

**LEGISLATIVE ASSEMBLY OF SASKATCHEWAN**  
**Second Session — Nineteenth Legislature**

**Thursday, June 5, 1980.**

**EVENING SESSION**  
**ADJOURNED DEBATES**  
**SECOND READINGS**

**Bill No. 105 – An Act to amend The Legislative Assembly and Executive Council Act**

**MR. R.L. COLLVER (Leader of the Unionest Party):** — I didn't know I was recognized, Mr. Speaker. I didn't hear anything from you. . . . (inaudible interjection) . . . They are really good (for the benefit of the member for Shellbrook). I tell you, I have to save those because sometimes Strepsil is the best. But if you want to try these Chloraseptics and then let me know, I would sure appreciate hearing how good they are.

Mr. Speaker, before we broke for the evening libation, I was talking about natural justice and over the supper hour I was able to find a book from which I would like to quote a few passages to give the members some background with reference to bias. Now you will recall, Mr. Speaker, I was talking about Bill No. 105 as being biased. Although I had a speech prepared (as Mr. Speaker will know) to present to the members about natural justice and the principle of bias, unfortunately (and Mr. Speaker was quite right in his ruling) I was not able to deliver that speech in this legislature. But I have been able to find a text written by Mr. Hewitt, published by Butterworths, on natural justice. It is written by D.J. Hewitt, OBE LL.M. He has produced this text which contains:

An Inquiry concerning Administrative and Domestic Tribunals and the Nature and Scope of the Rules as to Bias and the Right to a Hearing with References to Great Britain, Canada, Australia, and New Zealand.

Now, I think, Mr. Speaker, you would find this gentleman is a well recognized expert in the field of natural justice. He is a barrister of the Supreme Court of New Zealand, a sometime lecturer in constitutional law and administrative law of the University of Canterbury. He is also the author of *The Control of Delegated Legislation*. It is published by Butterworths in Australia which has offices in Sidney, Melbourne and Brisbane. Now, this particular author is an expert on natural justice. I mentioned to Mr. Speaker earlier that I am not a lawyer nor have I had legal training, but I think it is important in order for members to understand the objection I have to Bill No. 105, as to its bias and as to its opposition to the principles of natural justice, to understand some background information on the principles of natural justice. Mr. Speaker, this author talks about some cases which have come up in the . . .

**MR. SPEAKER:** — Order. I want to tell the members I am having some trouble hearing the member for Nipawin. I certainly want to hear every word he has to say in this debate.

**MR. COLLVER:** — Thank you very much, Mr. Speaker. I, too, was having some difficulty in hearing myself. Mr. Hewitt has cited or will be citing some cases which I know hon. members will wish to look up in developing their background information on an understanding . . . Mr. Speaker, I wonder if I could just ask to have one of those what-do-you-call-them brought forward just in case it's necessary as time goes on to get into another area of concern that I have about Bill No. 105.

From time to time, Mr. Speaker, it is necessary for members to have some prop to assist them in presenting their case and their arguments.

Professor Hewitt, from time to time, delves into the areas of English common law and English jurisprudence in his dissertation on natural justice and the rules of bias. I know members here will want to hear the cases cited by Professor Hewitt, and will want to look them up in order that they can determine the appropriate background information to see whether or not they believe Bill No. 105 is in opposition to the principles of natural justice. I don't want to bore members with all of Professor Hewitt's cases, but I do wish to cite some of them in order that the members can look them up and can determine these principles for themselves.

Professor Hewitt refers, Mr. Speaker, on page 16 of his book entitled *Bias . . .* Actually I shouldn't say that. His book is entitled *Natural Justice*. It is the chapter on bias. It's page 16 and he quotes several cases. I want to draw these to the attention of the hon. members.

He first cites the case of the Lord of the Marches of Wales, (1409) Y.B. 11 Hen.4,27. Professor Hewitt says:

. . . it was said that although an action would lie in Wales, 'Yet because he which hath cause of action cannot have justice there, he shall sue here in the King's Bench; for where the particular court cannot do justice to the parties they shall sue in the King's general courts at Westminster.'

Perhaps what Professor Hewitt is attempting to say, by citing that particular case, is that there are times when individuals cannot get justice in a particular arena. He is saying that (and I am sure that applies throughout the rules of common law and criminal law) from time to time, a change of venue is necessary.

Bill No. 105, being tried and heard in this very Chamber, is perhaps a prime example of a judge trying to judge himself. After all, it seems to me that the process which we undertake in this Chamber is a process which could be likened to a court and in fact the entire legislature is a court . . . (inaudible interjection) . . . I hope he says that loud enough for the people to hear, Mr. Speaker. The entire legislature of Saskatchewan can be likened to a court, and . . . Well, Mr. Speaker, the Attorney General suggests that it is the highest court in the land, and I am pleased to hear him say that because, by the very principles of natural justice which I am attempting to draw to the members' attention, the judge should not be allowed to judge himself. You will recall, Mr. Speaker, that I brought to the attention of this Assembly the remarks of a past hon. member for Indian Head-Wolseley, Cy MacDonald, who suggested to the Premier when changes to The Legislative Assembly Act were brought before this Assembly, that there should be an independent tribunal appointed by the Assembly to determine such matters as MLA remuneration, MLA expense allowances, rights of third parties, rights of opposition, rights of the Leader of the Opposition, rights of the leader of third parties, remuneration for the leader of third parties, remuneration for the Leader of the Opposition, remuneration for the Premier and remuneration for other cabinet ministers. You recall that's what the Hon. Cy MacDonald, the member for Indian Head-Wolseley said in the debate in 1978 in answer to the Premier's call for suggestions.

Now, Mr. Speaker, you will realize of course that the NDP government refused to bring forward any kind of independent tribunal, or commission, or committee, to deal with

matters in The Legislative Assembly and Executive Council Act. They refused to do that. What I believe Professor Hewitt is attempting to bring forth in this book by citing the case of the Lord of the Marches of Wales (1409) is to suggest that the organization which is attempting to judge itself should not judge itself, this being against one of the principles of natural justice. Bill 105 which is again a review of the remuneration to be paid to members and, as a matter of fact, even beyond that, Mr. Speaker, it is a review of the status of members in this legislature, is of necessity the judge judging himself. That is against the principles of natural justice.

Mr. Speaker, over the years I have had occasions to address many audiences, but I must say that this particular one is the most stimulating and attentive which I have ever had the occasion to address. Perhaps it is in keeping with the tenor of the debate.

Now, Mr. Speaker, Professor Hewitt goes on in his book entitled *Natural Justice* to cite the case of the Earl of Derby 1613:

... following the case of the Lord of the Marches of Wales (*supra*) it was held that the Chamberlain of Chester, who was the sole judge in equity, could not try a case where he himself was a party, for he could not be a judge in *propria causa*. However, in such a case where he was party, the case should be heard in the Chancery Court.

Now, Mr. Speaker, again, that case, and the reason for Professor Hewitt citing it in this chapter, is to suggest that a judge may not judge himself. But after all, that is precisely what this legislature is trying to do when it attempts to change The Legislative Assembly and Executive Council Act, and especially when it attempts to change that act retroactively, as this bill attempts to do. I am sure, Mr. Speaker, as I said, that is why Professor Hewitt has introduced this case into his dissertation on bias. Every reasonable citizen would agree that Bill No. 105, in its attack specifically on a particular political party, but more in its recognition of the position in which only three parties are recognized, and of its direct recognition of only three parties certainly would fall into the category of bias, even with the definition provided by Professor Hewitt. Now, Mr. Speaker, Viner's *Abridgement* (Chancery L.) Professor Hewitt also talks about where it was said:

... that the Chancellor himself could receive relief in the Chancery Court but he could not make a decree in his own cause, while in *Day v. Savadge* (1614) Hobart 85, it was considered that this principle was so important that it could not even be taken away by Parliament itself.

Now, Mr. Speaker, there Professor Hewitt makes an exceptional point. He says that the rules of natural justice as they applied in England at that time (which is the basis for all of the laws of the province of Saskatchewan), were so important, as stated in the *Day v. Savadge* (1614) case, that they could not even be taken away by parliament itself.

Now, Mr. Speaker, if that is true in the courts, if that is true in England, then surely it's true in Saskatchewan, in the legislature. Surely if parliament cannot take away the rights in court of a court to abridge natural justice, then how can parliament take away the very essence of natural justice within itself?

And, Mr. Speaker, for the benefit of the Attorney General and the member for Biggar, I thought that was kind of an interesting way to express that, and I thought they did too. . . . (inaudible interjection) . . . Thank you very much.

It seems to me, Mr. Speaker, and it seems to us (the members of the Unionist Party in this House) that somehow, in some way, by judging itself, this legislature is committing the ultimate attack on the principles of natural justice, because by the very essence of the rules established, for many hundreds of years, in England and in Canada and in Saskatchewan, the judge shall not judge himself. And that's what we're doing – judging ourselves.

Some member, Mr. Speaker, in advertently said, yum-yum time; there have been some who have suggested I've been under the yum-yum tree for many years, but one does what one has to, I suppose.

You can see, Mr. Speaker, I'm sure, from this exciting dissertation by Professor Hewitt that he is saying basically . . . (inaudible interjection) . . . Well, you see, Mr. Speaker, he may even be getting through to some of the members here. It cannot be my dissertation which is bringing about this understanding; it must be the exciting words of Professor Hewitt being brought to bear on this Bill No. 105, because one member just shouted out to another, did you hear that? A judge can't judge himself. That's precisely what we're saying here. The legislature in Saskatchewan, if it is to succeed and if it is to follow the rules and principles of natural justice, should not place itself in the position of judging itself. And that, I think, was what Mr. MacDonald, the member for Indian Head-Wolseley, suggested during the course of the debate in 1978.

Why is it, Mr. Speaker, the Government of Saskatchewan is attempting now to not only judge itself and not only to carry forward with the principle of judging itself, which is totally against the principles of natural justice, but is also attempting to attack the very make-up of this higher court?

Now it would be exactly the same, Mr. Speaker, if the supreme court of the province of Saskatchewan (Saskatchewan Court of Appeal) decided amongst its five or six members to say that Mr. Justice Woods (for example) was no longer fit to receive secretarial help and research help in order to conduct his duties as a justice of the supreme court of Saskatchewan. Mr. Speaker, it's identical – Bill No. 105 – to the justices of the supreme court of Saskatchewan that Mr. Justice Woods, because of his views, would no longer be fit to sit as a judge on the supreme court of Saskatchewan.

How in the world could that possibly work to provide justice for the people of the province of Saskatchewan? How could that possibly enable any justice of the supreme court of Saskatchewan to carry out his duties in a reasonable and realistic and honorable fashion. What would happen if the justices of the supreme court of Saskatchewan made the unfortunate decision to remove the rights of Mr. Justice Woods to his share of research and secretarial help because of his views?

It could be that every justice in Saskatchewan would believe that if they began to think anew or to think of new ideas and ideals in the law, or began to develop new propositions in the law, they would be chastised or their positions would be jeopardized by the majority of justices in the supreme court of Saskatchewan.

This would remove completely the potential of the independent thought and action on the part of the supreme court of Saskatchewan. No, it would go farther than that, Mr. Speaker. It would destroy the very essence of the supreme court of Saskatchewan as an arbiter in the . . . Is that who I think it is? For goodness sakes. . . (inaudible interjection) . . . For him, Mr. Speaker, a little later this evening, a little later this day,

I might possibly get a little wound up. I always want to do that toward the end of a marathon.

If you stay around a little while there might be some more fireworks coming up which might sparkle the debate and put a little vim and vigor into this community. I thank you so much. But at the moment, it is essential that the members understand the reasons why Bill No. 105 is an attack on natural justice and the cases and the literature the members could read. I'm sure they would find their minds changed if they would take the time to read the literature and to find out how essential it is that all laws in Saskatchewan be accepted as part of the natural justice scheme of things.

