

LEGISLATIVE ASSEMBLY OF SASKATCHEWAN
First Session — Thirteenth Legislature
16th Day

Thursday, March 7, 1957

The House met at 2:30 o'clock p.m.

SECOND READING — The Vehicles Act

The Assembly resumed, from Wednesday, February 27, 1957, the adjourned debate on the proposed motion of the Hon. Mr. Fines, Provincial Treasurer:

That Bill No. 27 – An Act respecting the Operation of Vehicles – be now read the second time.

Mrs. Mary J. Batten (Humboldt): —As you are aware, Mr. Speaker, this was adjourned by the member from Maple Creek (Mr. Cameron), and as I understand it, he will have the opportunity to speak on this Bill. He didn't have an opportunity at the time of the adjournment. It was understood by the member from Maple Creek and myself that I would have an opportunity to speak after he had spoken, and that I would take up certain legal points that might have been overlooked in the debate. Since this debate has come up today, of course, I will not have that opportunity. There is, of course, the difficulty of duplication although I don't know what the member from Maple Creek was going to say. Naturally he is not going to hear this debate, and we might miss a few points that are very important.

Mr. Speaker, I think this is a very important change. I do not suggest that there is only one important change in the proposed amendments to The Vehicles Act. As a matter of fact there are several that I would like to speak on at some length; but this time I will, however, speak on the compulsory feature that is being introduced; I speak on it first, not because of its chronological order in the amendments, but because it seems to me that it affects very basic rights.

As you know, Mr. Speaker, when an entire Act has been changed it is very difficult for members of the Opposition (and I suppose for other members) to find out at a glance exactly what the changes were. You have to go section by section, because there have been many changes, and, ordinarily, if the entire Act has not been changed, the changes are set out before your eyes very briefly.

The first reference I would like to make is, of course, to Section 67. This section, Mr. Speaker, provides that the Board shall not issue a licence or permit to certain people, and among those people in subsection (g) it says:

“(g) who, upon applying for a licence or permit refuses to undertake in writing to submit to the

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taking of specimens of his blood, urine, saliva and breath, or any of them, for chemical analysis, whenever he is suspected” – (whenever he is suspected, I repeat) – “of driving a motor vehicle while under the influence of intoxicating liquor.”

That, I submit, Mr. Speaker, should be read with Section 92, subsection 4(d). This section says the Board may suspend for a stated period or cancel any registration, certificate of registration, licence or permit issued under The Vehicles Act, if it is satisfied that – and then it states the various cases, including 4(d) which reads:

“(d) that, when suspected of driving a motor vehicle while under the influence of intoxicating liquor, he refused to comply with the request of a traffic officer, police officer or police constable that he submit to the taking of a specimen of his blood, urine, saliva or breath, contrary to an undertaking given by him to the Board when he applied for the licence.”

I would submit, Mr. Speaker, that it is every bit as much a violation of a basic human right to the control and use of his body, whether you go around it, beat around the bush (as was done in this case), or come right out and say that it is compulsory for everybody in Saskatchewan who wants to drive a car, or who gets behind the wheel of a car, to take a drunkometer or a blood or any other type of test, at the sole discretion of any police officer and other people in that category. That in itself, to me is most repulsive. Quite aside from any legal training, or any feeling, that I might have that certain basic and time-honoured laws are being violated in this section, I think this section, this whole suggestion, is violently and basically opposed to everything that the people of Saskatchewan and of Canada respect and hold dear in their personal liberty.

I don't suggest that there is never a time when we must not give up some part of our physical liberty and privilege, and even that of our inviolate body, in order to live in a society and for the good of that society. There are certainly instances of that type, and the rule is not absolute that no human being should ever be expected to give up some of his liberty to the State. But I suggest that, in this section, in the very wording and in the method, this is one of the dangers which people have been preaching about, and we have been laughed and scoffed at when we talk about the dangers of Socialism. When a State becomes all-important and the human being can be bent to the will of that State, the thinking comes from the top down to the individual, and he is used for the purposes of that State.

It did not seem to be shocking when this was introduced by the hon. Provincial Treasurer. The press reports were – I submit Mr. Speaker, our legislation should not be discussed there before anybody has an opportunity to legislate on this section in this Assembly; the press reports, as I say, are conflicting, and I personally have a little difficulty reconciling certain statements. Therefore I will not go into them; I will use these sections by themselves.

I don't think there is any question in anybody's mind but that the statement made in this Assembly, that no force, no compulsion, is

being used because you don't have to submit to this test if you don't want a driver's licence, is very foolish quibbling, because you and I know, Mr. Speaker, that very few people can lead normal lives in Saskatchewan, or anywhere else in Canada today, without possessing a driver's licence. Very few of us can even make our living without possessing such a licence.

I do not think it is a privilege that the state gives us (contrary to what the hon. members opposite seem to think), to drive a car. I think we have, as human beings, every right to make a living, to travel distances as we see fit, as long as in doing so we do not hurt anybody else's right. Therefore, the only question is, if we are not forced to compulsorily submit ourselves to these various test, are we hurting anybody else's right?

