 77.

MR. CHERNIACK: Have we now agreed that we can deal with these amendments before us, which means that by unanimous consent we go back to Section 8 and I will deal with all these motions that have been distributed.

MR. CHAIRMAN: Go back to Section 8.

MR. CHERNIACK: I don't think we can do it omnibus. Mr. Chairman, I don't believe we can do it omnibus, I'll try to read as quickly as possible. But meanwhile are we relieving the legislative counsel from having to pay attention to us? Fine.

All right, Mr. Chairman, I move that Section 8 of Bill 77 be amended by adding thereto at the end thereof the following subsection: Notice of arrangements, etc. 12(6) Where the Minister makes an agreement or an arrangement respecting the reciprocal exchange of information under subsection (5), the Minister shall publish in the Manitoba Gazette a notice setting out the terms of the agreement or arrangement.

MR. CHAIRMAN: Agreed? (Agreed) Next Section, 17(1).

MR. CHERNIACK: I move, Mr. Chairman, that Bill 77 be amended by numbering Section 9.1 - did you mention a different number?

BILL 77

MR. CHAIRMAN: Yes, I'm sorry. The Minister of Finance.

MR. CHERNIACK: Section 9.1 thereof as Section 9.2, and by adding thereto immediately after Section 9 thereof the following section: Subsection 17(1) am. 9.1 Subsection 17(1) of the Act is amended by adding thereto, immediately after the word "kept" in the third line thereof the words "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."

MR. CHAIRMAN: Agreed? (Agreed).

MR. CHERNIACK: Mr. Chairman, I move that Section 21 of Bill 77 be amended by adding thereto at the end thereof the following subsection: Notice of arrangements etc. 11(9) Where the Minister makes an agreement or arrangement respecting the reciprocal exchange of information under subsection (8), the Minister shall publish in the Manitoba Gazette a notice setting out the terms of the agreement or arrangement.

MR. CHAIRMAN: Agreed? (Agreed).

MR. CHERNIACK: Mr. Chairman, I move that Section 41 of Bill 77 be amended by adding thereto at the end thereof the following subsection: Notice of arrangements, etc. 11(9) Where the Minister makes an agreement or arrangement respecting the reciprocal exchange of information under subsection (8) the Minister shall publish in the Manitoba Gazette a notice setting out the terms of the agreement or arrangement.

MR. CHAIRMAN: Agreed? (Agreed).

MR. CHERNIACK: Mr. Chairman, I move that Section 52 of Bill 77 be amended by adding thereto at the end thereof the following subsection: Notice of arrangements, etc. 9(9) Where the Minister makes an agreement or an arrangement respecting the reciprocal exchange of information under subsection (8), the Minister shall publish in the Manitoba Gazette a notice setting out the terms of the agreement or arrangement.

MR. CHAIRMAN: Agreed? (Agreed) The Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I move that the proposed section 9.1 of The Revenue Act, 1964, as set out in Section 60 of Bill 77 be amended by numbering the section 9.1 as subsection 9.1(1) and by adding thereto the following subsection: Notice of arrangements, etc. 9.1(2) Where the Minister makes an agreement or an arrangement respecting the reciprocal exchange of information under subsection (1) the Minister shall publish in the Manitoba Gazette a notice setting out the terms of the agreement or arrangement.

MR. CHAIRMAN: Agreed? (Agreed) The Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I move that the -- we haven't come to 82 yet, Mr. Chairman, I think probably . . .

MR. CHAIRMAN: Wait until we come to that Section?

MR. CHERNIACK: . . . when we come to 82 which -- I am now under the impression that we can go with sections other than 77 and then come back to 77. Is that agreed with? Well then we go to 78 and leave 77.

MR. CHAIRMAN: On Page 32. (Section 78 was read and passed) 79 (7.1) -- pass - The Leader of the Opposition.

MR. SPIVAK: I wonder if on this section the Minister can indicate the reason for this particular change.

MR. CHAIRMAN: On 7.1 ?

MR. SPIVAK: On 79 7.1 .

MR. CHAIRMAN: The Minister of Finance.

MR. CHERNIACK: Let me read my note out loud so that we can all understand it, to save time, if the note is satisfactory - on Section 79.

This section provides a rate increase from 15 percent to 23 percent to be effective April 1st, 1974. It provides a formula to calculate when income is earned before April 1st, 1974 or after, based upon earnings being averaged throughout the year at one three hundred and sixty-fifth per day. In short for the year 1974, the yearly income is calculated on a daily basis, the old rate, 15 percent applied to days falling prior to April 1st, 1974, and the new rate, 23 percent applied to April 1st and the days following thereafter. It also provides the same type of formula for calculation of tax when and if the rate of 23 percent is reduced by Order-in-Council.

BILL 77

(MR. CHERNIACK Cont'd)

Mr. Chairman, what I was going to say before I read this note, is that it is to take care of the situation when a fiscal year of a company is different from the government's fiscal year, and having read the note given to me I think that my earlier explanations would have been correct and sufficient without reading all of that. But I think clearly that's it, and I note there was a mention made by one of the honourable members, I think it was probably the Member for Riel, that it's very complicated, t times p over 365, etc., but frankly I don't think it is at all complicated. The formula provides clearly what each letter represents, and I think it's clear. That is the purpose.

MR. CHAIRMAN: The Member for Brandon West.

MR. EDWARD MCGILL (Brandon West): Yes, Mr. Chairman, I'm still not quite clear on how this section would work averaging the earning over 365 days of the year. I take the case of a mine that maybe for six months of the year has \$500,000 of earnings and the rate at that time happens to be 20 percent, and then for the balance of the year their earnings dropped to \$250,000 and the rate may have changed to be 15 percent at that time. Now I think that by averaging over the 365 days of the year and applying two different tax rates that you may come up with a different amount of total tax payable than if earnings averaging were on another basis than on a straight annual 365 days of the year. I wonder if the Minister understands what I'm getting at here, that you have in some companies, for instance, the markets may be good up till the last three months and then they may be forced to stockpile, or something like that. So really there could be quite a variation in the taxes that they would be faced with at the end.

MR. CHAIRMAN: The Minister of Finance.