Now, Mr. Speaker, it is unfortunate when one is dealing with this kind of principle that the dry part of the law must come forward. I know members will feel that somehow this might be slightly boring. Now, I wouldn't want to suggest that if they had any understanding . . . I know the Attorney General has this and perhaps one or two others members on the NDP side. The member for Qu'Appelle in his own enigmatic fashion certainly understands the excitement and enthusiasm of the law.

But unfortunately for some of us, it can be a particularly dry and perhaps, for some, a boring subject. I am sorry to say that, but in this particular part of my address to the Assembly on the evils of Bill No. 105, I'm sorry it has to be as dry as it is. I hope members will accept my apology for that with all the sincerity with which I intend it.

Now, Mr. Speaker, Mr. Hewitt goes on to say:

The fundamental principle that a man should not be judge in his own cause was affirmed in *City of London v. Wood*, 1701 Mod. 669 where it was said by Holt C.J. (at page 687): 'It is against all laws that the same person should be party and judge in the same cause, for if it is, it is manifest contradiction; for the party is he that is to complain to the judge and the judge is to hear the party; the party endeavours to have his will, the judge determines against the will of the party and has authority to enforce him to obey his sentence; and can any man act against his will or enforce himself to obey?'

Now, could anything be clearer than that. Could anything be clearer than the words of C.J. Holt in 1701? It is obvious to even the most casual observer that C.J. Holt has captured the essence of the principles of natural justice, that no judge may judge himself. That's what parliament is. That's what the legislature is. It's a court, a court in total. Mr. Speaker, from time to time rises and gives rulings. We, as members, are not entitled to question those rulings. It is like a court. The court, in total, is that of the adversary system. The NDP on that side of the House, the erstwhile Conservatives on this side of the House, and way over here that third party, which is the subject of Bill No. 105, the Unionest Party which, Mr. Speaker, was created (as I have said once or twice before) with all legality, obeying all of the laws of the province of Saskatchewan, and I might say was created obeying the natural laws as well. We are a party of natural justice, and we believe natural justice and the law must coincide if there is to be any hope for the rule of law in our society. When a judge judges himself, naturally the people will not believe that judgment is fair and will not believe that judgment is reasonable or rational. Or in fact they might even believe, as Mr. Deputy Speaker said when he was in the chair earlier today, there is no criteria for sanity in this legislative Chamber, there is no compulsion for anyone to be sane to belong to this Chamber. I think the people might even believe that if we go ahead and pass Bill No. 105 we are, in fact, judging ourselves.

Mr. Hewitt goes on to talk about Coke and Dr. Bonham's case, and, Mr. Speaker, I will be citing this case. But he says:

In examining the powers of the college of physicians to fine its members for malpractice, the censors of the college could not be judges, administrators and judges in their own cause, and that no one could be judge and attorney for any of the parties.

Now, you see, Mr. Speaker, he goes on to give an example now outside the realm of the courts. What Mr. Hewitt is saying here is that it's not only the courts that may not judge themselves. He is saying it goes beyond that. He is saying that no judge may judge himself, whether it be a group like the college of physicians or whether it be a legislature like the Saskatchewan legislature. But after all, that's what Bill No. 105 is all about. It is an amendment to The Legislative Assembly and Executive Council Act. We are attempting to judge ourselves. Now if this was an acceptance, if you will, of a predetermined agreement among all parties, or among all members of the legislature, by which certain changes in The Legislative Assembly and Executive Council Act occurred, then I would say it is reasonable to judge yourself because all judges have agreed to what changes have occurred. They might not agree in total but at least they have come to some sort of agreement.

I must tell you that at no time was either the member for Swift Current or the member for Nipawin approached about the necessity to change The Legislative Assembly and Executive Council Act in a fashion that the NDP government (through the offices of the member for Biggar) introduced in this Assembly some time ago. At no time were we approached.

At no time were we consulted as to whether or not these changes, if you like, these attempts to judge ourselves, were reasonable or rational or met the criteria that all members in this Assembly should be treated equally, or met the criteria in the rules of equity. I do have a great deal to say about equity but I don't want to get into that just yet. We weren't asked whether or not we felt that these changes in the act met the test of the Canadian Bill of Rights.

We weren't asked, and there has been no indication that the Conservatives were asked for their opinion on whether or not these changes were reasonable and rational. I am inclined to believe that the Conservatives were not asked. I am even inclined to believe that the Conservatives might come to the conclusion that they are not in favor of rewarding a party – their definition of reward might be that the party is able to conduct itself in this legislature. Nevertheless they might not be in favor of tax moneys being used for a party which supports eventual union with the United States after the break-up of Canada. But they might possibly find themselves in the position where they don't agree with the means by which the NDP government attempted to accomplish this aim.

I think the NDP might well be wise to ponder why the Conservatives have not made a position known on Bill No. 105 to this point in time. The bill has certainly been before the people for some considerable time. It has been before this legislature for at least a week, and yet, as late as yesterday, the Leader of the Opposition, the member for Souris-Cannington, said the Conservatives had not yet determined how they will vote and they certainly weren't prepared to divulge how they would vote on this bill.

I think the NDP members might be wise to take a look at this from the standpoint that

given the past principles of the Conservative Party, they might just find that the PCs decide to object to the way the bill was brought in because, in fact, it is an attack on individual members of the legislature and against the principles of natural justice. It is an attempt by the legislature to judge itself without prior consultation with members and without attempting in some reasonable way to devise a means by which the, if you like, desires of those in our society who would I think, Mr. Speaker, be unreasonable and suggest that individuals shouldn't be able to think unless they thought with a majority opinion . . .

Nevertheless, I believe the NDP could find itself in the position of being stuck with this bill all alone. Now, that's a distinct possibility. I'm not sure of that, but I think that's a possibility. Certainly, if I were in the Conservatives' shoes right now, that's what I'd do. They may not, but that's up to them.

Believe it nor not, Mr. Speaker, I happen to believe that there is an underlying reason why the NDP didn't take the simple approach, attack the matter, if you want, in its simplest possible form and, if you like, remove the moneys paid to the Unionest Party for research and secretarial help by eliminating third party payments altogether. Then it would not be, in any way, specific to one party. Then it wouldn't be specific to two particular members.

Now, Mr. Speaker, they might have to face the argument if they did that, that, in order to accomplish it, they should look to the province of Alberta which is an equally rich province and oil rich. It supports one lone NDP member, Grant Notley, to the tune of \$75,000, even though he has less support in Alberta than the Unionest Party has in Saskatchewan. That they might have to face, if they eliminated third party granting. But at least then, Mr. Speaker, they would not be attacking the principles of natural justice. They wouldn't be attacking the principle of bias as Professor Hewitt has, I think, succinctly put forward in his treatise so far. I know Mr. Speaker will be interested to hear that Professor Hewitt goes on to say:

However, it was not until the case of *R. v. Rand* (1866) 1.Q.B.220 that the rule was firmly established that a judge was (and get this, Mr. Speaker) disqualified from adjudication whenever there was a real likelihood of bias.

Now think of that, Mr. Speaker. Here it is in Britain, and a body of law has been built up over the years that is the foundation for our legal system, that is the foundation for the very legislative Chamber in which we reside. Here it is in England in 1866 that a judge is disqualified whenever there was real likelihood of bias. Now, how in the world can this legislature hold itself out to the people of the province of Saskatchewan as a quasi court, which we always do? We certainly have the trappings of a court. We have all of the appearance of a court. We certainly believe in the adversary system which is the principle of the court. In fact, Mr. Speaker, I intend to show in one or two publications that in most English-speaking countries in the world, in most democracies, it is felt that a legislature is in fact a court. There are many, many precedents. There are many, many experts who have stated, with little degree of differentiation (of difference with others) that the legislature is in fact a court.

Now, if we are a court, then we must follow, surely, the principles of natural justice which have been built up in that body of law which has come from England, through Canadian history, and through Saskatchewan history which indicates no judge may judge himself and that a judge is disqualified whenever there is a real likelihood of bias.

Now, Mr. Speaker, how can anyone, any reasonable person, suggest that a law such as Bill No. 105, which specifically rewards only three parties to the detriment of all others, is not *prima facie* evidence for a bias. Here there is not only a real likelihood of bias, Mr. Speaker. The likelihood of bias would exist in that the NDP differs politically from the Conservatives and the Conservatives differ politically from the Unionists. That would produce a likelihood of bias. But the bill itself is evidence of bias.

So if one is to follow the principles of natural justice, which I think any sane, reasonable person would agree is the correct approach in making laws for the province, why would we be any less open to bias than the courts which are prohibited and disqualified from adjudications even when there is a likelihood of bias? Mr. Speaker, I don't think anyone, any human being (let alone any trained lawyer), could possibly believe that Bill No. 105 could stand the test of any reasonable assessment. That's clear even from the first two pages of Professor Hewitt's dissertation on bias. It can't stand the test. Then why is it here? It must be here, Mr. Speaker, as I have said before, purely for mundane political reasons which, as every member of this Assembly knows, will die in time, and I suggest, Mr. Speaker, already are dying in time.

The reasons for the introduction of this bill are not as strong as the initial shock which was created in public opinion by the announcement by the member for Nipawin and the member for Swift Current that we believe Canada is breaking up, and there is a need in western Canada for other options. Now the initial shock of that created a wave, I believe, and I expected to get a wave of public resentment because the majority of the people in the public had not really thought about the issue clearly. They wanted so badly to retain the country which was the land of their birth, the country of their ancestors, that they were prepared to overlook the very real differences which we believe are irreconcilable, but which some believe can be reconciled. We have stated time and again, if the views can be reconciled, more power to the people who reconcile them. Power to the people. We believe that. But the initial public reaction to that, naturally – given the hysteria that developed over the referendum in Quebec, and the feelings of the people, the desires to overcome these natural differences – was that the province of Saskatchewan should somehow be less free and less reasonable than the province of Quebec.

Now, how could any reasonable member of this Chamber in Saskatchewan, with its tradition in history of free thought and free spirit, want to change the image and the feeling of the people toward their governments, of whatever political stripe – Liberal or Conservative in the '30s, or CCF, or NDP? The fact remains that most governments in the province of Saskatchewan believed in the liberal-democratic tradition. I shouldn't say that. There was one government in the '30s – the Anderson government – which, as a result of some of its policies (I would say primarily in the area of education) developed the image (and with some justification) within the hearts and the minds of the people that they were not liberal-democratic in their approach to government.

I cite the case of the crosses being removed from the Catholic schools in the province of Saskatchewan. That, I think, exemplified the attitudes of some members (and I say only some members) of the Anderson government in the '30s. But, Mr. Speaker, I cite that case to remind you and the members of the Assembly of the tremendous damage done to the Conservative Party as a result of that movement away from the liberal-democratic traditions of the province of Saskatchewan.

The removal of crosses from the schools by the Anderson government of the '30s will pale in comparison with the NDP's attack on personal freedom through this bill. Bill No.



105 will be, to all citizens of Saskatchewan who believe in a free society, the same kind of rallying cry that crosses in the schools were to the opponents of the Anderson government in the '30s.

You see, Mr. Speaker, when a government breaks those natural laws, they reap the whirlwind. The Attorney General mentioned the KKK (Ku Klux Klan); he believes that somehow the people of Saskatchewan remember that and he is right. Unfortunately, just as I'm getting wound up, the audience left, so I'll have to go back to my dissertation from Professor Hewitt.