I don't think there is much question in any legally-trained person's mind that this compulsory section in The Vehicles Act, once a test is taken, has no use in the court of law at all. As you know, Mr. Speaker, and as I know, the Criminal Code provides two sections and, I submit, these are the only sections in Saskatchewan under which people can be convicted of drunken driving, or impaired driving. There is nothing in The Vehicles Act making it a crime or an offence to drive while under the influence of alcohol. That is under the Code. The only section there is in The Vehicles Act itself is a section that says that a driver of a public vehicle or conveyance should not use alcohol or should not have had a drink, which is not the section in doubt here.

The only possible use for a drunkometer (and I use that term loosely for any type of chemical test) is to assist in ascertaining whether or not a person's ability to drive a car has been impaired. I don't think there is any question that, in the present state of scientific experimentation in this field, nobody has reached a definite conclusion as to what is a perfect test, or even a reasonably accurate test. In all the authorities I have read (and I have read quite a few since this amendment was proposed), it seems rather clear that the urine test will not coincide with, and give you the same results as, the blood test; and that the blood test will not be exactly the same as the saliva test or the breath test. There has been no scientific way of determining exactly what is the best way of judging the amount of alcohol in a person's bloodstream. Even, Mr. Speaker, if you did ascertain that, what have you got? You still have not proved anything but that a person has had so much to drink or has had so much alcohol in his blood. It does not prove in itself that that person is under the influence of alcohol, because, as everybody knows (this is a scientific fact, and it has been proven in case after case), that one person may have absorbed an enormous amount of alcohol with very little effect on his co-ordination and thought, and another person may have absorbed very little with very great effect – which person is impaired? It does not depend upon the amount; it depends on the effect.

As far as I can see this compulsory section, and the very weird method in which it has got to be implemented, seems to be picked up out of the casual utterance of a legal writer, and, as you know, Mr. Speaker, legal writers will write about anything when they get in the mood. You can find a story for almost anything among legal writers, but – they are not citable; that is, you can't use them as authorities in court. They are not decisions of any court of authority. And I find that a man by the name of Letourneau, who is taking a post-graduate course in hospital administration

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at Northwestern University, wrote in 'The Canadian Bargaining Review, 1950' – I am sure some of my hon. friends have read this. He goes into this matter of blood tests and various alcohol tests, and then he says this – with your permission, Mr. Speaker, I will read it because I think this is exactly what our Government is trying to do:

“Even if it be assumed that a compulsory test violated the privilege of self-incrimination, which I certainly do not recommend, there is another theory for supporting the legality of compulsory tests for alcoholic intoxication. A state legislature can, by an enactment, remove all doubt as to the legality of such tests and overcome the alleged existence of the privilege. The theory is simply. It is undisputed fact that it is within the policy power of a state to regulate the use of the highways for the protection of the public. The use of the highways is a privilege and not a right.”

Now, Mr. Speaker, there is your “the use of the highways is a privilege, and not a right.” The right to drive a car, I submit, is a right and not a privilege, and is not quite the same as the use of the highways.

“The legislature can, if it so desires, exclude automobiles from the highways and streets altogether. If the privilege can be denied, the state can grant the privilege conditionally. If such a condition be that any motorist using the state's highways and streets is accused or suspected of being intoxicated, must submit to a scientific test for alcoholic intoxication, then the motorist can be deemed to have waived a constitutional privilege he may otherwise be assumed to have.”

In other words, Mr. Speaker, if you want to earn your bread and butter, you are going to trade your right, and you are going to submit to whatever the state wants you to do. That has happened in many countries and many times.

“When the motorist uses the highway, he assumes the conditions that have to be used; even if the privilege is assumed to exist, it can be waived, and there is no doubt that such a privilege is subject to waiver.”

I submit that this is probably where this idea sprang from. It is not carefully worded, and it is very difficult for anybody to say from those two sections what can happen. I submit that, from an ordinary reading, unless there are going to be cases that impose certain limits, Mr. Speaker, I can go up to any police constable and I can say: “I suspect that the Junior Member from Regina has been drinking, and I suspect that she is going to drive an automobile, or that she is in charge of an automobile,” and she would have to submit to the indignity of being hauled in at the request of a police officer, and subjected to such a test. there doesn't have to be a charge laid. She must submit herself to it, and even if it would be against her religion, for instance, to allow anybody to take any blood from her body, she has no choice, or she loses her driver's licence.

This, I submit, is violating the very basic dignity and

decency of our body. I personally, if I were ever charged with impaired driving, drunken driving, the first thing I would want is a test under the conditions that I set forth, with my own doctor, or with a scientist that I have trust in, present, with proper precautions taken so that my body is not infected in any way. I would want that test for my own protection, and I certainly think that this Government should provide the means for taking these tests, should train personnel to take these tests; but there is no suggestion at this time, that this Government has done anything of the kind. If press reports are to be believed (and I see no reason why they shouldn't), even policy personnel are not at the present time equipped with the equipment to take these tests.

Another thing that has been brought up is that this has been put in under judicial supervision, or tests were taken under judicial supervision. I am not quite sure what that means. If it means, or is intended to imply, that the judiciary, or the official body of judges of any court in Saskatchewan, have condoned this suggested legislation, that is not true, Mr. Speaker. If it is suggested that these tests have been approved by the Medical College, by the College of Physicians and Surgeons of Saskatchewan, that is not true; nor were these suggested tests taken under the supervision of that College, or anybody appointed by them. If it is suggested that the Law Society of Saskatchewan has approved in any official way this proposed legislation, that is not true.