MR. CHERNIACK: Mr. Chairman, the Leader of the Opposition suggests I may want my people here and I have a single 'people' upstairs, and possibly it would be better for him to come down, although I'll try at the same time to deal with the point raised by the Member for Brandon West. I think I understand his point. His point is, suppose during the year at different times of the year there are different levels of profit, and how do you do that. I don't know. I'd be happy to hear his suggestion. I suppose -- I hate to say the word, but there should be some flexibility by Order-in-Council to recognize that. But I wouldn't suggest that, it should be clear, Mr. Chairman, I wouldn't suggest that. The problem that's posed I imagine is the same problem that exists when there is a change in the tax structure generally, let's say income tax, corporate income tax structure, which takes place for a period of time which is different from the fiscal year of the company. I suppose the company has that problem, and I have not heard of a serious problem except that one knows that they then may so adapt their procedures as to stockpile or not to stockpile, on the knowledge of what they know. But the fact is that usually a tax change comes in on budget time.

MR. MCGILL: I just wonder if I can interrupt the Minister for a moment. We have a procedural difficulty. We're in Committee of the Whole.

MR. CHAIRMAN: Yes.

MR. MCGILL: And we have to proceed by leave.

MR. CHAIRMAN: Yes, by leave.

A MEMBER: To have this happen.

MR. CHAIRMAN: Yes.

MR. CHERNIACK: To have this happen. Well, I assume that since it was offered, the suggestion was made by the Leader of the Opposition that there is leave, but the Liberal Party I think has just indicated leave. I assume then that Mr. Perry could come in.

The note I have here --(Interjection)-- Yes, Yes. Well he has sent me a note which is the same as I've been saying up to now, one must calculate profits for an entire year and therefore it can only be established on the basis of the number of days in the year prior to the tax change; this is normal in all tax legislations. I believe it is. But that doesn't mean that we shouldn't hear any other suggestion that can be made. I just don't know unless a discussion area, which I think is not the mood of the committee.

MR. CHAIRMAN: The Member for Brandon West.

MR. MCGILL: Well, Mr. Chairman, the bill deems earnings to have been made at an even rate throughout the year, and I'm really trying to get at the position of the company when the tax rates change in the middle of the year, and is this an equitable way to apply the

BILL 77

(MR. MCGILL cont'd) taxes where in the first six months, as I've pointed out, they may have had a particularly good first half of a year, and the rest of the year sales decline or disappear, they go into stockpiling, and they are faced with maybe a 23 percent rate at one time and a 15 percent rate at another, take the extremes of the thing. Now I recognize the technical problem here; I don't know how often mining companies are able to produce a net earnings picture. I am not suggesting that we introduce a complexity here that doesn't agree with what kind of figures they're able to produce at the moment - some companies I know produce quarterly statements. Possibly there's an argument to be made for a quarterly review which would reduce the disparity which might occur over averaging your earning rates over 365 days of the year. But I would like to have the Minister perhaps give us an example of a change of tax rates in a yearly period, and compare the rates under the two different systems.

MR. CHERNIACK: Well, Mr. Chairman, I would not say it's equitable. As a matter of fact one of the Canadian tax authorities, at least in my mind, once said to me that you can never achieve equity in taxation, you can only aim towards the achievement of equity, and I accept --(Interjection)-- No, Senator Goldenberg once said it to me, and I think he's recognized as an authority. In any event that statement was profound, I thought, and so obvious that I should have recognized it even before I said it to him, we're not achieving equity in a certain tax structure. No, I would not say it's fair, but I would say that not being a student of either religious or astrological factors which have given us a 365-day year, every three years, and then a 366-day year the next one, I can't really explain why we're into this fiscal year system except that I guess in taxation, and in government, and in business life, one has to have a system, and a system that seems to have fixed on a fiscal year being a calendar year. I would have no objection to having a fiscal year, well ad observatum, down to a fiscal day. But, Mr. Perry, whom I've just consulted, points out he doesn't know of any other way; he does say, as he said in his note to me, that it happens that way in all taxation and in the suggestion made by the Member for Brandon West of say a quarterly, would I think satisfy me, because I'm not married to the thought of a 365-day fiscal year, but Mr. Perry says it would probably cost them an awful lot more to prepare a complete, adequate, audited, quarterly statement than to pay that gamble in taxation that the Member for Brandon West describes. In other words the quarterly statements that are run off are usually done unestimated; they don't actually take stocks, they estimate on a running basis what the stock would be, and they don't take depreciation that actively. I know it's not a complete financial statement. If however they prove that they could do it, I would think that it might be of interest to explore that possibility, recognizing as I do the point made by the honourable member.

I can't really make a suggestion, and neither did he, because we recognize the probability of some inequity but we don't have the answer which would not prove to be awkward or costly, but I would invite further discussion with members of the Opposition, and openly now to the mining industry, for example, which is no doubt maybe not listening but monitoring what we are saying, and who will in due course come to what I'm saying now, and invite them to come up with some equitable but yet realistic enforceable formula, which I think we should want to look at.

MR. CHAIRMAN: The Member for Brandon West.

MR. MCGILL: Mr. Chairman, I'm certainly not prepared to recommend a change which would add to the accounting complexities or to introduce some new problems for the industry when in practical terms the amount of variation in the tax may not justify that, but I would like to think that the department has taken examples of this and worked them out to see what kind of a swing would be possible based on previous results. But as I pointed out in the beginning, I rather suspect that quarterly statements, even audited quarterly statements, for all mines in Manitoba are not available at the moment. There may be some that are, but it might provide a great burden, and in doing that might add more problems and costs than would be, say by this change. But if the Minister would be prepared through his department to explore this problem and to consult with the mining companies as to what we're getting into here - I don't have an answer quickly, and it may be that we'll have to proceed on this basis, but subject to a further consultation with the industry.

MR. CHERNIACK: Mr. Chairman, I don't want to undertake that our department will explore it because we don't have access to a company's quarterly or internal statements, or knowledge of what their own statements other than the annual statements mean. What I would

BILL 77

(MR. CHERNIACK cont'd) say is that our department would be more than willing to discuss this with the mining companies if they wished to discuss it with us. I don't want to instruct our taxation division to go to the companies and start saying we want to explore, which means actually entering into their books and starting to draw statements for them. I would rather say that if the mining companies wished to explore this point, then our department will be more than happy to meet with them and discuss it and try to see what the impact would have been under a different system in order to see if there is some improvement to the formula proposed. So I've accepted the suggestion except put the onus on the companies to come to us rather than without invitation have our department go to the companies.

MR. CHAIRMAN: (1) -- pass; (2)(1) -- pass; (2) - The Member for Brandon West.

MR. MCGILL: I wonder if the Minister in connection with this formula on (7)(2)(1) could explain - and I mentioned in our previous discussions the situation where a mining company may have good markets for nine months of the year and in the last three months are stockpiling completely, no sales, but they build up a sizable stockpile of metal available for the market. Now can the Minister explain how this formula and this system of taxing earnings will accommodate the stockpile that has been accumulated?