There are people in Saskatchewan today who honestly and sincerely believe that the reason they won't vote Conservative is because the Conservatives took the crosses off the schools. I've been at by-elections where that was told to me at the door. I've been in by-elections, Mr. Speaker, where people said that. I've sat on open line programs and had caller after caller after caller say to me: you, the Conservatives took the crosses off the schools. But, you see, Mr. Speaker, Bill No. 105 which removes the rights of members of the legislature will be just as bad for the NDP as the crosses on the schools were for the Conservatives in the '30s. And, you know what happened to them, Mr. Speaker? They didn't get any support at all from then on. They had one seat in this entire legislative Chamber in 40 years. . . . (inaudible interjection) . . .

I tell you, Mr. Speaker, someone over there said I don't believe that. I want to say to them that I sure as heck wish, just at this moment in time, just for this one issue, that I could transplant myself (just even momentarily) and go out there to the people with some other political party and sell them on that very thing. I tell you, I could raise the people of Saskatchewan so fast on Bill No. 105 compared to what you did with the crosses on the schools in the '30s, that you wouldn't know what hit you. You watch, Mr. Speaker, whatever happens on Bill No. 105, some politician in opposition in Saskatchewan, somewhere down the road is going to liken onto that issue like a gleaming star.

Do you think, Mr. Speaker, it was really, really unpopular in the '30s when the Conservatives changed those rules? Oh, it was not. The majority in Saskatchewan in the '30s was Protestant; the minority was Catholic. The Conservatives in the '30s attacked the minorities. They took the crosses off the schools and the Protestants out there who believed . . . I can tell you this too because I've run into some of those Protestants in the backwoods of Saskatchewan from time to time – I think there are some of them in the backwoods of the NDP too. . . . (inaudible interjection . . . The point is, (and so has the member for Biggar ran into them), there were some of those Protestants who said by George, the Pope was running the school system here in the '30s, and by George, it was about time somebody did something about it. I've heard this said. I don't agree with it, not one whit do I agree with it, but I've heard it said! The majority of the people in Saskatchewan in the '30s were Protestant and that's why the government took the crosses off the schools because they said, Mr. Speaker, back in the '30s . . . (inaudible interjection) . . .

See, nobody bothers to read history over there. It was quite popular, oh yes; it was quite popular back in the '30s, oh sure it was. Taking crosses off the schools was pretty popular, until the Conservative government found out that one act was going to remove every Catholic vote, every minority vote and anybody in Saskatchewan who believed he was in the minority (which was most people). All of a sudden everybody in Saskatchewan said I'm not going to vote Conservative because sometimes I'm in the minority.

You see what happened, Mr. Speaker? They took a popular issue at the time; they did something about it; they acted; they thought they were acting in the best interests of the people and it backfired! And I say, Mr. Speaker, I would love the opportunity to try to sell that to the people of Saskatchewan. Just love it. . . . (inaudible interjection) . . . Rest assured, Mr. Speaker, it will be sold, by someone . . . (inaudible interjection) . . . Yes, you know, I've never expressed my appreciation, Mr. Speaker, to the member for Qu'Appelle (I'm glad that was expressed to me by the member for Prince Albert-Duck Lake) for all of that political acumen in bringing me those 17 members.

**AN HON. MEMBER:** — Well, he did a good job for you.

**MR. COLLVER:** — I thought so too. He'll do an even better job in his present capacity. Mr. Speaker, there are some members in this Assembly who are attempting to make me out of order. I think it is definitely not fair for them to do that kind of thing when we are into one of the most exciting areas of law that one can possibly study, where there was a possibility for members to develop some understanding of the future that is going to face them if they persist in this attack on the membership in the Saskatchewan legislature.

As I said earlier today, Mr. Speaker, they have all the whips; they can do whatever they want with 44 members. There are 43 sitting on that side of the House; there are only 2 here. Even without the Conservatives, 43 to 2 is pretty good odds. It doesn't take much, if they're bound and determined to go through with this act. The Attorney General has already said the majority is eventually going to rule in here anyway. Why then does the Attorney General want to spend all this money? I don't know.

He said, well, it's your fault because you're not sitting down. How can it be my fault for not sitting down? I believe strongly in this cause. If you believe as strongly in your way, just use your majority and finish it. It's easy. The Attorney General has already said he's going to do it — eventually. He said, one way or another . . . I'll get the article. Mr. Speaker, I'm sorry but these members have to learn what's really said. Romanow said Collver had made his point and he should let it go through. Why should I let it go through? I don't believe in it. I think it's wrong.

No matter how long the Unionest leader continues (Romanow said) the bill will go through sooner or later with the majority government vote.

That's a quotation from the Attorney General of this province. So why does the Attorney General want to continue on with this charade? I don't believe in this bill. I'm going to fight it as hard as I can; I told everybody that weeks ago.

If the Attorney General wants to continue on with this charade, go ahead. There's a means open to you; the rules are there; the people will accept it. Sure they will. Go ahead. Go out there and fight the next election on closure, on human rights, especially, Mr. Attorney General and Mr. Speaker, when you're going to be sued for passing the bill to begin with. Go ahead; I want you to do it; I invite you to do it; I beg you to do it.

I say to you, here I am. I'm going to fight. I'm going to keep on presenting these arguments and there are lots of them. 'Judge not lest ye be judged' is only one. I can only tell you that there are more arguments against Bill No. 105 than you can put up people. I tell you that for a fact. . . . (inaudible interjection) . . . I will give you a chance. Let me

adjourn debate. Fair enough? You have a chance. I'll give my word to the Clerk and to the members of this House, my very word as a member in this Chamber. You let me adjourn the debate and I'll let anybody who wants in and I'll come last, just before you. Now that's fair, Mr. Speaker. How's that? I'll wait for everybody else and then you get to close debate anyway, because that's the rule. The member for Biggar says he wouldn't go for that.

**AN HON. MEMBER:** — If you adjourn debate nobody else can get in. What are you talking about?

**MR. COLLVER:** — That's not true. That's not true! Learn the rules. Talk to the Clerk's office. The point is, Mr. Speaker, I've told the members time and time again, if they want to get in, let me have the opportunity to rebut, that's all.

Now, the principles of natural justice . . . I suppose it's necessary every once in a while to clear the throat, Mr. Speaker, but those soirees into excitement with the Attorney General certainly play on one's vocal chords.

**AN HON. MEMBER:** — Dick, resign and call an election.

**MR. COLLVER:** — I hope the member for Estevan is not serious in that little rebut. For me it wouldn't hurt much.

Mr. Hewitt says (now remember, Mr. Speaker, where we were in this development of the rules of natural justice) that a judge was disqualified from adjudication whenever there was a real likelihood of bias and we've shown that the bias is in Bill No. 105. Now, Mr. Hewitt goes on to say:

Since the decisions in *Great Charte v. Kennington Parish* (1742) 2 Str. 1173, and *Lee v. Bude and Torrington Junction Ry.* (1871) L.R. 6 C.P. 576, it cannot be doubted that parliament can make a man a judge in his own cause.

What he is saying now is that parliament can make a man a judge in his own cause. He cited some cases to do that. In other words, we have the right. The question is, and I know that Professor Hewitt is going to get to it, the question really is, should we, not can we? In other words, in accordance with natural justice, can we pass Bill No. 105? The answer is obviously yes. Have we, in the past, passed a bill like Bill No. 105? The answer is yes, but against the advice of many very intelligent and reasonable men. And as a matter of fact, against the advice of the Attorney General at times (I recall his speech in this legislature when we talked about the Hughes committee); against the advice of the Premier of the province in 1978 (I have already read that into the record); against the advice of the member for Thunder Creek; and against many people's advice. So, what I am saying to the Attorney General is, can we do it? The answer is yes. But the point surely is, should we do it? Should we do it? Should we bring this kind of change before this Assembly, or should there be some other body, independent of politics, independent of the kinds of political pressures placed on members, independent of this entire Assembly? Judge not lest ye be judged. A man shouldn't be his own judge. The question is, should we carry on year after year to have the kind of situation arise in which members under political pressure have to bring their political judgments into view, but, in turn, have to judge themselves or judge members of this Assembly and bring the entire legislature into disrepute. . . . (inaudible interjection) . . . I'm happy the member for Shellbrook likes this point. I appreciate it.

Should we judge ourselves? Clearly, and I can only say, Mr. Speaker, in the short time I had to peruse Professor Hewitt's dissertation on natural justice, I don't know if Professor Hewitt is going to come to that conclusion, but I can certainly tell you that I came to that conclusion. We, in this Chamber, should not subject the legislative process, this supposed independent arbiter for the people of Saskatchewan, this only last-resort protection against the ever-increasing power of a power hungry government (nor should we subject ourselves) to that kind of attack by outsiders. We should allow outsiders to make this determination for us. Now, Mr. Speaker, there's precedent. Clearly, when the Hughes committee was formed many members believed that this process in the Chamber was not acceptable. Clearly, many members believed that the distaste (you remember, that was the word used by the member for Thunder Creek and it was the word used by the Premier and many others) of having to bring a bill before this Assembly to judge ourselves should not be required of members.

No member should be placed in this position. That surely is what I am trying to say about Bill 105, and about why we are opposed to it. The majority in this House is attempting to judge itself. It is biased and we accept the bias. But by attempting to judge yourselves, you are placing two of your number in jeopardy. Is that fair? Is that equitable? Is that reasonable? Is that necessary? Well, some members might nod their heads, yes. Others might say that's not reasonable, that if this process is necessary, some independent outsider, outside the Chamber and outside the pressures of this Chamber, should be required to make this decision.

Now, Mr. Speaker, I must say to you, from a political point of view (and I am not speaking now from Professor Hewitt) there is an ultimate arbiter, the people of the province of Saskatchewan. They are the ultimate arbiter in this decision. Why the rush? Is it the cost to the people of Saskatchewan of \$35,000 a year for three years? Is that the reason why? I mean that's what this bill deals with — \$35,000 for each of three years. Is that it? At the most, it is three years; it might be two years. So it's somewhere between \$70,000 and \$105,000. That's the total cost. Is that the reason members are concerned?

Well, I might say to members that the cost of keeping this Chamber open per day runs somewhere in the neighborhood of \$10,000. It is certainly over \$5,000, and that's just for members' indemnity. Over \$5,000 a day for every day the session is on, just for members' indemnity, not counting the extra cost of Hansard secretaries, not counting the cost of the extra security. It is in the vicinity of \$10,000 a day. So you see, Mr. Speaker, if it's the cost, then somewhere between seven and 10 days, by keeping the House open and examining this problem ourselves, we have already spent whatever money might be involved over the next three years. Mr. Speaker, I submit to you that by bringing this bill forward as the Attorney General has in the last week with seven and a bit full days of debate on Bill No. 105 and no end in sight, I say to the Attorney General he has already spent \$70,000 extra and in another three and one-half days (that is by Tuesday) the people of Saskatchewan will have already spent the full amount which could possibly be involved in monetary terms with this bill. And that spends it all today as compared to over a period of three years. So is it the money? It can't be. I can assure the members of this Assembly the debate on Bill No. 105 will not be finished by Tuesday. I can assure them as sure as I am standing here tonight, the debate on this bill will not be finished by Tuesday.

**MR. ROMANOW:** — Won't be?

**MR. COLLVER:** — Cannot be.

**MR. ROMANOW:** — Why not?

**AN HON. MEMBER:** — Bringing in closure, it would be.

**MR. COLLVER:** — By bringing in closure, it could be. . . . (inaudible interjections) . . . I say to you, Mr. Speaker, I am glad the Attorney General suddenly perked up because I wish he had been listening to this from the start. By Tuesday, the province of Saskatchewan will have spent, in additional costs alone for keeping this Chamber open, from \$70,000 to \$105,000. This is what this bill is dealing with — \$35,000 a year. That is what it is in numbers. Those are the adjustments you are talking about. That is the amount of money you are removing from the Unionest Party. That is what you are doing. By Tuesday, you will have spent in extra costs, just to keep this Chamber open, the full \$105,000. So is the issue money? It can't be. First of all, the one good thing about it is, some of that money has already got into the hands of Donor's Choice in Nipawin and is doing some worthwhile good for the people of that areas. But I say to you, is it the money? It can't be. Otherwise you wouldn't have rammed this bill first on the order paper day after day; otherwise you wouldn't have ignored all the other business of the people of Saskatchewan to try to ram through Bill No. 105. It can't be the money. Because . . .