Hon. Mr. Walker (Attorney General): —Nobody suggested any of those things.

Mr. Speaker: — Order!

Mrs. Batten: — Well, there is certainly a suggestion in the newspaper to that effect, unless the hon. members were misquoted – I will read from the February 28, 1957 edition of 'The Leader-Post':

“Mr. Fines disclosed that for several years an experiment with drunk tests had been partly carried out in Saskatoon with the co-operation of volunteers, the Liquor Board, University professors, judiciaries, R.C.M.P., and the Highway Traffic Board.”

The only one I am questioning is the judiciary. If they had one or two police magistrates, I submit it is not fair to call that the judiciary.

Hon. Mr. Walker: — What about the Law Society and the Medical College?

Mrs. Batten: — I said, Mr. Speaker, and I think I made it plain, that if there is any implication that these bodies have been consulted, that isn't true. It also says, since I've got the paper here now:

“However, Mr. Fines added that the Judicial Association had approved of the proposed change, and chemical drunk tests, taken up voluntarily,

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have stood up in Saskatchewan courts in the past.”

It is true that these tests have been allowed as evidence, but they were not, Mr. Speaker, compulsory. As a matter of fact, it has been stated in four or five Canadian cases, that, if a police officer should take such a test of a person against his will and without his consent, that constitutes an assault, and I don't think there is any question as to the legal truth of that. It certainly is an assault, and the only way it is not going to be assault is if this Legislature gives to police officers that power over human bodies.

Now, there is no question but that this Section will not be able to be used, and will not assist this province, in convicting drinking drivers of drunken or impaired driving. It cannot be used because it is ultra vires insofar as those types of cases are concerned. The Criminal Code has already provided that in the case of a charge of driving while intoxicated, or driving while ability to drive is impaired; and I wish to read, Mr. Speaker, if I may, out of the Criminal Code of Canada, the section that refers to these tests. In case my hon. friends are not aware of it, it is Section 224, 'The Criminal code of Canada', subsection (4):

“No person is required to give a sample of blood, urine, breath or other bodily substance for chemical analysis for the purpose of this Section, and evidence that a person refuse to give such sample, or such a sample was not taken, is not admissible.”

That is to say, Mr. Speaker, that when you get up in court to prove your case, the police officer, Attorney General, or anyone else who comes in to prove such a case, can't even – it isn't even admissible for him to come into court and say, “This man didn't want to take the test” or “This test was not taken.” There must be complete silence on it unless the man has consented to the test, at which time it may be brought in and given in evidence.

“Nor shall such a refusal, or the fact that a sample was not taken, be the subject of comment by any person in the proceedings.”

Therefore, if we make this law, the first thing that will happen, the first charge that is laid against a man – and those, I submit, are the drivers that this Section should be used against, those that are actually charged with drunken driving where there is some evidence; not merely suspicion; in that case, the mere fact that a man was compelled to give a sample or take this test is sufficient to make that evidence inadmissible in court. Then why has this legislation been brought in? I submit, Mr. Speaker, it is quite plain why it has been brought in, and it has to be read with another amendment that has been brought in, and that has passed second reading. If I am permitted to refer to this Section in order to clarify The Vehicles Act, I will do so. I am now referring to Bill No. 6, Section . . .

Premier Douglas: — The name of the Bill?

Mrs. Batten: — Bill No. 6, - An Act to amend The Automobile Accident Insurance Act. I am referring to Section 12 of that Bill. There is an amendment there to Section 48(a), and 48(a-b) as it is proposed – I think I should read it . . .

Hon. Mr. Fines: — Mr. Speaker, I don't want to interrupt the hon. member, but we will all have the opportunity, will we, of debating those Bills again?

Mrs. Batten: — No, this Bill has passed second reading, I submit, Mr. Speaker?

Mr. Speaker: — This Bill has already passed second reading.

Mrs. Batten: — I don't think the hon. member is correct in suggesting that Bill No. 6 is going to be debated in toto.

Hon. Mr. Fines: — As long as we have an opportunity to reply to what my hon. friend has said, that's all – or what she was about to say.

Premier Douglas: — I think the point at issue, Mr. Speaker, is that bill No. 6 has had second reading, and is in Committee of the Whole. I think the Provincial Treasurer was raising the question as to whether or not it is proper to discuss both Bills at the same time, and if so, of course will all members be allowed to discuss both Bills at the same time?

Mr. Speaker: — By leave of the House.

Mrs. Batten: — I am merely referring to it in order to clarify what I suggested is the purpose of this amendment to The Vehicles Act. I am not discussing it; I am not against it in principle at this point. I mean, that time has passed. I am not going to go into the second reading, or what was discussed at the second reading, of this Bill, but that section, as you know, Mr. Speaker, merely says that:

“In any proceeding where The Automobile Accident Insurance Act of Saskatchewan is involved, if it is shown that a test has been taken and concentration of alcohol was in the blood of the person who took the test, was in the proportion of 1.5 or more milligrams of alcohol to one cubic centimetre of blood, shall be conclusive evidence that such person was so using, or operating a vehicle while under the influence of intoxicating liquor.”

Therefore, I suggest, reading that subsection, reading the section in The Vehicles Act that gives the Traffic Board power to cancel licence if somebody's conduct is undesirable (and you all know that the Traffic Board has just that power), why are we proposing, or why is this legislation being proposed?