MR. CHAIRMAN: The Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I am learning now that when there is stockpiling the stockpile goes in at cost rather than at market, and frankly as a tax collector, which I am, I'd rather it went in at market so that we can impute a profit even when it isn't there. But apparently the system is more in accord with what I understand the Member for Brandon West said, and that is that there should not be a profit imputed on stockpiles - and I'm told that there isn't. It goes in as valued at the cost of bringing it up, and at the stockpile at cost rather than at an imputed motive. Now does that answer deal with the question raised by the Member for Brandon West? It does to me, but maybe I didn't understand his question sufficiently.

MR. CHAIRMAN: The Member for Brandon West.

MR. MCGILL: Mr. Chairman, that brings up another question and I must ask then in the case of stockpiling 100,000 pounds of nickel, how do you reach a cost figure per pound of nickel? Who supplies that figure?

MR. CHAIRMAN: The Minister of Finance.

MR. CHERNIACK: Well the company of course supplies the information, and then it is subject to audit by our department. I don't know that there's been a problem that's come to my attention. There has not been a problem in that respect because I suppose in the end you catch up anyway. If they underestimate or overestimate their cost, another year comes round, they sell the goods, they've got to pay it one year or the next, and there is the peculiar thing about taxpayers, and the Leader of the Liberal Party would know even better than I, taxpayers would rather postpone tax than pay tax, and somehow it seems to me they are prepared to gamble on future increases and pay them when they come rather than pay them now. I think that's generally a true statement, is it not?

MR. CHAIRMAN: The Leader of the Liberal Party.

MR. ASPER: Generally it is felt, Mr. Chairman, that a dollar of tax deferred is a dollar of tax saved, so it would depend on the circumstances. I find the optimism of taxpayers that taxes can't go any higher and can only go down would influence them. However I think the section does what it is supposed to do.

MR. CHAIRMAN: The Minister of Finance.

MR. CHERNIACK: On the other hand, if they think ahead and say, well if we do have to pay taxes next year or two years from now, we'll be paying it out of cheaper dollars, so that we have another saving, so there's no doubt that they would not now want to pay a tax on goods they haven't sold yet, they'd rather stockpile it at cost and wait and not pay tax on that basis. I understand that that is the accepted way by them.

MR. CHAIRMAN: The Member for Brandon West.

MR. MCGILL: Well, Mr. Chairman, then to take one example. If they stockpiled in the last three months when the rate is 23 percent, and then a year later they sell that stockpile and the rate is 15 percent, how does the compensation work? Does this provide any difficulty or inequity in the payment of tax on stockpiled material?

MR. CHAIRMAN: The Minister of Finance.

BILL 77

MR. CHERNIACK: Well it is of course taxed as at the time of the end of their fiscal year, whenever that is - and if it's not the same as our fiscal year, then in accordance with this formula. But I don't see their stockpiling in the expectation that there will be a reduction. They wouldn't know that there would be any reduction, but if there were - if they had stockpiled and there was a reduction, then it is based on their having sold it at that time, which I guess then is really not unfair; that not having sold the goods until after there is a reduction in taxation they will then be taxed as of a sale, which is sort of on a cash basis - which really I don't see as being unfair to them, but if it is I'd like to know.

MR. CHAIRMAN: The Member for St. James.

MR. GEORGE MINAKER (St. James): Thank you, Mr. Chairman. Further to questions raised under this section, the Honourable Minister indicated that - if the mineral was sold. Now a person can have a contract, receive a contract today for minerals or any object they're selling, but until they deliver that particular mineral or item and bill it to the customer he doesn't get any revenue - and I'm wondering in his definition of "sale" of the mineral, is he talking about the booking or the contracting, the achieving of a contract which is known as a booking? Or is he talking of billing where the actual item is delivered and is on its way and a bill goes out for the payment of same? What would you define the sale in the year-end as, either a booking or a billing or what?

MR. CHAIRMAN: The Minister of Finance.

MR. CHERNIACK: Mr. Chairman, there's no doubt in my mind that if they don't get paid it's not our concern. I mean, I'm sorry for them, but that doesn't affect it. If they make a sale which is specific and the goods are on their way, to the extent that the goods are now the property of the purchaser then the sale has been made. I think that's straightforward common law.

MR. CHAIRMAN: The Member for St. James.

MR. MINAKER: Mr. Chairman, I guess I didn't quite explain the case. The example might be a \$5 million contract for a shipment of nickel we'll say, and \$2 million has been shipped at the year-end but there's still \$3 million outstanding, so that two million has been billed but in actual fact they may have booked five million in sales. Now what would be applied in terms of their earnings for that year? Would it be the \$5 million sale of the goods or the \$2 million billing of shipped goods.

MR. CHERNIACK: No, no. Mr. Chairman, it's only based on billings. There may be a contract for years to come. It's only as the goods are produced and shipped and billed out. It is only when they're billed out that one knows. Even if the price is known - I think that again is common commercial practice, I think that in any other industry it's only done that way. Unless you have the goods on hand ready and available, but otherwise no, even if its stockpiled; it's not until it's billed out that we know the sale has been consummated, otherwise it's only an agreement to sell and buy.

MR. CHAIRMAN: (Sections 79, 80 and 81 were read and passed). Section 82 (11.1) - The Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I refer now to the earlier group of amendments dealing with the question of access to books of account, and I move that Bill 77 be amended by adding thereto immediately after Section 81 thereof the following section:

Subsection 11(3) added. 8.11 Section 11 of the Act is further amended by adding thereto, at the end thereof, the following subsection:

Copies as evidence.

11(3) Where a mine assessor takes -- Mr. Chairman, yesterday we were just taking it as if read, unless you want me to read it. You do have it before you, do you? It's the earlier group of amendments.

MR. CHAIRMAN: Yes. It's on Page 4 of the first set of amendments.

MR. CHERNIACK: Yes. Do honourable members have any doubts about . . . ?

MR. CHAIRMAN: Agreed? (Agreed) Section 82 as amended -- pass? The Minister of Finance.

MR. CHERNIACK: No, Mr. Chairman, 81(1). And now I'd take the next amendment which is on the sheet distributed today, and I move that the proposed Section 11.1 of The Mining Royalty and Tax Act, as set out in Section 82 of Bill 77, be amended by number the Section 11.1 as subsection 11.1(1) and by adding thereto the following subsection:

BILL 77

(MR. CHERNIACK cont'd)

Notice of arrangements, etc.

11. 1(2) Where the minister makes an agreement or an arrangement respecting the reciprocal exchange of information under subsection (1), the minister shall publish in the Manitoba Gazette a notice setting out the terms of the agreement or arrangement.