**AN HON. MEMBER:** — It's a matter of principle.

**MR. COLLVER:** — . . . it is a matter of principle. Ah, good. Now some NDP over there said, it is a matter of principle. Terrific. What is the principle? Tell us what is the principle?

**AN HON. MEMBER:** — We have tried.

**MR. COLLVER:** — We have tried. No, never mind. They don't understand it. What is the principle, I say to the Attorney General. If it is not the money, what is the principle? The fact that a member crossed the floor and didn't seek re-election, is that the principle? That is not what the bill says. If that is the principle, then why did you recognize, under this very act, the crossover of the member for Thunder Creek, under this very term of the act — third party, opposition party? Why? If it is the principle, then why would you recognize it for Conservative Liberals but not for Unionests? Is that the principle? It is not the money because the House is still open. An NDP member said, it is the principle of the thing. I say, what is the principle? What is it?

**AN HON. MEMBER:** — Only a thinking person can have a view.

**MR. COLLVER:** — You see, Mr. Speaker, no answer. When I asked if it was because a member crossed without seeking re-election, they said yes. I said, why was it O.K. for the Conservative Liberal group, but not O.K. for Conservative Unionests? You see, Mr. Speaker, no answer.

**AN HON. MEMBER:** — You don't want an answer.

**MR. COLLVER:** — I want an answer. I'm waiting for it. You see, Mr. Speaker, I'm waiting for it. The member for Biggar . . . I'm sorry to say this to a new member who's sitting in a different seat than his own, but I want to say this to this particular new member because I have some respect for him. I say to this particular new member, it is the job of the person introducing the bill to spell out the details and the principle of the bill. That is the

job of the person introducing the bill. They introduce it to the House. Other members hear what the member said is the principle of the bill and then they react. Now I ask you to get the comments of the member for Biggar who introduced this bill and tell me what the principle of the bill is, given the crossover and the recognition thereof of the member for Thunder Creek. I want you to tell me that. Take every single word said by the member for Biggar whose job it was to introduce that bill and tell me, given the fact that this very bill, third party status and opposition status were in 1977 recognized when the member for Thunder Creek crossed, without seeking re-election, from the Liberals to the Conservatives, what the principle is. I'll tell you what I think the principle is. I think the principle is that it's O.K. between Conservatives, Liberals or NDPers, but anybody else is out. Now that's what I think the principle is, and that's what the bill says.

Back in 1978 three parties were before the electoral office – Liberals, NDP, Conservatives; that's it. If that's what you're saying, that you are creating a three-party system in Saskatchewan, then say that's the principle of this bill. . . . (inaudible interjection) . . . Say that's the principle of the bill. . . . (inaudible interjection) . . . Well, what is the principle?

**AN HON. MEMBER:** — Nobody voted for you.

**MR. COLLVER:** — Oh, I see. Now we've changed, Mr. Speaker. Now what we have is proportional representation in Saskatchewan. We're attempting to bring in a bill which provides proportional representation. Isn't that interesting. Well, Mr. Speaker, I ask you (you've certainly studied this bill as much as anyone in this Chamber), does Bill No. 105 have anything to do with proportional representation? Is that what we're attempting to bring into this House? If that's so, why don't we have a bill for proportional representation before this Chamber? If you receive over 10 per cent of the vote you elect one member; if you receive over 20 per cent you elect five members. Why not, Mr. Speaker? That's what the member is saying. Oh yes it is. If the party ran in the last election, then it's all right for them to have members in this House. Then you're saying to me that the member for Swift Current and I will be recognized in this Chamber if we declare as Marxist-Leninists.

**AN HON. MEMBER:** — Did the Marxist-Leninists run last time?

**MR. COLLVER:** — Yes they did. Are you saying to me that we would be recognized in this Chamber if we declared as Marxist-Leninists? . . . (inaudible interjection) . . . No, the party; the Marxist-Leninist Party ran in the last provincial election in six seats and they received a grand total of 612 votes in Saskatchewan. That's the stupidity of this bill; that's the stupidity. Six hundred and twelve votes in the whole province of Saskatchewan, but we'd be recognized if we crossed to the Marxist-Leninists. Of all the nonsense I ever heard in my life, that's the shakiest logic I've ever heard; ever! Mr. Speaker, I might wish to say one more thing. You can see the logic of these members opposite. Of all the nonsense I've ever heard, that is the most nonsensical!

Now, Mr. Speaker, I would like to return if I may . . . (inaudible interjections) . . . I see that, but he's been here for awhile. I got pretty livened up there for a moment – just for a moment.

Mr. Speaker, Bill No. 105 is not designed to provide proportional representation in Saskatchewan. If it were, I'd be supporting it. I say this to you, Mr. Speaker, I am not in disfavor of proportional representation in this province. I don't believe, for example, that when 10 per cent of the people vote Liberal in Saskatchewan (which is some

40,000 people) that they should go unrepresented in this House. I don't believe that's the case. I don't think proportional representation is a bad idea, but you see, Mr. Speaker, when you have proportional representation (for the benefit of the member for Assiniboia) you don't have ridings. I'm sorry to say that, but you don't. Proportional representation is just that. So many votes provide so many members. The point is, there are detriments to the proportional representative system. You don't get the direct link between constituent and member.

Now, the member says, agreed. He says that's a good system; we don't have proportional representation. Then for goodness sakes, if we don't have proportional representation, don't believe you can put it in by the back door through a bill that attacks two members, because that's what you're trying to do.

**AN HON. MEMBER:** — The people in Nipawin who voted for you don't have a very good representative.

**MR. COLLVER:** — Oh, that's where the member for Shellbrook is sadly mistaken. What the member for Shellbrook should try to get through his head, is that what he said is quite true. The people of Nipawin voted for me; they didn't vote for any party. They voted for me, and that's the system.

Mr. Speaker, I ask you for this one time to have the members try to understand that I have set forth a challenge. The Attorney General gave me one, and I said to the Premier, I accept your challenge. You quit Regina; I'll quit the House; we'll go to Nipawin and we'll see who wins.

Now Mr. Blakeney is a most popular man in Saskatchewan, and I think that challenge was a reasonable one. If that member opposite honestly and sincerely believes that I have no personal support in Nipawin, then I say, you tell your Premier to get up there, quick like a bunny, and he can eliminate with one fell swoop the Unionest Party from this House. I'll be gone; the member for Swift Current will have to sit as an independent, and that's the end of us and you don't need to attack individual members by a bill.

Now, it's an easy exercise; it's a perfectly easy and satisfactory exercise. The Conservative leader would go too. For the opportunity to watch Allan Blakeney beaten, I tell you, Grant Devine would be out there in a second. . . . (inaudible interjections) . . . I say, Mr. Speaker, that's what I want . . .

**MR. SPEAKER:** — Order, order! I notice over the years that every time we get near an election, it gets noisier. I wonder if we can just keep the level down so I can hear the member for Nipawin.

**MR. COLLVER:** — Mr. Speaker, I thank you very much for drawing that to the attention of the people of Saskatchewan. If that is acceptance, or if in your way, Mr. Speaker, you are accepting on behalf of the Premier, then all we need to do is get Grant Devine into the contest and we would have one great contest going for us in Nipawin, Saskatchewan.

Mr. Speaker, the member for Shellbrook believes that somehow I didn't get elected in Nipawin. I tell you what we'll do — Unionest Party, Conservative Party, Liberal Party or NDP. I think in the constituency of Shellbrook, for example, it was Ted Bowerman who won and not the NDP. I'll be frank with you. You see what I mean. The constituency of Shellbrook is a fine constituency but it is near the constituency of Prince Albert. I'm not

going to try to deprecate in any way the constituency of Prince Albert, but the constituency of Shellbrook needs a man of the stature of the member for Shellbrook, the heavyweight for Shellbrook. But beyond that I'll tell you what they need the most. . . . (inaudible interjection) . . . I sure wish, Mr. Speaker, that when I am in the middle of one, the member for Moosomin would let me finish mine before he makes his. What I was going to suggest to the member for Shellbrook, the man of great stature, is that the reason the people of Shellbrook voted for him is because he's the son of one of the most respected men in the whole area.

**SOME HON. MEMBERS:** Hear, hear!

**MR. COLLVER:** — That's right and I think, Mr. Speaker, to be quite frank with you, that if Ted Bowerman had gone into Shellbrook as a Conservative, he would have won Shellbrook as well. I'll go one further. If Ted Bowerman had gone into Shellbrook as a Liberal, it would have been a close race, but he still would have won. And there are no Liberals left. That's how much I think people vote for parties in this province.

You see, for the members opposite there's no such thing as a precedent; there's no such thing as a past happening; there's no such thing as history. If I say that it's right for Ted Bowerman in Shellbrook, it can't be right for me in Nipawin, Well, Mr. Speaker, this is on point.

**MR. SPEAKER:** — I agree the member may be on the point, but the fact of the matter is he's abridging the rules of the House. He's referring to a member not by his constituency or his title, but otherwise. As common practice that's not allowed in this Chamber. I know I can keep working on the member and eventually I may get him to agree with me that he shouldn't do that.

**MR. COLLVER:** — Mr. Speaker, I couldn't agree with you more. The only reason I was referring to the member for Shellbrook by his name was because of the tremendous respect and admiration I have for his father and his family. That's the only reason I mentioned it. . . . (inaudible interjections) . . . I wonder, Mr. Speaker, now that the frivolities are over . . . Oh, I am dead serious about the challenge. I sincerely hope the Premier decides to take me up on that challenge; I really do. I'm dead, dead serious. If you want that in writing, I'd be happy to provide it in writing. If you want it written in blood, I'd be happy to write it in blood. I'll do it any way you like.

Let me put it another way. There's another challenge that these fellows have put forth. I'll go even this far, Mr. Speaker. I've already told them about Nipawin and I'd love to run there. But, let's suppose the Premier of Saskatchewan says he would like to resign Regina Elphinstone and call a by-election in Regina Elphinstone; I would even run against him there. Now, I wouldn't have much chance but I would still run against him there. The reason I say I wouldn't have much chance, Mr. Speaker, is because that is his home constituency. That's not NDP; that's Allan Blakeney's constituency, just as Nipawin is Dick Collver's constituency. Mr. Speaker, say what you will, check the election book, check the act. That's the man the people in Nipawin elected; that's the man who is standing here representing them, and that's the man who is going to continue.

**AN HON. MEMBER:** — What was on the ballot?

**MR. COLLVER:** — Richard L. Collver, management consultant. Read it, read the ballot. Mr. Speaker, I don't . . . That's right out of order. He asked me what was on the ballot and I just told him what was on the ballot . . . (inaudible interjection) . . . Very small. In



some constituencies we asked the chief electoral officer and the returning officers to write it even smaller but they said they only had one size of small print so that's what they used; the members will understand that. Mind you, Mr. Speaker, the print of NDP wasn't a lot bigger than the PC on those ballots. Most people emphasize their names as a matter of fact. I even went around to constituencies from time to time (now this is right on point, Mr. Speaker; we're talking about what created the third party and Bill No. 105 deals with the third party) in this province, and I went down into several constituencies in the southern part of the province. And do you know, Mr. Speaker, there were actually the names of candidates on billboards with no party affiliation on them at all? Do you know that there were areas of this province where NDP wasn't a very good name so what the guy did was leave it right off and just put his own name up there, even though he was a member of that party? I even went around to places and saw them.