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For one purpose only: not in order to secure more convictions; not to prevent drunken driving on the highway – but merely to save the Saskatchewan Automobile Accident Insurance Fund some money, because the minute this test is taken, if it sows alcohol in the concentration suggested under that automobile Accident Insurance Act amendment, the man is automatically denied any insurance payment, unless he is dead or died shortly afterwards; but if he is alive, he is automatically excluded from participating in the insurance fund to which he is normally entitled.

Now there is nothing wrong with that section in The Automobile Accident Insurance, if it is not compulsory; but by putting teeth into it with The Vehicles Act amendment, you are making it compulsory, and by forcing a man to undergo such a test, he is automatically denied his insurance; he no doubt automatically loses his driver's licence if he refused, and also if it is proven that he has that quantity of alcohol in his blood, whether or not there is evidence to show that that man has been driving under the influence of alcohol.

I submit that seldom have we had anything as directly contrary to public feeling and conscience in this province as this section, making it compulsory to expose your body to the violation of God knows who. There is nothing in the section to suggest who is going to take the test; there's nothing in the section to suggest where that test must be taken, within what time it must be taken – and this is directly contrary to every legal principle in connection with a type of intrusion upon the human body of this kind. The section is as wide as anybody wants to make it. It can be misused as much as any malicious or undesirable person may wish to make it.

I suggest, Mr. Speaker, that before anything compulsory of this nature is passed in this Legislature, the Legislature should be convinced, first of all, of the absolute necessity of such a thing. And nobody feels more strongly than I that drunken drivers should be kept off our highways. People whose ability to drive is impaired in any way by alcohol or drugs, should not be allowed to jeopardize the lives of our citizens. Every single person in Saskatchewan feels the same way about it; but we can't be impractical; we can't be foolhardy; we can't violate every decency in order to safeguard these lives. We might just as well say, "Nobody must drive on the highway because we might get somebody killed." I realize what a terrible thing these deaths on the highway are, but, at the same time, we must remain sane and sensible, and reasonable in enforcing regulations of this nature. Therefore, Mr. Speaker, we should be convinced of the necessity for the legislation. We should then be convinced of the validity of these chemical tests – and who is convinced of their validity? Certainly not the legal writers. Certainly there has been no group of recognized medical men who have come right out and said, "This test is valid absolutely, and this test is valid absolutely." Nobody has. It is still in a state of experimentation.

Then, we must be convinced, Mr. Speaker, before we pass any such legislation that the protection of the individual rights and the rights of that individual who is subject to the test, is looked after – for instance, that nothing evil occurs to him; that no damage is done to him; that his religious beliefs are not violated; and that those tests are being looked after – that there is either a defence lawyer or a defence doctor, or somebody there to make sure that this test is proceeded with, and executed in, a proper manner.

I am very much afraid that this is one of those instances where our Government is perhaps, although interested in saving lives of people (and certainly it must be – everyone is) perhaps a little more interested in this point-in saving insurance money.

Premier Douglas: — Shame! That is a despicable statement.

Mr. Speaker: — Order!

Some Government Member: — Strike it from the record!

Mrs. Batten: — It's very despicable suggested legislation.

Some Opposition Members: — Hear! Hear!

Mrs. Batten: — And I certainly feel that it is most despicable for me to have to sign an undertaking to have to submit to any chemical test or blood test, in order to give me the right to drive on the highways for which I pay taxes to build.

I suggest, Mr. Speaker, that this is another place where, when government goes into business, it is difficult to see how powerful a lobby group and what type of legislation that business will bring in. No other private corporation would be allowed.

Opposition Members: — Hear! Hear!

Mrs. Batten: — I am against the compulsory features of this legislation. I certainly am in favour of legislation that would make it possible for people to be protected and for drunken drivers to be convicted, and I suggest that, if this Government took more care to see that equipment is put in our police stations and that persons are trained to take these tests, and took less care of their insurance fund and less care of the section making it compulsory, we would have better legislation.

Opposition Members: — Hear! Hear!

Hon. R.A. Walker (Attorney General): — Mr. Speaker, I want to make some comments on this legislation, and I want to say in the first place, that I wholeheartedly support the principle that motorists should be prepared to submit to tests of their sobriety as a condition of being able to use our highways. I am not in the happy position that the hon. member who just sat down enjoys, of being able to be in favour generally of greater safety on our highways, but at the same time oppose any constructive suggestion put forward to achieve that result.

Something has been said about the effectiveness of thee tests. A good deal of research and study has been given, not only in Saskatchewan, but in other parts of North America, as to their effectiveness. Hundreds of people have been tested under varying circumstances of intoxication, and the results are not uniform with all individuals. There are some individuals who exhibit a degree of impairment at a percentage as low as .05

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per cent of alcohol in the blood. There are some individuals who show no degree of impairment up to a percentage of 1.5; but in the experience of hundreds of tests it has been shown that all fall within that range of .05 to .15 percentage of alcohol in the blood. So it can be concluded from those tests that people who have less than .05, even if they have had two or three or four drinks, are not impaired, and it is safe to conclude that people who have over .15 are impaired. But this Legislature is not having any decisions in that matter. This Legislature is leaving the decision in that respect to the courts of the land
...

Mrs. Batten: — Oh, no!

Mr. McDonald (Leader of the Opposition): — What court?