MR. CHAIRMAN: Agreed? (Agreed) 82 as amended -- pass. Section 83 -- pass? The Leader of the Official Opposition.

MR. SPIVAK: Mr. Chairman, I wonder if the Minister can explain why this portion of the Act is . . .

MR. CHERNIACK: Why what?

MR. SPIVAK: Why this portion of the Act is being repealed.

MR. CHAIRMAN: 83.

MR. CHERNIACK: This section repeals a provision for late payment of tax, 10 percent of tax not paid. The Act continues to charge interest on later deficient payments at a rate of 9 percent. (Was this a penalty of some kind? I see.) I'm informed that this section was a form of a penalty at a time when there was no interest payable on late payments, and now with the introduction of the late payments interest it is felt that it is unnecessary to have that form of penalty. Is that right? (That's right.)

MR. CHAIRMAN: The Leader of the Opposition.

MR. SPIVAK: . . . introduced by way of regulation or in the Act itself?

MR. CHERNIACK: I'm informed that it appears that it was in the previous Act but let's not have any doubt about it. Let's get the Mining Royalty and Tax Act.

My attention is drawn to Section 4.2 of The Mining Tax Act which reads, "Whereunder any provision of this Act interest is payable in respect of any sum, the interest shall be (a) at the rate of 9 percent per year, or (b) at such other rate per year as the Lieutenant-Governor-in-Council may describe, compounded annually" and it goes on. Shall I read it all?

MR. SPIVAK: No. Can you give me the number?

MR. CHERNIACK: 4.2 of the Act itself, enacted 1970. Yes, I am reminded that we've waived some interest under the 10 percent because actually it was a, I wouldn't say a redundant clause, but a duplicating one and I assume should have been eliminated earlier, should have been eliminated at the time, 1970, when the interest rate section was brought in, and wasn't, and therefore there have been a few occasions of late payment where under the Act we should have charged both interest and this ten percent and therefore we had to waive it. This is - I would now call it housekeeping on the basis that it's no longer necessary.

MR. CHAIRMAN: The Leader of the Opposition.

MR. SPIVAK: There may be a request to - and it's a minor one, but it relates to a misunderstanding, I guess, we had of that other section, that 15(2) become 15(1) in the Act itself, because that's not being repealed and that's necessary, I guess, for the record of the arrears itself.

MR. CHERNIACK: Well I would agree, and I am under the impression that when a section is repealed there is a renumbering, but we're not eliminating 15(2). This repeals 15(1) but 15(2) would continue to be in the Act and therefore would continue to provide for that accounting. Is that all right?

MR. CHAIRMAN: Agreed? (Agreed) (Sections 83 and 84 were read and passed; 85, 36(a)(b) and (c) were read and passed.) (d) -- pass? The Member for Brandon West.

MR. MCGILL: Yes. I am looking at "(d) prescribing variations and extensions to the formulas set out in subsections 7.2(1) and (2) for the purpose of calculating royalty tax under subsection 7.2(3)." We have a cross reference here. 7.2(3) refers to the regulations and the regulations refer back to 7.2(3). I wonder if the Minister can give me an example of variations and extensions to the formula that might be used or required under these regulations. I just don't quite visualize what is being attempted here under this section (d) which is referred to in section 2(3) under multiple variations.

MR. CHERNIACK: Yes, the explanation I've received is that this is necessary to carry out -- in the event that there is more than one change in a fiscal year, then they do have the variations. It relates exactly to the same point mentioned by the Honourable Member for Brandon West earlier, and is the application of that complicated transition from one rate of tax to another. I'm advised that it's necessary to have that so as to take care of the possibility of a variation more than once in the fiscal year.

BILL 77

MR. MCGILL: Mr. Chairman, I'm wondering if the Minister or his staff has any examples of these variations that they might use. Something must have been anticipated and I'm just wondering if there's anything in the working papers.

MR. CHERNIACK: No, Mr. Chairman. I'm informed that the only thing that was anticipated is the possibility that there would be more than one change in a fiscal year and therefore a subdivision had to be made. There were no examples, hypothetical examples, that were worked on, because firstly, they didn't believe that it would ever come about, but that isn't a good enough reason. The real reason I can see, is being hypothetical, then any assumption would then be again hypothetical as to, you know, what a certain price could be, what a production could be, in relation to both the market and to the nature of the ore, I suppose, or the cost of it. Again, I rely on the department believing that it's necessary to have this kind of procedure or authority, but since I believe it's the same problem, then I extend the invitation to mining companies to come and discuss it with us to include this of course. I think it would be a necessary part of that.

MR. CHAIRMAN: The Member for Brandon West.

MR. MCGILL: Mr. Chairman, this regulation would not be written in specifics until after the second tax change had taken place, in which case the mining company would have no anticipation or no understanding of it until it had occurred, and then the government would work out a regulation and apply it. And then after the third change in tax had occurred in one year, a new regulation would be introduced covering that situation. Is that the way it's going to work, on a sort of an ad hoc basis?

MR. CHERNIACK: I wouldn't be sure of that. I would think that probably it might be of greater advantage to work out a regulation and have it reviewed by the mining companies in advance, or in any event even if it's passed before it is applied, then the mining companies would have the opportunity to discuss the regulation before it's applied and therefore I don't know that it has to be done after the fact. It could be changed, of course.

MR. CHAIRMAN: The Honourable Member for Brandon West.

MR. MCGILL: Mr. Chairman, I take it the Minister is giving the industry some assurance that if he contemplated a second or third change in the rates, that there would be some notice to the industry of what is going to happen before this happens rather than after the second or third change takes place? I interpret his remarks to indicate that that would be his line of approach to this situation.

MR. CHAIRMAN: The Minister of Finance.

MR. CHERNIACK: No, not quite, Mr. Chairman. I don't quite see how we can undertake in advance to consult with the industry before a change in rate is made. I think that before the regulation is actually enforced - that's not the correct word - but carried out, administered, that there would be an opportunity to discuss it, but I wouldn't like to be on record as saying before a change of rates is brought about there will be discussions with the industry as to the application of a formula under this section 36. I would think that it's dangerous to undertake it and it wouldn't be necessary, because again you can review a regulation and retroactively make an adjustment. I do point out that there would have to be compliance with the formula as set out in section 7(1) and that this would have to be in accord with that. Regulations always must be in accord with the Act that authorizes them. And there is that safeguard that the mining companies have. I would say that there would be an opportunity to discuss it with the mining companies before it's administered, and let me tell the honourable member that there are often discussions with mining company before an assessment is made. I would say probably it's more often than not that there is that discussion that takes place.