Do you know something, Mr. Speaker? In the constituency of Shellbrook, I remember seeing . . . (inaudible interjection) . . . Oh yes I did. I remember seeing a candidate by the name of Paul Meagher and he had no party affiliation on it whatsoever. He had no money, so he painted homemade signs with just his name, that's all. Isn't that interesting, that candidates in the last provincial election might advertise themselves as men — not parties? Doesn't that sort of change things, Mr. Speaker, with reference to Bill No. 105? There were actually candidates elected in the province of Saskatchewan who didn't subscribe to any political party. Mr. Speaker, I might tell you one other thing, just to give the members a precedent. They won't know this; they won't believe this, but I'm going to tell them anyway. In the federal constituency of Prince Albert, for the last six elections, six, count them, Mr. Speaker, the Rt. Hon. John George Diefenbaker refused to use Progressive Conservative Party literature, Progressive Conservative Party signs, Progressive Conservative Party letterhead. As a matter of fact if you drove through the constituency of Prince Albert during the last six federal elections, you wouldn't know that John Diefenbaker was a Conservative because nowhere did John Diefenbaker ever ascribe to his name the name of the party under whose banner he was running! No place. But you see, Mr. Speaker, would you ask John Diefenbaker to resign because he supported the Conservatives? No, you would not. He was elected as an independent. He never would let anyone know. Ask Mr. Member for Prince Albert if I'm telling you the truth. You're darn right I'm telling you the truth; he wouldn't allow it to happen, Mr. Speaker. He was there as an independent. He wasn't elected under a party banner, but not once has anyone ever suggested for one single moment that John Diefenbaker wasn't the greatest Conservative that this country has seen for a long time.

**AN HON. MEMBER:** — He certainly didn't run as an independent.

**MR. COLLVER:** — He certainly did. Ask the member for Prince Albert. Even the member for Assiniboia knows that. He ran as an independent. I'll tell you why. I remember even talking to him about it. . . . (inaudible interjection) . . . But you see, Mr. Speaker, you see what happens when logic is brought to bear on the case. They say, don't let facts interfere with my arguments. Here's a man, one of the greatest Canadian politicians, who is elected under his own name because, Mr. Speaker, that is our system.

Somebody said, what caucus did he sit in? From time to time he sat in the Conservative caucus, but most of the time he didn't attend caucus meetings following the last six elections. But don't you see, Mr. Speaker, what I brought his name up for was to show you . . . (inaudible interjection) . . . I haven't proved a thing. Men don't get elected as individuals. They elect parties. Right? . . . (inaudible interjection) . . . Oh, he was elected as a Conservative. Right? There wasn't anything on his literature that said that,

but he was elected as a Conservative. That's right. . . . (inaudible interjection) . . . I'm sorry, Mr. Speaker, I don't want to let facts interfere with anybody's argument. I don't want anyone to think that I'm trying to confuse them.

I'll try to keep it as simple as humanly possible and return to a discussion of the principles of bias as they relate to Bill 105 because, no matter how hard you try to change the mind of someone whose mind is not going to be changed . . . It's very much like trying to chop down a cherry tree. The trouble is, after you've chopped down the tree, unless you tell the truth, you couldn't tell the difference between the person and the wood. Someone told me the other day that most of the members opposite are beautiful. And I said, why? And they said because they are beautiful wood. They're teak from the neck up. . . . (inaudible interjection) . . .

Professor Hewitt, in his dissertation, goes on to outline the law in England. As I have mentioned before, in order to appropriately understand why this bill is biased, you have to understand the background of bias. I hope sincerely members in this Chamber will decide to go pick up some of these references. I realize they probably won't. Their busy schedules prohibit it. But they might, if they wanted to learn something. They would pick up some of these materials Professor Hewitt refers to and they would find that perhaps a law should not be passed that is biased, and the judge should not judge himself. It was said by Lord Hewart C.J. in the King versus Sussex Justices, Ex parte McCarthy, 1924, 1K.B. 256 at page 259:

It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

Now, Mr. Speaker, you've heard that phrase before, I am sure. But I would like to repeat it because in 1924 it was Hewart who said it. He was one of the greatest of English justices, ranked among the top five judges who have ever sat on supreme courts in Britain.

Now, any lawyer will tell you that. And what he said was that it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done. O.K. Take a bill like Bill No. 105. Take the facts as they exist. Two members were sitting in the Conservative Party and were elected as Conservatives, no question. They decide for their own reasons and for others announced publicly, that they can no longer in conscience remain in the Conservative caucus. In order to present what they believe sincerely to be true, they have to remove themselves from the Conservative caucus and sit somewhere else or quit. That's their choice. For their own reasons they look at historical precedents and they decide to sit as Independents. There are two members, two Independents.

They sat in this Chamber as Independents for some time. As a result of the move, they received from large numbers of people . . . (inaudible interjection) . . . No, no, don't be ridiculous. They received from large numbers of people expressions that they wished they could form a political party so they could express in an appropriate fashion their feelings about what was happening in their country. These two members looked around and could find no political party which believed as they did. So under the laws of Saskatchewan they created a political party of their own. The political party was legally formed. It is legally recognized by the chief electoral officer who sent a letter to the Clerk of the Legislative Assembly stating that the party was recognized.

Having created this party, the two members examined The Legislative Assembly and

Executive Council Act. As a matter of fact, they didn't do it, a member of the Conservative Party did. They found that they were entitled under the act, which had taken since 1976 to prepare . . . In 1976, 1978 and 1979 and in the Hughes committee there were four separate, complete reviews of the act which had not changed one particle of the clause referring to third party status. They found they had complied with all the laws to receive that prerequisite of being a party in the Saskatchewan legislature.

They looked at precedent and they found that the precedents in this very Chamber, not counting those outside the Chamber, but the precedents in this very Chamber (the member for Thunder Creek crossing from the Liberals to the Conservatives) said this Chamber itself recognized that you may in conscience no longer feel you can sit in this caucus and move to another one. That's what the precedent says in this very Chamber. And as a result of that crossover, that third party grant will be adjusted, be law, and be recognized by the very Chamber. And I say to the members, those are the facts – exactly.

The NDP brings in a bill that says, against its own precedent:

In order to be recognized as leader of a third party that party must have run in the previous election.

Now keep in mind, we do not have proportional representation in Saskatchewan. It makes a difference for this reason. Let me say why it makes a difference; then maybe you can say I'm right. Every member who is elected, under whatever political banner under our system, on the day he is elected is expected to be a member for all constituents of whatever political party. That is our system. He is expected to do the job as well for the person who voted for him as for the person who did not vote for him. That's what a member of the legislature under our system means. Under proportional representation it's different. Under proportional representation you are responsible to the people who voted for you. That's correct, under proportional representation. To suggest that you must change the system to recognize parties that ran in the last election means that you are recognizing a change in the system which says the member must act on behalf of all constituents, no matter what the political party.

The point is that our system says and has said for hundreds of years that you are elected, although under a party banner, as an individual. And on the day you are elected, if you are reasonable (and we are not talking about practical politics now) and doing your job, you are expected to lose your party partisanship and work for all, and to work for all equally. And it has served the people of this country well. When you say that you must have run in the previous election as a party (not as man but as a party), then you discount that principle that a member of the legislature deals with all of his constituents. And that's why this bill is wrong, over and above the other reasons I have stated. It is wrong because it will discount that very feeling of people that when a member is elected, no matter of what party, that member is going to act on behalf of everybody.

**AN HON. MEMBER:** — If what you are saying is right no party leader should get a grant.

**MR. COLLVER:** — If that is true, and you wish to bring that into this bill in this Assembly, you might get more support than you think. I can tell you why that happened though. The reason that a party leader gets a grant in this Assembly is twofold. One, because of

necessity a government party, because it controls the cabinet, has the kind of research help and secretarial help that gives it an added edge on political parties in opposition. For many, many years opposition parties did not receive any grants from government. Only the government had that edge. And it was in the enlightened era of modern times deemed that that wasn't fair in a democratic system, that somehow that had to be evened up to keep the opposition able to meet the challenge of the government. Now I'm not for one moment saying to you that's a perfect system to award political parties in a legislative chamber.

Perhaps there should be an increase in the allocations to caucus, and a decrease in allocations to leaders. That's what happened last year. That's the very thing that happened. If that's what you want to do, if that's what you believe in, if that's what you think is right and proper, then bring legislation before this legislature to do that, and do it fair for all and fair to all.

If you believe an individual member represents all his constituents after he's elected then you cannot, if you're fair, say the guy ran under a party banner, because the day after he was elected he was supposed to drop it. He's supposed to go out there and work for everyone. Well, that's the truth and those are the facts.

**AN HON. MEMBER:** — That isn't what you did, Dick.

**MR. COLLVER:** — That has nothing to do with it. But you see, Mr. Speaker, that's exactly what I did.

**AN HON. MEMBER:** — Is that why you're in the trouble you're in?

**MR. COLLVER:** — Oh, I'm not in any trouble at all. For the benefit of the member for Shellbrook, I'm not in one iota of trouble.

**AN HON. MEMBER:** — You've backed yourself into a corner.

**MR. COLLVER:** — I haven't backed myself into any corner . . . (inaudible interjection) . . . Oh. Mr. Speaker, I would like to provide to the members of this Assembly a copy (if they would like to receive it) of a petition from the people of Nipawin for me to remain as their MLA whatever party I may belong to. The point I'm trying to make to the members is to take a look at the principle; it's not whether I'm popular in Nipawin or unpopular, not whether the member for Assiniboia is popular or unpopular, not whether his executive is mad at him or not mad at him, not like the case I brought to you this afternoon about Mr. Dewhurst who had to work in this Assembly while minions were out working in his constituency to get him unseated. Not like that. That's not what I'm saying.

The minute you recognize parties officially as being a criterion for membership in this House, then the principle of acting on behalf of all of your constituents must go out the window . . . (inaudible interjection) . . . There is the unfortunate part of the logic of the member for Assiniboia. You can't have both. Mr. Speaker, even God says you can't serve two masters. You can only serve one. If your job as a member is to serve all the constituents then that is your first master. After that comes your party. If you take it the other way around, you will develop the kind of pork barrel politics to which you have objected, to which the member for Kelsey-Tisdale has objected, to which every member has objected, both federally and provincially, and in some cases it goes too far. First come your constituents and then comes your party. That's all I'm saying. If that is true, if that is a fact then you can never recognize your party first. Never! You can't

serve two masters, only one. That's all I'm trying to say, Mr. Speaker. . . . (inaudible interjection) . . . That's the argument that comes back – you're wrong, Dick.

Here are the precedents against you. Right over there, the precedents against you. . . . (inaudible interjection) . . . How is it different? . . . (inaudible interjection) . . . But that's not proportioned representation. We're not talking about proportional representation. How does it differ? He was elected as a Liberal. The member for Thunder Creek was elected as a Liberal. He crossed to the Conservatives and the grants to the Conservatives changed dramatically; they sky-rocketed. How was it different? The point is, they can't answer that question. They also can't answer the question that the minute you recognize party before you recognize constituents, then you stop representing all the constituents. Then the whole basis of this Assembly falls apart. And that's what we are trying to say, Mr. Speaker.