Hon. Mr. Walker: — This Legislature has not prescribed under The Vehicles Act any percentages of blood tests.

Mr. McDonald: — What about The Automobile Accident Insurance Act?

Mr. Speaker: — Order!

Hon. Mr. Walker: — Mr. Speaker, we are debating The Vehicles Act; whether the hon. member wants to say something about the other Acts he may do so at the proper time. We are debating The Vehicles Act, and in this Act we have not made any attempt to spell out what percentage of alcohol must be required to constitute impairment. As a matter of fact, I have been examining a great many of these results, and having seen some of them tested in practical application, I can assure some of my moderate-drinking friends (and I have a few of them) that if they consume four or five or six ounces of whiskey over a period of an hour and a half, they can safely submit themselves to this test and come out with less than .05. The drinker who drinks a half-dozen bottles of beer in the course of a couple of hours, will, as a result of these tests, probably not even be charged. And I submit that there are cases today where people are convicted where, if they were given a drunkometer test, they would not even be charged. Just because there is a smell of alcohol on their breath, very often the judge or the jury can be persuaded that their ability to drive is impaired.

So we come to the suggestion of my hon. friend that we ought to make this equipment available more readily, and trained personnel more readily available. If my hon. friend had been a member of this House and knew its procedures, she would understand that legislation is not required in the Government to make equipment available or train personnel.

Mrs. Batten: — How can he talk so?

Hon. Mr. Walker: — Those are matters which are discussed and properly discussed in Committee of Supply under the Estimates of the Departments concerned, and if she is interested in that she should raise it at that time. It doesn't require legislation, and the fact that there is legislation which does not provide for it does not reflect the decision of the Government not to proceed to provide such equipment and such trained personnel. That is another issue which we will discuss when the Estimates are before the House.

It is a significant fact that, in the city of Detroit where tests have been widely taken of persons who are suspected of impairment, some 22 per cent of all those people whom the police thought were impaired, passed the test below the minimum requirement of .05 per cent.

I think it should be borne in mind, and we should not forget for a moment, that drunken or impaired driving in this province is a crime. It is a crime like burglary, or manslaughter – which it very frequently is. It is a serious and heinous crime. The Government of Canada, the Parliament of Canada have seen fit to recognize that conduct, and to provide penalties, on indictment, of a minimum of 30 days' imprisonment for drunken driving. In summary conviction there is a minimum of seven days' imprisonment and a substantial fine. It is all very well for members of the Opposition to say, "Well, we are against sin, but we are not in favour of doing anything to curb it." I suggest, Mr. Speaker, that this is one of the first and most constructive measures that have been taken in recent years to do something practical about curtailing the use of the roads by those who are unwilling to obey the criminal law.

It should be remembered that many crimes are more easily subject to conviction than that of drunken or impaired driving. In the first place, the condition of the driver wears off very quickly, and may wear off before the usual clinical tests can be given. It should be remembered, also, that there are many other conditions which closely resemble the condition of drunkenness, of impairedness. Such things as diseases of the nervous system, which may make a person appear drunk or impaired; diabetes, the lack of insulin or an overdoes of insulin; the inhalation of carbon monoxide fumes – all give a result not far removed from an appearance of drunkenness. Some diseases of the kidney, or injuries to the nervous system, a blow on the head, shock – all these things produce results very similar to the impairment from the use of alcohol. As a result, not only must the courts be extremely wary (and they are) of convicting of impaired or drunken driving, but all these possibilities are opened up to the accused to suggest as possible explanations for his conduct, and the court can't rule them out. The court can't ignore those suggestions. So it is an extremely difficult thing to get convictions of drunken drivers.

'The Leader-Post' editorially says you can make it very easy to get a large number of convictions. This Government is not out to get a large number of convictions. This legislation is not aimed at getting a large number of convictions. This legislation is aimed only at keeping off our roads those who are convicted of drunken and impaired driving. This legislation cannot result in the conviction of innocent people, through the use of these tests. My hon. friend says this is a denial of the civil right of an accused person when he appears in court. It may be a denial of the rights to use the highways by those who insist upon taking advantage of their right, under Section 224, to refuse to submit to a test and those who are guilty of drunken or impaired driving. This Legislature is quite properly taking steps to make certain that drunken and impaired drivers do not get back on the road by taking advantage of the technicalities of the law.

All those provisions which the law holds for the protection of accused people, erecting around them certain immunities – these are designed for the protection of the innocent.

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It is only people who have a complete misconception of justice who would argue that these restrictions are inherently desirable. They are desirable only to the extent that they protect innocent people from conviction; that is the reason why the restrictions are provided. They are not provided to allow the guilty to escape the consequences of their crimes. So this legislation does not infringe in any way upon the rights of an innocent person who appears in court and is confronted with the test of the drunkometer.

Mrs. Batten: — How can it be when it is ultra vires?