MR. CHAIRMAN: Section (d) - passed; 36 - passed; 85 - passed. The Honourable Minister of Finance.

MR. CHERNIACK: Under 86, Mr. Chairman, I'm referring again to the earlier amendment sheet that was distributed I guess Saturday - I referred to it yesterday - acknowledging the fact that it seems like it's one day after the other, but it was really the day before yesterday:

I move that Section 86 of Bill 77 be amended, (a) by striking out the word and figures "June 30" in the 5th line thereof, and substituting therefor the word and figures "March 31". I assume you would rather, Mr. Chairman, deal with this amendment (a) and (b). Shall I move (b) and then you could deal with it that way?

BILL 77

MR. CHAIRMAN: Move them both.

MR. CHERNIACK: (b) by striking out the word and figure "July 1" in the 9th line thereof and substituting therefor the word and figure "April 1". And, Mr. Chairman, in explanation, I'd say it's a clerical error; it was inconsistent with the previous Act and this is the point of the correction.

MR. CHAIRMAN: Agreed? 86 as amended - pass. (Section 87 was read and passed.) Which leaves us with Section 77. If we may have a moment - I'm sorry. The Minister of Finance.

MR. CHERNIACK: Well, we are waiting now, I believe, to deal with Section 77. I don't know. Has it been approved? Has the proposed amendment been approved?

MR. CHAIRMAN: Leader of the Opposition.

MR. SPIVAK: Mr. Chairman, my understanding was that the Legislative Counsel was out trying to arrange for typing of the actual amendment.

A MEMBER: Can you give us three minutes?

MR. SPIVAK: All right. I wonder if I could make one preliminary statement at this point while someone is out looking for the Legislative Counsel, and I would like to make this point . . .

MR. CHAIRMAN: On Section 77.

MR. SPIVAK: Yes. I make this statement now so that we have this as a matter of record and our position is clear on this, and there would be no misunderstanding of our position. We've seen the amendment and I assume that the Legislative Counsel is typing out -- there may be some corrections as far as grammar is concerned, or even initial wording, but the intent is there and I would hope that the Government will be introducing it and this will be the acceptable compromise in this particular situation, compromising the differences in points of view. And I think in this respect, as in any of the other sections in this bill, we have in the main been successful in the committee in dealing with the taxation matter generally and with this particular one specifically. I want to make these observations and I'm doing this now under this section because it'll save time later on and because I think it has to be said, that with respect to the compromise if so agreed, whereby in the event the session is on and there is a reduction of the taxation, this gives the power for the Cabinet to reduce taxation, that reference would have to be made to the Legislature within two days, and in those cases where it's in between sessions, within ninety days for ratification by the Legislature from the time that the session commences; that this as a precedent is one which I think in respect to Cabinet discretion, with respect to taxing matters, is an important one, and one that I think we all recognize, recognizing that the ultimate authority for taxation really rests with the Legislature, with the agreement of the Legislature of the actions that are undertaken, but also recognizing that we are in a very sophisticated period of time now, with tremendous pressures and tremendous changes in our economy, and action is often required by government that would require immediate response and in some cases the inability for the Legislature to be able to come together quickly. But in most cases as a general practice, Mr. Chairman, it is really the Legislature that should be dealing with it, and Cabinet discretion should be exercised on only what would be considered extreme occasion.

The other point, Mr. Speaker, with respect to this, and because there was mention of it and I think I'd like to put this into the record, that this cannot be considered and should not be considered as a precedent for a proposal in the Financial Administration Act, that would allow special warrants to operate in the same way during the period of time when the House is in session. I point that out because there was a reference made to it and I think it may have even been made from his seat by the Minister of Mines and Natural Resources, and I just want to indicate that very clearly, that the problems with respect to special warrants during a session are entirely separate from the problems of a reduction of a specific tax that has been agreed to by this House, and is capable of being reduced and is reduced during a particular session in which ratification would be required if the proposals embraced in the amendment to be introduced are accepted by the House. And so I just want that position clear because I think it's important that it be put on the matter of record. I don't think the Government will argue that it is really a precedent for it. They may argue the principle with respect to the other matter another day, but so far as this being a precedent for it, it is not. This is a clear situation where the Government wants the power to be able to reduce taxation because of situations that

BILL 77

(MR. SPIVAK cont'd) were known to us at this point could arise, and we are prepared to do this recognizing ultimately the authority still comes back to this Legislature for the approval of their actions and for answering on their actions, because it is a tax matter. And if we have accomplished this, I think in this respect, we've made progress into an area now in which governments of necessity are more involved and will be more involved in years to come, and I think we may have to set a precedent which will bring us back to the traditions which really are the traditions of our Parliamentary democracy. Now, again, this is maybe another debate, but I want the point made now and at least put on the record so that our Party's position is known and it's understood.

MR. ASPER: Mr. Chairman, I too feel that progress was made and that the functioning of the Committee in this less formal setting has been of benefit to the people of Manitoba. Nevertheless, I do want to put on the record the fact that only because of the extremely unusual circumstances, the uncertainties of world market and federal taxing intentions, and also the difficulty of knowing what kind of tax to bring in, are we able to support even the compromise. We don't know whether 23 percent is right or 15 percent is right or 38 percent is right. We really don't know. We would encourage the Government to make further studies over the period between now and the next session, at which time we expect the complementary bill to the Mining Tax Royalty Act, and be able to give us at that time advance studies, so that when we do come to debate the bill that should be thought of as the successor to Bill 82, and the complementary bill to Bill 77, that at least we will do so knowing the full economic, social and development impact of the mining taxes.

We will support the bill. We will support the amendment. But we do reiterate that we cannot regard this as a precedent, nor will we consider ourselves bound in any future debate to adopt the same posture we have today - our main position being that taxation belongs in the Legislature; that when it's insignificant and trivial and administrative taxation, of course it can be done by regulation, but when it affects the whole spectrum of the economy and the whole major source of Provincial Government revenue, that that is something that cannot and should not be done by a regulation or by Order-in-Council.

I would ask the Finance Minister to confirm, because of the complexities of the bill and the fact that we've dealt with it rather in a cursory way, to stand now and confirm that the bill will not be interpreted or implemented in a manner which permits the Government, under 7(1), to first reduce the royalty from 23 percent to something else, and ever thereafter by regulation have the power to raise it, but that the bill only speaks of reduction, and not down and back up. I believe he said that, and I believe the Mines Minister said that, and because the drafting is a very complex thing - I'm not sure that we'll even catch it with the amendment - I would like his assurance, and because courts have to interpret these bills as to what is the intent of the Legislature, I am trying to put on the record what is the intent of 7(1) should it ever go to a court, that we have agreed that the intent of 7(1) is to set a rate of 23 percent, to be able to reduce it, to continually reduce it if necessary, but never to re-raise it. Now if the Finance Minister will put that intent on the record, we are satisfied.