Like I say, if you want to get rid of the money to those darned Yankee lovers, do it in the right way. Do it properly. Do it reasonably. This isn't the way. This way attacks the very foundation of this institution. If you, as a government t, are so silly that you can't figure out ways to get rid of the Yankee lovers and still keep parliament intact and a free society intact, then you don't deserve the job of government. I can tell you if I were over there I could figure out a way to get rid of the Yankee lovers. . . . (inaudible interjection) . . . That's right. That's exactly right, without jeopardizing the very freedoms and foundations of our society.

Mr. Speaker, if the members don't believe what I'm saying, why won't they go and talk to anybody who is interested in constitutional law? Why won't they go and talk to any lawyer in this province who is interested in maintaining the rights of parliament? Anybody. There isn't one who doesn't disagree with this bill. Not one. I read to you (I wasn't joking with you) a personal note on another matter from an eminent judge in western Canada, who says, you're building your own prison which your children are going to inhabit. That's the point.

Members say, why is this man still going after all those hours? What is he doing here? He's not getting any recognition. There is nothing good going out there. He isn't getting great press. He's not even able to go out and organize. What's he doing there? I gave the money away. What more can I do to prove to you that this is not right, that this is not rational? Surely, whether I stay on in politics or I don't – and I think I have made announcements all over that I won't – I owe something back as an individual, even if all I owe back is to prevent you from doing this to yourselves, not even to me, to whoever comes in here later.

The first time you let a majority attack this institution, that first time will be the last time because the next time will be easier. The next time it will be easier to coerce these guys into blackmail and those guys into blackmail. And pretty soon it's the easiest thing in the world for a majority to do. It's the easiest thing to do.

For the life of me, Mr. Speaker, I can't understand why the members don't understand what I'm saying. I invite them to read the experts. I invite them to talk to legal counsel. . . . (inaudible interjection) . . . I wonder whether that document, Mr. Speaker, was prepared by the chief electoral officer? I think it was Mr. McMillan at the time, and I wonder if there were ever any accusations that Mr. McMillan might have been a political animal. I won't say what particular political party he was with . . . (inaudible interjection) . . . That's a book, for the information of members. Why don't you check the returning office and check the actual act to see whether it's a party that's elected?

Look up the act. . . . (inaudible interjection) . . . Oh, that's right. Do you want to read it from the election before? It said Colin Thatcher, Liberal. That's what it said. Why don't you go back there? Go to the election before. . . . (inaudible interjections) . . . Oh I won by over 500 votes. That was quite a few; over 500 as I count. . . . (inaudible interjection) . . . Oh, just under? Sorry about that.

Well, Mr. Speaker, I think that's about all of the excitement we can put up with today. I think we should return to our discussion to try to bring to bear some of these experts that I have been talking about, to try to get the members to look up these matters.

If the members think they can sell that political argument, that's fine; that's their business. If they want to attack their own House, that's fine; that's their business. Then there's an easy way to do it. Close it tomorrow. Right tomorrow, there's the book; it's easy to do. That's the solution.

You know the thing is, the minister responsible for tourism has wanted to take a trip for a long time. I know that he's anxious to get on that trip, and he also wants to hear the member for Swift Current speak. I suggested he go ahead on his trip, enjoy himself, and when he returns from his trip, that might be in time, or just about in time, for the member for Swift Current to speak on this issue.

**AN HON. MEMBER:** — Your book just disappeared with my file . . .

**MR. COLLVER:** — Well, I guess I'll have to find some more then. It's amazing what's available to one, if one digs deep enough.

Professor Hewitt goes on to talk about England. You will recall that when I was interrupted, I was just about to make a point, Mr. Speaker. I was just about to say that justice should not only be done, but should manifestly and undoubtedly be seen to be done. Are the people going to see that justice is done by Bill No. 105?

Take all of those facts that I outlined earlier and those facts, Mr. Speaker, will be presented . . . I must be hurting somebody over there with logic because he keeps spouting from his chair some very illogical stuff from a political document. I don't know why he's doing that but I'd be happy to . . . Are you looking up 1975? Oh, 1978. Well, I think if he looked up '75 he'd find the precedent was also there. . . . (inaudible interjection) . . . Mr. Speaker, given all of these facts (I must have been touching some kind of nerve over there) we've laid out, and taking all these facts into consideration, will the people think that justice is done by Bill No. 105?

Mr. Speaker, in my judgment, the answer is no. The people will think an attack has been made, not only on members of this legislature, but on the very institution itself. Justice will not seem to be done, because justice isn't done. Now you can see, Mr. Speaker, that when the laws of natural justice are not coincidental with the law, I think I have been able to show and to prove to members of this legislature that dire consequences result. I have cited three or four examples. I might cite a couple more. I am thinking, Mr. Speaker, of laws in the United States in which natural justice and the rules of natural justice were not applied.

I alluded to this very briefly the other day, but I would like to bring out the case just a little bit more succinctly for the benefit of the members. In the 1940s you will recall the cold war in the world was just building. Americans became concerned about the so-called communist menace.

In reaction to the so-called communist menace, they enacted legislation establishing a committee of the Senate of the United States which was designed to look into what they called unAmerican activities.

What happened as a direct result of the establishment of that committee is that the very principles under which the United States of America was founded were ignored. Individuals were blackballed and chastised and brought to the bar of justice because they had been members of so-called communist front organizations when they were 12 or 13 years old. Such tremendous talents as Trumbo and others in the United States were put on a black list and couldn't publish their works for a period of 10 years. Mr. Speaker, they brought this law forward against natural justice. They wouldn't allow the rights of association and free speech because they said America was in peril. That was the reason they used.

But what has happened as a result? You recall what I said about the Conservative government in the 1930s taking crosses off schools and how they came by that reputation and couldn't shake it for 40 years. You recall that I said Bill No. 105, which is against the laws of natural justice, will be just as hard a cross for the NDP to bear as taking crosses off schools was for the Conservatives of the 1930s.

What happened as a result of the law in the United States going against the laws of natural justice? McCarthyism has become a term. The very man who put forward the rationale for this unAmerican activities committee and used every crooked and rotten tactic to attack his fellow countrymen without the laws of natural justice is today one of the most reviled people in the United States of America. His very name has become synonymous with legislation which is similar to Bill No. 105. That is the logical outcome when the law opposes natural justice.

What else happened? America lost the talents of a great many of its best artists, of its best writers, of its best painters, of its best movie makers for between 10 and 15 years and some of the most promising never did come back.

That's what happens, Mr. Speaker, when you pass a law that is against the natural law. Now, Mr. Speaker, I'd like to give you one more example. This is not a law that has been passed; this is a law which I believe is going to be proposed in Canada. So I want to tell you what I believe the logical outcome of that law will be, which is against the natural law. The Prime Minister of Canada has proposed – no, he's gone farther than proposed – he has stated that a Bill of Rights including compulsory bilingualism must be embodied in a new constitution for Canada and that item, as far as the federal government is concerned, is non-negotiable. He has gone further; he has said that if the provincial premiers do not agree with that change he will ignore the provincial premiers and go directly to the Canadian people.

Mr. Speaker, the Canadian people he intends to go to, because they form the majority, are the people of central Canada – Ontario and Quebec. That is what Pierre Trudeau has said to this point in time. Those are the facts. Now, what is natural justice in so far as western Canada is concerned? Western Canadians are a multicultural society. People from all origins and races have come together, formed a society and get along better than in any other area that I know of. I grew up in Ontario and I can say to you that in Ontario the feeling of people toward those of other cultures and origins is not the same as it is in western Canada.

We have developed a feeling among ourselves here, the likes of which could be emulated throughout the world. But if you go to the province of Ontario (and the member for Regina Victoria says that's right) you will find some of the most narrow-minded, bigoted people toward people of other racial origins that you will ever meet in your entire life wherever you go in the world.

Now the Prime Minister has stated that compulsory bilingualism must be included in a Bill of Rights, and if the premiers don't agree he's going to the people, and the people constitute Ontario and Quebec. In this country, if compulsory bilingualism is brought to western Canada, every single person will now have to think that there are only two important races and the rest are second-class because that's what they think in Ontario and that's what they think in Quebec. It's going to remove the very essence of western Canada — the very essence of our society. People as great as James Richardson have had the guts and the courage enough to say exactly what I am saying here today.

I say to Mr. Speaker that there is a policy, a law which is against the principles of natural justice for our region. It is against the principles of natural justice for the people of western Canada. And I say to you, Mr. Speaker, that the people of Ukrainian origin and Jewish origin and Indian origin and English and Scot and German and Italian that make up the mosaic of western Canada will not stand for that law. It cannot work. It will not work.

And therefore, Mr. Speaker, because the Prime Minister of Canada has promised that law to the people of Quebec, and because he has now stated it's non-negotiable and because he has stated that if the premiers won't agree, he's going direct to the people (and the people are Ontario and Quebec) I say to you, the differences in Canada are irreconcilable. Now if you believe that you can reconcile those differences, if you believe you can make the people of this part of Canada feel good as I do and feel good as every western Canadian does about that mosaic that we have instead of that garbage that I grew up under, if you think you can make them buy that, then you go out and sell them. But I say it is irreconcilable. You will not change those people. Mr. Speaker, I say to you, whatever the solution, that one is irreconcilable.

I say to you, Mr. Speaker, I am prepared tomorrow, if the Attorney General can give me another alternative that will keep us in western Canada with a similar standard of living, and with the strength to face the world that we have with any kind of a free country, to take that alternative. I picked at least one alternative that might work. Maybe it won't, but I say to you that if we as western Canadians allow ourselves to be sucked in by that attitude of bigotry that exists in Ontario and Quebec, then we make the biggest mistake for our kids and grandkids that you could dream of making. You could nationalize everything in Saskatchewan, and you couldn't make a worse mistake than that. Those are the principles of natural justice that I'm talking about. That's making a law that goes with natural justice.

If you can give me other alternatives, I'll listen, and so will the member for Swift Current.

**AN HON. MEMBER:** — Fatalistic.

**MR. COLLVER:** — Fatalistic, my foot. Figure out, and you tell me what the Prime Minister has said anything different from what I have just said. . . . (inaudible interjection) . . . Not once, not once, can anyone tell me that the Prime Minister hasn't said that.



**AN HON. MEMBER:** — You are a fatalist.

**MR. COLLVER:** — And a fatalist I am not. I just see no possible way. And all I see for the people of the West now, under these circumstances, trying to solve that kind of problem, is heartache and bitterness for generations to come.

**AN HON. MEMBER:** — So you went right to the U.S.

**MR. COLLVER:** — So I wanted to give them any option I could, anything to say, don't suck into that.

Now you see, Mr. Speaker, that's what I mean by natural justice, and I believe that sincerely. And if you think that what I just said, I just made up out of some great blue thing for a nice little display to use up the time, you are mistaken. I feel that. I believe that. I believe it to be true, and I believe it's important that it be told to people. And what you are saying with Bill No. 105 is that I shouldn't be allowed to have the right to say that.

**AN HON. MEMBER:** — No.

**MR. COLLVER:** — Yes, you are. You are saying I'm not even a party. You are saying that the rules you made in this legislature are no good. They are good enough for the Liberals but they are not good enough for me. That's what you are saying, and that's nonsense, absolute and utter damn fool nonsense. You are saying that anyone who has the rights of a free citizen cannot come in here and use every single tradition and precedent of this legislature . . .

**AN HON. MEMBER:** — Sure you can.

**MR. COLLVER:** — No, you can not. You are saying that the minute he does anything out of the ordinary, the minute he takes a stand you don't like, you are going to step on him. That's what you're saying . . . (inaudible interjection) . . . Well there are a lot of people who disagree with you, including constitutional legal experts, judges, most lawyers in Saskatchewan. If I were alone in this opinion, I would say to you: sure, maybe I'm just spouting off at the mouth, but I'm not alone in this opinion!