Hon. Mr. Walker: — The onus is still on the police to prove their case. Someone has said that this is putting the power in the hands of a chemist to determine whether or not a person is guilty. Don't forget that in countless places in our law we provide, and have been providing for a long time, provisions enacted by a Liberal Government, for example, under the Liquor Act, that if a beverage is sold and there is more than a certain percentage of alcohol, then it is deemed to be intoxicating. It is bootlegging and an offence to sell it. It provides in that Act that a certificate filed by an analyst stating that the percentage found in this beverage in question is over (I think it is) 2.5 per cent, shall be accepted as conclusive proof that it is an intoxicating beverage. Is that placing in the hands of the chemist the administration of justice in this province? It is not. The Legislature, in its wisdom, decided and decreed that if it is over a certain percentage, it is intoxicating. This is not taking away from the powers of the courts the right to convict guilt people and acquit innocent people; nor is it interfering in any way with the court's jurisdiction to do so. It merely makes it possible for the court to make its decision on better evidence than any now that is available.

Mrs. Batten: — How could you condemn the courts?

Hon. Mr. Walker: — I do not propose to get into an argument with my learned friend about the constitutionality of this proposal at this time.

Mr. McCarthy (Cannington): — You hadn't better.

Hon. Mr. Walker: — I would, however, say that the constitutionality of legislation providing for the suspension of drivers' licences was challenged in the Supreme Court because it was said that under the Criminal Code, the judge, having the power to prohibit from driving anywhere in Canada, that the Federal Government had enacted criminal law and, therefore, the right to suspend licences for the same offence was ultra vires. My hon. friend, I am sure, is acquainted with the Egan case which went to the Supreme Court of Canada, where it was held that this suspension of licences was not, in substance, criminal law, but was rather a regulating of the use of our highways.

In this province, what we are proposing to do is limit the use of our highways to those people who are prepared to either stay sober, or else, if they are suspected of being drunk, submit to a test and establish one way or the other whether or not they are. We are doing that because it is in the public interest to protect our people.

I am not going to say, standing in my place, like a former Liberal Attorney General did many years ago, when he said, "I guarantee the validity of The Debt Adjustment Act." And, of course, he was overruled by the Supreme Court of Canada.

Mr. Danielson (Arm River): — It was your Act that was overruled.

Hon. Mr. Walker: — I am talking about The Debt Adjustment Act introduced by the Liberals in the 1930s. It was overruled by the . . .

Mr. Gardiner: — What has that to do with The Vehicles Act?

Hon. Mr. Walker: — And then, I'll go further. The Liberal Government of . . .

Mr. McDonald: — I thought we were discussing The Vehicles Act.

Mr. McCarthy: — Mr. Speaker, I submit he is not discussing the Bill we are talking about.

Mr. Speaker: — Order! The hon. member may continue.

Hon. Mr. Walker: — I will go further. The legislation which the Liberal Government enacted to replace this ultra vires Act, called The Moratorium Act, passed in 1943, was also ruled ultra vires by the Supreme Court of Canada.

Mr. McDonald: — Are you still discussing The Vehicles Act?

Hon. Mr. Walker: — Both were Liberal legislation, and both were guaranteed to be valid by a Liberal Attorney General.

Mr. Loptson: — Yes, but you stuck your amendment in there!

Hon. Mr. Walker: — Our legislation had nothing to do with The Moratorium Act.

Mr. McCarthy: — Mr. Speaker, I submit that he is not discussing the Bill.

Hon. Mr. Walker: — As a matter of fact, Mr. Speaker, it is not my duty in this Legislature to guarantee the validity of legislation.

Mr. Danielson: — You'd better not.

Hon. Mr. Walker: — I can, and I will, say that there is good grounds for believing this legislation is constitutional, but we are determined, as always, that the constitutionality of it shall be determined in the proper tribunal, the courts of the land. We uphold the rights of the court to determine this matter, and we are not devolving this responsibility upon the hon. member from Humboldt (Mrs. Batten).

I want to say, Mr. Speaker, that it has been said today that this is a denial of the basic civil rights of an accused person. Well, why are accused persons given protection under the law? I have already suggested

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that they are given protection so that innocent people cannot be convicted. We provide, for example, that confessions given by accused persons are not admissible in evidence against them, unless they were obtained voluntarily, because it is a matter of common human experience that people may be subjected to coercion and inducement to make confessions which are not true. So to protect the innocent, the courts require evidence that the confession is obtained voluntarily.

As a matter of law, the accused is protected from the necessity of giving evidence against himself at his trial. That is a right which is inherent and a right to which every accused person is given the benefit. The reason for it, of course is obvious. Confronted with his judge, his accusers and a battery of attorneys, he may be persuaded to say something against his interest, and which is untrue. That is not the issue here. The results of these tests are objective facts. There is no danger of anybody being persuaded to give a test of .25 per cent when, as a matter of fact, his blood test is .05 per cent. You cannot coerce a person into giving a blood test which shows a higher percentage of alcohol than is actually there.

Mr. McDonald: — Still doesn't prove anything.

Hon. Mr. Walker: — Some question has been raised by lawyers as to the right of an accused person to have his body measured. If a footprint is found outside of a window of a place which has been burglarised, or if a person has been brought in under suspicion, there is no question about the right of the police to measure his boot to see whether or not it fits the tracks that were left outside the broken window.

Mr. McCarthy: — Oh yes, but that's only his boot!

Hon. Mr. Walker: —And with fingerprints, some lawyers have protested that people suspected of offences are fingerprinted. I remember a case of a friend of mine in Prince Albert who was defending an action, and he protested very vigorously against his client having to subject herself to fingerprints. He lost. His client was fingerprinted. And it means that innocent people are fingerprinted. It means that, as a result of the fingerprint taken against the wishes of an individual, on, say, a mere drunken charge, for instance, that fingerprint may be used to connect that individual with a murder and result in his conviction. So, innocent persons or a guilty person – they are both fingerprinted irrespective of their innocence or guilt.