MR. CHAIRMAN: The Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I was sitting in this same Chamber with the Leader of the Liberal Party, and I heard, as he did, the Mines Minister saying that it is not the intent to raise again a rate of taxation under this section after it has been reduced. That is the point. Having said that, Mr. Chairman, I indicated earlier this morning that I defer to the Mines Minister in dealing with the royalty position on this because he has studied it much more extensively than I have, and I would think that his comment is of much more value than is mine in this regard. It is clear to me that he said it and I accept it as that, and to the extent that the section may be interpreted as going beyond this, and permitting - not an arbitrary, but an increase - by regulation, then it is clear to me that the Mines Minister this morning said that was not the intent.

Having said that, Mr. Chairman, I have to tell my young friend - and I call him young friend, for the Leader of the Liberal Party, because although his practice of law, his experience may have been much more extensive than mine, it was nevertheless during a shorter period of time than my practice of law, that I have been unable to succeed to get the Court of Appeal or any judge to read Hansard to find out just what was the intent of the Legislature, and I can't give the assurance to my honourable friend that any court will be concerned with what

BILL 77

(MR. CHERNIACK cont'd) was said in the Legislature, because even though we may not, and of course never do, ascribe motives to each other, the court may well think that the motive in passing a law was not the true reason for the presentation or argument, and therefore I know that the courts will not look at Hansard, look beyond the Act itself, beyond the written word, and even get to the trouble if it starts looking at preambles in certain Acts, so I cannot give them the assurance of what a court will do.

Speaking more generally about the point raised by the Honourable Leader of the Opposition and his colleague the Leader of the Liberal Party in regard to precedent, I must say that I often look with amusement at the statement that I make and my colleagues make and other members of the Legislature make, saying in voting for this or in saying this, it shall not be considered a precedent, and I say it very often, especially when people apply for special grants. We always say this shall not be considered a precedent and, unfortunately, one either goes by saying, "Well, it was done before," as we said even this morning, and that we're not bound by it, but it's there. And certainly the Leader of the Opposition is correct in saying that no one has a right to say that, because it was done this morning, it means it shall be done at another time. But no way can you prevent someone arguing that if you are prepared to do something this morning, you should be prepared to do it tomorrow. It's just an argument and it doesn't bind any person to that kind of an arrangement, whether or not he says it, but the fact he said it is on record and I accept his statement as being the statement of the Conservative Party in this regard. As to whether or not -- I think what he implied is, it is a precedent for certain circumstances but should under no way be considered a precedent for others. If he said that, then you know, that's fine; that's the way he looks at it and that's the way it could be argued henceforth. Certainly it is not a compelling act which binds anybody in the future.

I think that's absolutely clear to that extent, and to no extent do I quarrel with him on this basis. I even go further and say to him that I would think it would ill behoove me, if in the future I am unhappy with what has been determined this morning, to say that I was misled into believing that it accomplished the purpose discussed and therefore I would disassociate myself from it. I do associate myself with the proposed amendment; (a) not having seen it; (b) accepting the fact that the only member on this side who has seen it is the Minister for Mines, and I accept the fact that his having agreed to it is good enough for me. Although when we do get the amendment, I do propose to read it, but my argument will then be with him, not with anyone else.

MR. CHAIRMAN: May I have the indulgence of the committee for just a moment. I would agree with the comments of the Official Opposition Leader of the Liberal Party, that we've accomplished a lot by proceeding more informally, but the Deputy Speaker was in the Chair and passed some of these pages, page by page, some clause by clause, and some sub-clause by sub-clause. Now I checked the bill carefully but nevertheless I think, just for the record, that after we have considered 77, that if we could have a motion to concur in that the bill has been passed, sections 1 through 87 as amended - just for a matter of record - because there may be some sub-clause that Hansard could be read that it wasn't actually passed. In checking the bill carefully, it seems that the bill has been passed, section by section, but nevertheless the Deputy Speaker having been in the Chair, I can't attest to that. It appears that way but nevertheless in the signature, it appears that he signed . . .

A MEMBER: Yes, on the whole bill it might . . .

MR. CHERNIACK: . . . signed it page by page, but clearly, I'm quite sure that it was passed section by section.

MR. CHAIRMAN: I'm of that opinion also, but nevertheless it's over my signature, and the whole bill I would ask the committee to . . .

MR. CHERNIACK: Can we take a moment then to . . .

MR. CHAIRMAN: Well, possibly, I'll . . .

MR. CHERNIACK: I hate to move something I haven't read before but -- I think we'd better read it. The Legislative Counsel hasn't read it either, so I think we'd better take a moment. (Pause)

MR. CHAIRMAN: About two-thirds of the way down the page under 7(11) "or by removing the reduction." The Honourable Minister of Finance.

MR. CHERNIACK: Well, I'm wondering if honourable members are ready for me to move the motion.

BILL 77

(MR. CHERNIACK cont'd)

I move, Mr. Chairman, that the proposed Clause 7(1)(b) of The Mining Royalty and Tax Act, as set out in section 77 of Bill 77, be struck out and the following clause substituted therefor:

(b) where the income derived from the operation of the mine in any year is \$50,000 or more, an annual royalty tax of 23 percent (or such smaller percentage, being not less than 15 percent as may be fixed by the Lieutenant-Governor-in-Council) of the whole of the income derived from the operation of the mine in that fiscal year.

Mr. Chairman, I would say that the only change here is the provision that the tax shall not be less than 15 percent so that the margin is only between 15 and 23 percent. I move the amendment.

MR. CHAIRMAN: Agreed? The Member for Morris.

MR. WARNER H. JORGENSEN (Morris): Are we dealing with the entire Resolution? I'd like to . . .

MR. CHERNIACK: I didn't hear.

MR. JORGENSEN: I'd like to say a word or two on 7(12) if that's - you haven't reached that yet.

MR. CHAIRMAN: The Honourable Member for Riel.

MR. CRAIK: Before we take the vote on the first part, then, if we're going to do it by parts, could the Minister or one of the Ministers indicate, for a mine which has an income of \$51,000 or slightly over the \$50,000, is there a provision so that the person, he doesn't pay a lump penalty in going from the 6 percent to 23 percent rate, is there a sliding scale in there in between the first 50 and that over?