I'm not talking about joining the States. I can truthfully say that, politically speaking, I am damn near alone in terms of the United States. But that is not what we are talking about on Bill No.105. We are talking about the principles of natural justice and what is right for the people of this province. That's what we're talking about. So you accept what is right for them and you make up your rules. As long as it's your way it's O.K. But if somebody else has an idea, that's not good enough!

Well, Mr. Speaker, I say to you tonight that I am not going to stop fighting whether it is in here or out there. I am going to do what I can to present what I believe to the people. Nobody, and I mean nobody, is going to tell me that I can't think the way I want to. . . . (inaudible interjection) . . . I wonder if the man has read the bill. A duly elected member of the legislature, a member who was elected to serve all of his constituents, legally elected, legally forms a party, legally obeys all the laws, and this is the way you're going to treat him? You're going to retroactively change the law and make him into a lawbreaker. That's what the bill says. And, if you don't believe that check . . . (inaudible interjection) . . .

Oh no, it doesn't say that? Well, read it. Under this old bill, I have accepted moneys. I have expended moneys under the old bill, legitimately and legally. I have expended it to the Donor's Choice of Nipawin. And you are saying to a duly elected member of this Chamber, that you can retroactively make him into a lawbreaker? Nonsense. That is as bad as the natural law that Trudeau is going to break with bilingualism.

Now, Mr. Speaker, to return to Mr. Hewitt and his common, rational exposition of natural justice and the rules of bias. Remember he was talking about Lord Hewart C.J. He goes on to say:

These observations may be compared with the observations of Avory J. in *R. versus Byles* (1912) 77 J.P.40 namely: 'It is as important, if not more important that justice should seem to be done as that it should be done.'

They may also be compared with views of Atkin L.J. (as he then was) in *Shrager versus Basil Dighton Ltd.* (1924) 1K.B.274 at p. 284 when he stated: 'Next to the Tribunal being in fact, impartial, is the importance of it appearing to be so.'

So, Mr. Speaker, there is a great deal of legal precedent to say that justice must not only be done but seem to be done.

The more simple ideas of the law of nature have given place to the requirements of public policy (and that happens from time to time). If there is to be public confidence in the administration of justice, it is essential that a person who is himself a party to the proceedings or who has any financial interests in the result should not be qualified at common law to adjudicate on those proceedings.

Again, Mr. Speaker, he is saying the judge cannot judge himself, which is what we are trying to do here with Bill No. 105.

This was the principle of the decision laid down in *Serjeant versus Dale* (1877) 2 A.B.D. 558, where it was said by Lush J. at page 567, 'If he has any legal interest in the decision of the question one way, he is to be disqualified, no matter how small the interest may be.'

There's one, there's one that says no matter how small the interest may be. He is disqualified. There's one that says in this very building at this very time, no matter how small the issue may be, pertaining to third party status, this bill is biased and therefore an attack on members of this legislature and is going to destroy the very legislature in which we ourselves are attempting to conduct democracy. That's what it says; it doesn't matter how big or how small. It doesn't matter, like Mr. Malone said earlier to the press, whether you kick him out, whether you shoot him, whether you hang him or whether you take away his rights as a party. That's the principle of British justice that was established over a hundred years ago. We are trying to call ourselves a civilized country. We are trying to establish that we are a liberal democracy. Over a hundred years ago it said, whether you attack in a little way or if you attack in a large way, you are accomplishing the same thing.

If there is to be public confidence (Professor Hewitt says) in the administration of justice, it is essential that a person who is himself a party to the proceedings or who has any financial interest in the result should not

be qualified at common law to adjudicate on those proceedings.

All right. Do you know what he's saying there, Mr. Speaker? He's saying that I shouldn't be forced into this position. No member of this Assembly should force me to stand here and justify why it's necessary for me and for our party to receive secretarial help and research help. He said it shouldn't be necessary and I shouldn't be required to be judging myself. That's the principle of natural justice. That's another of the reasons why this bill is so wrong. You just don't do it. If you have a principle to achieve, you attack the whole principle. If you want to prevent this from happening again, you make a law that it may not ever happen again, but you do not retroactively attack individual members of the legislature. If you want to stop the flow of money, you do so for economic reasons but you do not attack individual members of the legislature for whatever small or large purpose. The first time you do it small and the next time it's going to be bigger and eventually, you have no choice.

The common law disqualifications (Professor Hewitt says) for interest and bias may however be waived; while they may also be removed by statute or by express words or by implication.

Now (he says) if you want to as a group, you may contract out of bias. Am I right there, Mr. Lawyer? If you want to, if you have that desire, you may contract out of this natural law. But, Mr. Speaker, when did the member for Nipawin and the member for Swift Current have an opportunity to contract out? Never. If this bill had been brought to us a year ago in May of 1979 and somebody had brought this forward, I might have fought against it because I thought it was a bad bill, but I wouldn't be personally involved. I might have had a chance, though, to express my views, pass the law and then contract out by continuing to accept the position of MLA. I'd contract out of natural justice. But that's not what Bill No. 105 does. Bill No. 105 retroactively changes the law, not giving members an opportunity to contract out, not giving members a chance to look ahead and say, is this right or is it wrong? No, it's retroactive in nature. It's retroactive in scope.

It cannot be denied that Parliament has power to make a man judge in his own cause. As it was said by Willes J. in *Lee v. Bude and Torrington Junction Railway Co.* (1871) L.R. 6 C.P. 576 at page 582. 'It was once said – I think in Hobart – that if an Act of Parliament were to create a man a judge in his own cause, the court might disregard it. That dictum, however, stands as a warning, rather than an authority to be followed. We sit here as servants of the Queen and the legislature. Are we to act as regents over what is done by Parliament with the consent of the Queen, Lords and Commons? I deny that any such authority exists. If an Act of Parliament has been obtained improperly, it is for the legislature to correct it by repealing it; but so long as it exists as law, the Courts are bound to obey it. The proceedings here are judicial, not autocratic, which they would be if we could make laws instead of administering them.'

Now, Mr. Speaker, what Professor Hewitt is saying there is that although we are like a court in a parliament, although we are supposed to act like a court, although we are supposed to take all of these dicta into our heads when we are enacting legislation, we are not under the power of the courts as a legislature. And that, Mr. Speaker, is why, upon examination, we could not use the Bill of Rights in Saskatchewan to say that this law is invalid because it opposes the Saskatchewan Bill of Rights. The reason is that the courts have no jurisdiction over this legislature's actions. We are supposed to act like a court – supposed to – but the courts don't have jurisdiction over us, except as it relates

to our constitution. There the courts do have jurisdiction over us, because we are only entitled to pass legislation which is not ultra vires of our constitution, and the Canadian Bill of Rights has been taken to be part of that.

So in the case of the Canadian Bill of Rights, the courts can be involved with the Government of Saskatchewan and with the statutes in Saskatchewan. But because all we enacted was a statute, in effect, Mr. Speaker, we are above the Saskatchewan Bill of Rights. In effect, therefore we should exert and exhibit more responsibility than the average citizen toward the Bill of Rights. We are expected to set ourselves up as examples to all. We, therefore, because we are above the Bill of Rights in Saskatchewan, must not counter the Bill of Rights in what we do. For if we do, our example is unable to be checked in so far as our jurisdiction is concerned.

Can any member tell me why he would want to take the example of a legislator acting outside the Bill of Rights to the people of the province of Saskatchewan, when we are the only citizens of this entire province who are above the Saskatchewan Bill of Rights? Sixty-one people in this Chamber, the only ones who are above the Saskatchewan Bill of Rights. Out of one million people, 61 of us are above it. Therefore, we have to show more respect for it than anyone – not just the same respect as anyone, more respect than anyone. If we expect others to follow the Saskatchewan Bill of Rights, then we must follow it even more closely than they do. And that's what Professor Hewitt says here. The courts are not above us and so we have to be more like a court, more of a court than they.

Again, in 1882, it was observed by Holker. L.J. in *Gibbs versus Guild* (1882) 9 Q.B.D. at page 74: Acts of Parliament are omnipotent, and are not to be got rid of by declarations of courts of law or equity.

That Parliament was mentioned in the famous case of *R. versus Local Government Board, Ex parte Arlidge* (1914) 1 K.B. 160 at page 175, when Vaughan Williams L.J. remarked, 'Parliament is omnipotent.'

If we are omnipotent and we believe in liberal democracy, how can we set ourselves down below the very laws we ourselves pass?

I asked earlier in terms of politics, Mr. Speaker. I asked whether the members would, at the next provincial general election, carry back to their constituents their support of a bill declared by the Queen's Bench Court in Saskatchewan to be ultra vires of the constitution because it violated the Canadian Bill of Rights. Do you think people would accept that? Do you think they'd buy that? Does anyone here believe I don't mean what I say when I tell you I'm going to take it if you pass it. I'm going right straight into the court system.

Didn't you believe it when I told you I wasn't going to allow this bill easy passage? You didn't believe perhaps. Do you not believe I mean what I say? Is that what you want to take to the people when there are other means of doing so? Because it will happen.

The people expect you to be above that. The people expect you to obey the Saskatchewan Bill of Rights which is just like the Canadian Bill of Rights. How would you like those courts to tell you that you did it against the Bill of Rights? This is not against Exxon. You're not going to bring that one in. If you want to take it, it's your business.

Nevertheless (Professor Hewitt says), the present day courts uphold the common law tradition and refuse to accept an interpretation of a statute making a man a judge in his own cause if the wording of the statute is capable of having a different meaning. (And I don't think that particularly applies here.)

. . . The intention of Parliament is taken to be that statutory authorities are to have the same . . . This is illustrated by reference to the well known case of *Mersey Docks and Harbour Board v. Gibbs* (1866) L.R. 1 H.L. 93 . . .

I would like to ask while I'm on my feet, the member for Kindersley, isn't that one you study in first year law? Because I sure remember that one. *Mersey Docks and Harbour Board versus Gibbs*. Isn't that first year law? Something about Gibbs seems to strike me. I never went through first year law but I just wanted to let you know I'd heard of it before.

. . . where the House of Lords refused to extend to statutory bodies of this kind the rule that applied to ministers of the Crown, namely, that they and their subordinates were all alike holders of public offices, and that the relationship of public offices and the relationship of master and servant did not exist between them. The intention of Parliament is taken to be that statutory authorities are to have the same legal liabilities as individuals, unless some provision is made to the contrary.

What he started to say there, Mr. Speaker, I think if we can relate it to Bill No. 105, is that we should be the same, no, we should be better, than private individuals or private companies or corporations. As I said earlier, if they are responsible for the Saskatchewan Bill of Rights, we should be more so.

Finally, it should be mentioned that in special circumstances, such as necessity, a person who is *prima facie* disqualified for interest or bias, may be called upon to adjudicate if no other tribunal is available.

Now here is the unfortunate part. I ask all hon. members to put themselves in the positions of the member for Nipawin and the member for Swift Current. What other tribunal is available to us? Given this set of circumstances what other tribunal is available? Well, there are the courts. It's costly, but will be done. I've had to face it before; I'll face it again. This principle overrides and supersedes anything I've ever been called to do in my whole life, bar none. This is the most important principle I have ever been called upon to fight from the day I left school, the single most important to me.

So that's a tribunal that's available. Another tribunal that's available on reasonable terms and conditions is the electorate itself. I have accepted that challenge. I have stated categorically in this House that I would accept that challenge. . . . (inaudible interjection) . . . Oh, Mr. Speaker, why is that? The former leader of the opposition in the province of Saskatchewan, and now the leader of a party in Saskatchewan, albeit small, is supposed to go out there and face the new Leader of the Conservative Party in Saskatchewan and some jerk from the NDP? Go away.