The result of a blood test is not a statement given by the accused against his interest; it is a measurement of an objective fact, just the same as the measurement of the size of his foot or his boot, his fingerprints, or a photograph compared later on with rogue's gallery at police headquarters which may suddenly result in that person being connected with a serious crime, for which he was not even suspected at the time. This is a thing that is on a particular with those other objective means of solving crime.

It is suggested here that this is an infringement on the civil rights of innocent people – people who are out driving on the highway.

Well, innocent people have to take the test the same as the guilty. I draw your attention to the fact, for example, that if you own a firearm you must register it. Infringement on your civil rights? Well, it may be; and it has been argued seriously. It has been seriously argued that that is an infringement upon the civil rights; in fact, such a requirement would be contrary to some American Constitutions. Such legislation would be contrary to the Constitution of the United States. It was enacted by a Liberal Government in this country early in the war, and innocent people as well as saboteurs and traitors had to register their firearms. As a matter of fact, I will tell you that this has resulted in the solution of a great many crimes which would have remained unsolved, were it not for that registration.

This legislation is designed for the protection of the public. Last year, out of 141 drivers who were involved in fatal accidents, it appears that 43 of them had been drinking. That is a ratio of about 30 per cent. I am not saying that the 43 who were drinking were convicted under the impaired or drunken driving sections. What I am saying is, from the observations of the first-aid people who treated them in hospital, the bystanders who reported the accident, and the police who investigated the accident, the percentage appeared to be a little over 30 per cent. Compare that with figures obtained on exactly the same basis for other than fatal accidents; out of a total of 14,233 drivers involved in other accidents, only 1,151 had been drinking – less than 10 per cent.

Mrs. Batten: — I know.

Hon. Mr. Walker: — Those figures indicate there were somewhat less than 1,000 people convicted of impaired or drunken driving; 1,151 showed some evidence of intoxication. And so these figures show that in fatal accidents, the ratio of drunkenness is about three or four times the ratio in accidents as a whole; and if you consider the people who don't have accidents, of course the ratio is even less. I suggest that those figures show some correlation between drunkenness and the frequency of fatal accidents, and that provides us with all the argument we need to take effective measures to curb the use of the highways by those guilty of this criminal offence.

A simple arithmetical calculation will show that of the 130-odd people, men and women, boys and girls, who were slaughtered on our highways and byways in this province last year by motor vehicles, if they were laid out in this corridor they would fill this floor from one side to the other. There wouldn't be enough space left for the orphaned boys and girls, left as a result of those accidents, to stand on the floor between those bodies. But I am sure that if hon. members could see even a few of the results of drunken and impaired driving on the highways of this province, they would be more concerned about protecting the public of Saskatchewan from the effects of this crime. Instead they are concerned, apparently, about protecting the civil rights of these people who are the criminals.

Mr. Speaker, I hold no brief for the motorist who is impaired, and who cannot pass . . .

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Mr. McDonald: — Neither does anybody else.

Hon. Mr. Walker: — My hon. friends opposite are defending their civil rights; they are defending their civil rights.

Mrs. Batten: — It is not ours; it is everybody's!

Hon. Mr. Walker: — If my hon. friends are talking about the people who are not drunk or impaired, they have nothing to fear from this legislation. Nothing whatever.

Mr. Danielson: — How silly can you get?

Hon. Mr. Walker: — If my hon. friend from Arm River would confine himself to five or six ounces of whiskey in an hour and a half, he could go out and he could blow up that balloon, and they wouldn't even bother him.

If there's one thing the people of Saskatchewan are demanding, they are demanding that the highways of this province be made safe for their families to travel upon in safety and in comfort.

Mr. McDonald: — Hear! Hear!

Hon. Mr. Walker: — If my hon. friends can come up with a better way of protecting innocent motorists from the ravages of drunk and impaired drivers than is done by the amendment which is before the House, I will be very glad if they would place it before us, and to see the House give it very serious consideration.

So far as I am concerned, safety organizations, patriotic organizations throughout Canada and the United States have endorsed this idea of drunkometer tests. They endorse it because they know that it is the only objective way of determining guilt or innocence in these matters.

Mr. McCarthy: — That's your opinion.

Hon. Mr. Walker: — My hon. friend doesn't need to expose his ignorance to the public by making that interjection. I happen to know a little more about these things than my hon. friend . . .

Mr. Danielson: — Tell us about it. Tell us! I am practically an amateur.

Hon. Mr. Walker: — . . . And that's not saying very much. As a matter of fact, Mr. Speaker, this suggestion has gone through the Highway Safety Committee of this province. It has been proposed by a Committee of this Legislature, and was endorsed for consideration by the Government. I say if anybody in the Opposition can come forward with a better way of making our highways safe from these killers, I would like to hear about it.

In the meantime, unless a better way can be brought forward, I am prepared to endorse this as a step in the right direction, a step in the direction of making the public of Saskatchewan safer from murderous automobile accidents on our highways. I support the Bill unreservedly.

Premier Douglas: — Mr. Speaker, for some days now the Liberal press in this province, and the member for Humboldt (Mrs. Batten) this afternoon, have talked a good deal about the rights of automobile drivers. I think the time has come to say something about the rights of the innocent people who are murdered and maimed on the highways by drunken drivers.