MR. CHERNIACK: Mr. Chairman, the honourable member's asking whether there's a notch provision in the Act and my Assistant Deputy Minister is looking that up. Whether it's in the Act or not, that's the answer, because it's certainly not in this portion. I'll move then, Mr. Chairman . . .

MR. CHAIRMAN: I wonder if we could just wait until we're recognized so . . . on the tape. The Minister of Finance.

MR. CHERNIACK: Well, Mr. Chairman, I better move it and then we can discuss that.

MR. CHAIRMAN: The Honourable Leader of the Opposition.

MR. SPIVAK: You moved 7(1)(b) and I just want to get it clear insofar as the record is concerned. It's anticipated that on the basis of the 23 percent that there will be \$30 million more or less realized for the Budget . . . --(Interjection)-- Well, in terms of anticipating revenue for budget purposes, the Government makes an estimation of the revenue to be earned on the basis of past experience but also its forecast for the future, and I put it to the Government, are you in a position now to indicate that if 23 percent is applied, that the revenue will be substantially higher, based on your forecast of what will take place in the next period of time? And I think this has to be clarified because -- I appreciate that it's based on past performance, but your forecasts are based on, or your projections are usually based on forecasts. And I wonder if the Government can confirm that their forecast would only indicate more or less \$30 million.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, it's, as all things, as the Leader of the Opposition says, it is based on past experience and on forecast, in that if governments - and I'm talking now generally - can foresee the probability of a change in, say, revenue or profits for the coming year, it takes that into account. But generally speaking, it's very difficult. I'm told that the price of copper is drifting downwards somewhat, so that again it can't be done on what the market will be. If the Government really took into account what the market will be, then we ought to be in the stock market more than we are otherwise. It is based on what the Department believes to be as close to the probability as possible, taking into account much more the knowledge of last year than the speculation of next year. And that's about all I can say. The Department does estimate that -- well actually, the figures I've been given based on last year would be somewhat less than \$30 million but, as pointed out by the Minister of Mines, we hope they'll make more money and therefore pay more. But the 23 percent, I am informed, is an estimate based on last year and some expectation or knowledge or forecasting of the coming year, and is expected to produce, I'm told, somewhat less than 30 million but that's as far as we can go.

BILL 77

MR. CHAIRMAN: The Honourable Member for Riel.

MR. CRAIK: Mr. Chairman, on the first question I had with regards to the shift from 6 to 23, if there's not a provision in there it would appear that a person could make \$1,000 over the \$50,000 and it would cost him \$10,500 in tax. While this may not be a large amount of money for large companies nor for Government, it would seem to me that just from the point of view of logic, since it occurs in personal income tax and so on to take care of these provisions, that there would somehow be a provision to -- It's an anomaly by the looks of it. You jump from a rate of 6 percent to 23 percent by increasing your income \$1.00, and that difference, which is six away from 23 times your 50,000, gives you a penalty. For making that extra \$1.00 there's a penalty of somewhere close to \$10,000.00.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I'm informed that we are now having a theoretical argument. Well, let me point out the reason. It is theoretical because it's based on the hypothesis that somebody will be earning between \$45,000 and \$55,000 and that's where the notch would come in, and it's not in the Act and it wasn't in the Act and I don't know if there's any principle involved in pushing it into the Act right now. I don't quarrel at all with the hypothetical situation. The reason the \$50,000 was put in is that mining companies that are in the mining business make more than 50,000, substantially more, and their variation, if they were to lose, would be substantially less. They wouldn't be in that short bracket. But people in the gravel business are much below the 50,000 and they're the ones that are paying the six percent. So that it's really a difference between gravel and minerals that is distinguished in this tax. I don't quarrel with the proposal that there ought to be a notch provision because theoretically there ought to be, and again it's the kind of thing I think our department should make a note of and maybe Statute Law Amendments could well look after it in another year. I'm just not under the feeling that there's a real actual problem, although I don't at all reject the suggestion by the Member for Riel.

Mr. Chairman, I move that Bill 77 be amended by adding thereto, immediately after Section 78 thereof, the following section:

Subsection 7(11) and (12) added.

78.1 Section 7 of the Act is further amended by adding thereto, at the end thereof, the following subsections:

Restriction on variation of percentage.

7(11) Where the percentage under clause (1)(b) is reduced, the Lieutenant-Governor-in-Council shall not vary the percentage by increasing the percentage or by removing the reduction, and

(a) where the Legislature is in session on the date the reduction is made, unless the reduction is ratified by resolution of the Legislature within 2 days of the date the reduction is made, the reduction ceases to have effect on the 3rd day after the date the reduction is made; and

(b) where the Legislature is not in session on the date the reduction is made, unless the reduction is ratified by resolution of the Legislature within 90 days after the beginning of the next session of the Legislature, the reduction ceases to have effect on the 91st day after the beginning of the next session of the Legislature.

7(12) Where, under clause (1)(a) a resolution is introduced in the Assembly to ratify the reduction under clause (1)(b), the Assembly shall proceed to debate the resolution forthwith and the Speaker

(a) shall not accept any motion in the Assembly to amend the resolution, to adjourn the debate on the resolution, or to defer consideration of the resolution; and

(b) shall call a vote of the members of the Assembly on the resolution not later than 30 minutes before the time on which, on the date the resolution is introduced, the Assembly would adjourn under the standing rules and orders of proceedings of the Assembly;

and no member shall speak for more than 20 minutes in the debate on the resolution.

Mr. Chairman. . .

MR. SPIVAK: (Inaudible)

MR. CHERNIACK: Are you serious?

MR. SPIVAK: Yes.

MR. CHERNIACK: Well, the point the Leader of the Opposition has asked for an

BILL 77

(MR. CHERNIACK cont'd) explanation, as I read this, there is firstly the point raised by the Leader of the Liberal Party that there should not be an increase in taxation after there's been a reduction, which is the beginning of 7(11). But then it stipulates that in a case where the Legislature's in session, then the decision must be debated within two days and voted on by way of approval. Now I make the comment, and I would like to hear the Legislative Counsel's comment on it, that firstly I think the two days should be two days commencing with the first sitting day following the decision, because it might be a long weekend or there may even be a week or two weeks of adjournment in-between, and it seems to me that the two days ought to be two days commencing with the first day that the House actually sits.

Secondly, I assumed that there need not be any notice given, because then there could be delay just by the printing of Votes and Proceedings or some other form. I make that point again so that if I'm wrong the Legislative Counsel will point out it's not necessary. So that provision is if a decision is made during the Session; secondly, that if the Legislature is not in session, then within 90 days after the session commences the reduction be ratified by resolution within those 90 days.