The point is, if they want a real challenge, put up the heavyweights. Don't put up a lightweight. You want to have a real challenge; if you really want to go to the electorate, I've said I'd go. So that's the second tribunal. But I said, put up a heavyweight. You don't put up a lightweight. Then if I win, oh well, we just had a lightweight against him

anyway. To heck with that. . . . (inaudible interjection) . . . I'm sorry for the member for Assiniboia if he doesn't know this, but boy, I remember that Pelly by-election. I'm sorry, Mr. Speaker, but you remember I did make that point this afternoon. I remember going up to Pelly and taking readings on that electorate. I wish my friend, the chief electoral officer in Saskatchewan, was here, because he was up there in Pelly and he'll tell you the same.

We took readings of that constituency you wouldn't even believe. There were polls at 60 per cent, 65 per cent Conservative. Everybody in the whole constituency was going to vote Conservative. When we added up our votes, there wasn't any possible way to lose that seat; and that reading was taken two days before the election. We had polls with 60 per cent of the vote, read by good poll-readers. And I'm not talking about just one; I'm talking about three or four different people up there reading. Hi, how are you going to vote, and this and this. Yes, yes, Conservative. My wife, who is the best reader on any by-election or election I've ever seen in my life, who was dead-on in Sutherland, dead-on in Prince Albert-Duck Lake – her polls came within two votes. I tell you the day of the election it's like the world caved in. My wife read one at 60 per cent and it came in with 12 per cent. That's a fact. I just told that to the member for Assiniboia to show him anything can happen in politics. I walked into that Pelly by-election, went to a meeting the likes of which I'd never seen as long as I'd been leader of the Conservative Party. I'd never seen anything like it; 850 people crammed into this hall . . . (inaudible interjection) . . . Honest! I'm not kidding you. There's no point. That's a vote count. I don't know how many people. Eight hundred and fifty people voted. There's no point in lying to you now. I couldn't believe it. Honest to goodness! Banners and excitement and bands and I thought, good grief, is this Pelly? That was the constituency I'd run into, Mr. Speaker, where I couldn't raise enough people to go to the cafe, and all of a sudden 850. I thought gee whiz, this is terrific! And then we had workers coming out our eyeballs, door knockers up and down. Signs were put up; signs were ripped down. Signs were put up; signs were ripped down. Good grief! I can never remember the name, though, of that chief electoral guy the NDP had who was my next-door neighbor when I was at the Pelly motel. What's that guy's name? He's downstairs today, with the blondish hair. He's one of your key guys. What's his name?

**AN HON. MEMBER:** — He's the deputy minister of labor now.

**MR. COLLVER:** — I asked for his name. You don't know either. Matt something . . . No, no, not McMillan, he wasn't an electoral . . . Anyway, that's certainly off the topic now, Mr. Speaker.

**AN HON. MEMBER:** — Those were the days.

**MR. COLLVER:** — Oh, those were the good old days, Mr. Speaker, I'll tell you. I tell the member for Assiniboia, anything can happen in politics. You can go into an election one place and you think, boy oh boy, I've got it whipped. I can remember the NDP guys coming to me in Saskatoon-Sutherland. Oh boy did they have that one locked up. Mr. Speaker, that was automatic; even the people from Saskatoon who were hard-core NDP said, Saskatoon-Sutherland is locked up. You guys might have a shot at Prince Albert-Duck Lake now. There's a possibility up there, but you haven't got a shot at Sutherland. Heck, the only opposition we have is the Liberals. We took every poll in old Sutherland . . .

**AN HON. MEMBER:** — Where is he now?

**MR. COLLVER:** — Gone. Where is anybody now? That's right. Where is anybody now? That's the whole point. I'm just saying, Mr. Speaker, you never know what can happen in politics. Never. So I don't think the members opposite should believe in their heart and soul that if Allan Blakeney accepted that challenge in Nipawin he'd be such an automatic winner. I don't think they should just believe that automatically. As I said before, he accepted jokingly but I'm accepting seriously. Now I'm waiting for him to react accordingly. . . . (inaudible interjection) . . . I'm sorry. I couldn't agree more and I would do so exactly. You put up the right contestant and I'll be there. I've already told you that. That wasn't even my idea. That was the idea of the Attorney General. I said, fine, let's do it. But I didn't hear anybody — I heard the Premier agree facetiously but he didn't say he'd do it actually.

Mr. Speaker, excitement is generated in this Chamber from time to time when you talk about politics. I must say, Mr. Speaker, I do appreciate your not ruling me out of order on that recollection of events which happened in Pelly, because it really was an interesting experience, I think, for anybody who participated. It was probably, I would guess, the hardest-fought by-election in the history of this province by all three parties all at once. I would guess that would be true. . . . (inaudible interjection) . . . I don't think so either. I never saw it before or since, one household with a blue, a yellow and red sign on it (three times in one day). That poor old woman, I don't know who was hitting her but . . . Pardon me.

**AN HON. MEMBER:** — You call that almost persuaded.

**MR. COLLVER:** — No, looking back on the Pelly by-election, I must say to the member that in fact, she was hard core red, and all she did was let us put the sign on her lot, because in that particular poll I think we had 40 signs and got 12 votes. The reason I recall that is it was one of my polls — 40 signs and 12 votes.

**AN HON. MEMBER:** — I got a vote a day.

**MR. COLLVER:** — The member for Estevan got a vote a day out there. Every day he was there he got one vote. He lost six but got one.

Mr. Speaker, may I return to the principles of Bill No. 105 perhaps just for a moment or two. These exciting principles of law are eluding some of the members opposite and I do want to capture them with this scintillating talk. I would refer this book to all hon. members. I am only going through the areas which apply to natural justice. But there are a great many things after that which are of extreme interest to members. It goes on into the development in Australia, the development in Canada, the development in the United States and so on. It's exciting, exciting stuff, but I just want to stick with the areas pertaining to this bill.

Mr. Speaker, now that we understand what these principles of natural justice are, now that we are looking at them from a more realistic or interesting point of view having looked at the background, we want to look at them from the standpoint of how they apply to administrative bodies. Professor Hewitt says this:

In determining the principles applicable to administrative bodies, there are two important matters to be considered, namely the meaning of judicial function and their modification to meet different requirements. It is a task of great difficulty to draw any satisfactory distinction between judicial and administrative functions although numerous attempts have been made.

Now, Mr. Speaker, don't forget he's talking about the principle of bias here, and Bill No. 105 deals with an administrative function of government. So in order to do that he has had to go through a few cases and talk about the court system, then he goes from the court system to administrative bodies that are similar to the Saskatchewan legislative Chamber.

Generally speaking, the concept of a judicial function is a broad one as may be illustrated in the case of *R. v. Hendon Rural District Council, Ex parte Chorley* (1933). Here, one of the councillors, voting in favour of the resolution to permit the development of the town-planning scheme, had such an interest in the matter as to disqualify him from taking part or voting on account of bias, and an order quashing the decision of the council was made.

Now, here we are with Bill No. 105, in opposition to the principles of natural justice. I have shown that. It's a biased document prepared by people who have a natural, discernible, and producible bias. In other words, the bill itself is shown to be biased and certainly this Chamber itself can be shown to be biased. We have to be biased because we are political animals.

In this case in 1933, it can be shown that a member of the council had to disqualify himself in voting on a matter because he was biased.

Mr. Speaker, keep in mind the principle of the minister of justice – judge not yourself. Does this mean if we are biased and judging ourselves, we should disqualify ourselves? That may be so. That's never been done in legislatures before, but I'm not sure we shouldn't consider it. I'm not certain, Mr. Speaker, that the real principle we should be looking at here is the principle of Bill No. 105 at all. What we should be looking at is that any change in The Legislative Assembly and Executive Council Act should be brought to the members of this Assembly as a non-controversial item by an independent organization outside the legislature. Then this kind of problem would not exist.

If a particular member or group of members had a problem with what they believed to be an inequity in expense allowances or research grants, they would then present that to this committee or group or judicial inquiry and they would make a binding recommendation that would automatically be placed through the non-controversial bills committee – automatically. If it were brought in the way I'm suggesting, we wouldn't see this kind of problem develop in the Saskatchewan legislature.

I ask all hon. members to think back to the Hughes committee. I ask all hon. members who were here, was there the same feeling of rancor that developed in 1976, in 1978 and 1979 when the Hughes committee was no longer there? Was there the same kind of upheaval of this House, the same kind of (I say this knowing some member is going to get mad because I said it) backroom dealing that went on pertaining to members' money and people's business in 1978 and again in 1979? We are again taking up the time of the legislature in 1980 with the same kind of matter. Wouldn't it have been a better approach had we decided back in 1976 to form a permanent committee like the Hughes committee to deal with these matters so none of us ever has to be involved with them?

Mr. Speaker, I suggest that is the only way this legislature will ever get out of this box on



a permanent basis. Every year I've been in this Chamber, since 1975 . . . I'm not like the Attorney General. I'm not going to say it's the worst in 13 years or the worst in 6 or the best in 5 or anything like that. What I am going to say is this. Every single year that I've been here there has been some kind of backroom politicking and backroom backbiting between members over The Legislative Assembly and Executive Council Act. Mr. Speaker, every year that I've been here, it has influenced the people's business, either through back room deals to get prorogation (the Attorney General will remember that one) and therefore you have to ram something in to the bill which the NDP didn't want to put in. Now, Mr. Speaker, let me finish . . . (inaudible interjection) . . . Yes we did honor our agreement. . . . (inaudible interjection) . . . Well, there was a big definition and I don't think the Attorney General or I really want to get into that dispute again.

Mr. Speaker, I'm trying to make a point, and I'm not trying to strike a nerve with the Attorney General or anyone else. I'm not trying to be political, but every single year we've been in here, we've had members running around the back halls worrying about how much money they were going to get, saying if I get another \$100 over here, I'm going to let your bill go through over here. And if I get another \$50 expense allowance over here, I'm going to let your account go through easier over here. Every year I've been here, I've seen that happen. . . . (inaudible interjection) . . . That's the last one I ever respond to from that member.

You know, Mr. Speaker, there are times in the House when a guy comes forward with a reasonable suggestion, has nothing to lose, and says, look fellows, here's a bunch of trouble you got into with this bill this year; you got into it last year; you've been into it every year since '75 or since '76, but in '75-'76 you weren't into it because the Hughes committee was there. They were independent; everybody knew they were independent. They did a heck of a good job and everybody thought they did a good job. And when the recommendations were brought into this Assembly, everybody accepted them because they were independent. Some guys thought they should have more; some guys thought they had too much. But there was an independent commission that dealt with this bill, and that's the point.

It could greatly alleviate this kind of problem if an independent commission were established once and for all to eliminate the necessity for individual members to have to justify their existence in this House, and for individual members to be pressured by political reasons, like they are right now, to attack individual members of this House. If you had an independent committee, they could examine that and if this was a new situation that first came up, they could look at all this background information that I'm presenting. They could look at whether or not a member ran in a seat under one party and then created a new one, or whether he ran in a seat under one party and walked into another one which ran in the election – whether that is enough of a criteria to say that there's difference. This independent committee could make that assessment. And members would have to accept that and members would accept it – every member – because under the principles of natural justice, then justice would not only be done but would be seen to be done. Now, that was an idea that first came up in '76 with the Hughes committee and the government refused to accept it. I don't know why, because every member of the opposition was in favour of it and most, I think, of the members of the government were in favor of it. I really believe that. I want every member to think about the problems we've got into since 1976 with this dumb act, The Legislative Assembly and Executive Council Act and changes that we try to make to it, either through political pressures or pressures from our own caucus or pressures from our own members, or pressures from within, or pressures from our families. We take away from the business of the people and we've done it every single time; we've done it again

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this time. Mr. Speaker, I honestly believe that it's ten o'clock.

The Assembly adjourned at 10 p.m.