Then 7(12) deals with a procedural matter and the one thing that we have to be agreed upon is that we're not looking for a technical way whereby we can later frustrate the intent, which to me is very clear. So what we must make sure is that it is debated and voted on within the two days, and there should be no procedural method whereby it can be delayed by even one member of the House, because the agreement is that it shall be debated, it shall be settled within that period of time.

MR. CHAIRMAN: We approach the adjournment hour and we're proceeding so well I wonder if we could not proceed by leave. The feeling of the Chair is we're proceeding so well. Perhaps by leave we could proceed past the 12:30. The Member for Morris.

MR. JORGENSEN: Mr. Chairman, the Minister raises two points that I would like to deal with in connection with the proposed amendment. The first one is the possibility that if the motion is introduced on a Wednesday following the question period, it could very well mean that the debate would last no longer than the 20 minutes allowed for the person who is going to be introducing it. That is a possibility.

The second possibility is that even if it were introduced on any other day, if the resolution is delayed in its introduction to the last 20 minutes of the day, then --(Interjection)-- My understanding that the debate will be lasting two days.

A MEMBER: Right. (Inaudible)

MR. JORGENSEN: No. That's right. Well I have no objection if it is clearly understood that it's going to be a two-day debate. I was just wanting to make sure that we have more than an opportunity then to just introduce the resolution, and if that's the case, if it's going to be a two-day debate - I don't read that into the resolution but if that is the intention and if the Minister can indicate to me where that intention is carried out in the amendment, why it's fine; then we're prepared to accept it.

MR. CHAIRMAN: The Honourable Minister of Finance.

MR. CHERNIACK: I think, Mr. Chairman, we've agreed on the principle that it shouldn't be just a half hour or an hour debate, it shall be a debate which gives us a day, let's say a complete day, in which to debate it. Therefore, again, if the Legislative Counsel is making correction - I think he is; I think he's providing for the third day and he is saying commencing with the first sitting day following the decision, in case there is a hiatus period that's more than the normal. I think we're heading towards a change in this amendment which takes care of - let's see, I mentioned two points. I mentioned the point about notice not delaying the debate and I've agreed with the Honourable Member for Morris that it shall be at least a full day; that's the intent. And the third point I think is taken care of by the point mentioned by the Member for Morris.

MR. CHAIRMAN: The Member for Morris.

MR. JORGENSEN: Yes. Mr. Chairman, I detect in the amendment a suggestion that the Minister made earlier when dealing with the Financial Administration Act, and I would hope that this particular amendment stays within the bounds of Bill No. 77. I hope that the Minister is not attempting to establish some kind of a precedent for amendments to the Financial Administration Act.

MR. CHAIRMAN: Agreed? 77 as amended - pass? Do you want to read that in?

BILL 77

MR. CHERNIACK: Whatever's more convenient, Mr. Chairman. I can possibly point out the changes but make them part of the original motion rather than amend a motion that has not been dealt with yet.

The change then would be (a) - I'll indicate the change and then read it as amended. The last word in the third line "within" and the "2 days of" in the fourth line be struck out and replaced with -- shall I dictate it or just read it? Are honourable members writing it down? - "before the expiration of the third day on which the Assembly sits after". That's right and I'll read it as amended. And then instead of the third day it would read "the fourth day on which the Assembly sits after debate". Now I'll read it as changed:

"(a) where the Legislature is in session on the date the reduction is made, unless the reduction is ratified by resolution of the Legislature before the expiration of the third day in which the Assembly sits after the date of the reduction is made, the reduction ceases to have effect on the fourth day on which the Assembly sits after the date the reduction is made."

Well that is the intent. And then, Mr. Chairman, under 7(12)(b) in the third line "on the date following the day the resolution is introduced" and that takes care of the point made by the Honourable Member for Morris.

I think that takes care of it, Mr. Chairman, and I move it.

MR. CHAIRMAN: The Member for Riel.

MR. CRAIK: Mr. Chairman, before we just finish this off I have one further question. I think the Minister of Mines probably is the person who would want to answer. Since he has introduced and recognized that the Mining Act tax provisions, not the mining royalty tax we're talking about but the tax under the Mining Act, allow discretion to the Cabinet to set the Royalty on leases and so on, at whatever level they so desire, I wonder if the Government can give the indication, though, that it is not their intention to use that portion of their powers for the purposes of bringing in different scales of taxation for the different mines in Manitoba. The amount of money raised now by the Mining Tax as opposed to the Royalty Tax that we're talking about, is very very minor. In fact, the Government is predicting \$150,000 only, from the mining claim lease tax, and the mineral tax is to bring in only \$150,000, as opposed to \$30 million they're proposing to collect from the Royalty Tax. Is it the Government's intention apart - it would indicate that it's not their intention from the Revenue Book to bring in any more money from the Mineral Tax, from the Mining Tax. Now I raise the question because the Minister of Mines and Resources has raised the right this morning of the Government to bring in a discretionary tax under the Mining Act. I trust that what I want is the Government's statement of intent one way or another with regards to that, whether they intend to use it or to leave it as it's been used in the past.

MR. CHAIRMAN: The Minister of Finance.

MR. CHERNIACK: Mr. Chairman, I believe that the other lesser amounts that are being received and referred to by the Member for Riel are different types of taxes. They have to do with claims and leases and are not Royalty taxation. I can say that it is not the intent of the Government to tax other than has been taxed up to now with the changes that are in this Act. I can't go any further than that. I don't think it's responsible to do more than that.

MR. CHAIRMAN: Agreed? 78 as amended - pass.

MR. CHERNIACK: Mr. Chairman, did you want some motion that all sections have been passed?

MR. CHAIRMAN: Sections 1 through 87 as amended - passed? (Passed) Preamble - passed. Title - passed. Bill be reported. Committee rise. Call in the Speaker. Mr. Speaker, Committee of the Whole has considered Bill No. 77, has requested me to report same and begs leave to sit again.

IN SESSION

MR. SPEAKER: The Honourable Member for Winnipeg Centre.

MR. J. R. (BUD) BOYCE (Winnipeg Centre): Mr. Speaker, in moving the report of the Committee of the Whole, I would report to the Speaker that we transgressed the rules on the assumption that we would have leave of the House to go beyond the normal order of adjournment. A committee cannot waive the Rules of the House. I move, seconded by the Member for Radisson, that the Report of the Committee be received.

MOTION presented and Carried.

MR. SPEAKER: The hour of adjournment having arrived, the House is now adjourned and stands adjourned until 2:30 this afternoon. (Monday)