Freedom does not extend to the freedom to kill other people merely because you have put yourself into such a condition that you are no longer capable of controlling a car. An automobile, in this day and age, is more than a vehicle. Modern cars, ranging from 180 to 300 horse-power, are lethal weapons. When a man sits behind the wheel of a modern car he has control of an engine of destruction which can be much more dangerous than a man firing a shotgun down the main street of one of our cities.

Let us look for a moment at this question of rights. Contrary to what the member for Humboldt has said, it may surprise her to know that on this side of the House we are just as much interested in preserving basic human rights as she or anyone else in this county.

Mr. McDonald: — You don't demonstrate it.

Premier Douglas: — But we still maintain, contrary to what she has said, that the right to drive a car on the public highways is a privilege and not a right.

Mr. Danielson: — No, sir.

Mr. Cameron: — I disagree.

Premier Douglas: — My hon. friends say they disagree. Well, let me just deal with it for a moment.

Mr. McDonald: — What about the Bill of Rights?

Premier Douglas: — The highways are built by all the people of the community, out of their taxes and their labour. When they give me or any other citizen the right to drive upon that highway, they have the right to demand (and they do demand) that before I go upon that highway I must first of all prove that I am capable of driving a car, that I know how to operate it, and that I know what the traffic rules and regulations are. It is not an absolute right. No person can drive a car in this province or any other province until they have first of all proven their ability to drive that car.

Mr. Speaker, we are only saying we should go one step further. We say that a person not only must prove his ability to drive the car, but he must also prove that he is capable of driving the car and that he has not reduced himself to a place where he is no longer able to control that car, and that he has not become a menace to the other drivers on the road.

Mr. McDonald: — That has nothing to do with it.

Premier Douglas: — We require tests now. We require, first of all, a test to prove that a person can drive; and we require tests,

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from time to time, to prove that he is still able to drive. I have an instance in mind of an elderly gentleman who drove a car. His grown-up sons and even his grandchildren became so alarmed for his safety that they asked the Highway Traffic Board if they couldn't have him tested because his eyesight was so bad that he was a menace to himself and to other people. So it was suggested to him by the Highway Traffic Board that he must submit to a test. It was found that his vision was so poor that he couldn't distinguish an object at twenty feet. So, very reluctantly, he was told that it wouldn't be possible to continue his licence. He submitted to a test. But that test was not to hurt him. That test was to protect him and, even more important, to protect the innocent people who drive upon the roads. There was nothing wrong with saying to this man that because you only have about 20 per cent vision we do not feel that it is safe to allow you on the road. What difference is there between that and saying to another man, "You have consumed alcohol to the point where you are no longer able to control this high-powered vehicle, and you will not be allowed to drive."

Mr. Loptson: — There is no comparison.

Premier Douglas: — Well, take the other objection that has been raised. The other objection that has been raised is that this is interfering with a fundamental right because we are asking a person to give evidence against himself. Well, Mr. Speaker, as the Attorney General has already pointed out, we require people to take fingerprints. A short time ago in this city a man was accused of murder. A dead man was found with hairs clutched in his hand, and hairs were taken from the head of the accused and put under the microscope and compared.

Mrs. Batten: — He was charged with murder.

Premier Douglas: — We now check people in an attempt to see whether or not they are guilty.

Mr. McDonald: — But he was charged and convicted. He was charged with a crime.

Premier Douglas: — It is argued that a person is being asked to testify against himself. All he is being asked to do is to submit to what seems to be a reasonable accurate test, the result of which may prove his innocence or may indicate to the court the amount of alcohol which he has consumed. I want to say, Mr. Speaker, that no person need fear a compulsory test of the alcohol content in his body, except the people who have consumed excessive amounts of alcohol.

Mrs. Batten: — Oh, no.

Premier Douglas: — And, as a matter of fact . . .

Mr. McCarthy: — On suspicion.

Premier Douglas: — . . . there are many cases where it will help the accused. I have had instances myself. People whom I know who have been convicted of impaired driving, and in whose word I have considerable credence, have assured me that, even while they were convicted on the strength

of the fact that someone said they had staggered a bit and a policeman said he could smell alcohol on their breath, they had only had, say, a couple of beers. But the judge, in this particular case, because of the evidence of the policeman who could smell liquor, and because of the evidence of witnesses that the individual staggered (although he may have staggered because he got a bump on the head when the car turned over), convicted him of impaired driving. Had a test been available that man would have had a change to prove that he had actually only had a couple of beers as he claimed, rather than being impaired or intoxicated.

Mr. McDonald: — Make that available then.

Premier Douglas: — Mr. Speaker, this legislation is important and drastic legislation. It is not an ideological question. It is not a matter of C.C.F. vs Liberals. I hope that when we come to discuss this we can discuss it on both sides of the House, not as a Government measure, but with regard to whatever point of view a person has. I do, however, take very serious exception to the statement of the member for Humboldt that this is typical Socialist thinking . . .

Mr. McDonald: — That's what it is.

Premier Douglas: — . . . and to the editorial in the Regina 'Leader-Post' . . .

Mr. Danielson: — It's right up your alley!

Premier Douglas: — . . . the editorial calling it 'Socialist regimentation', 'trampling underfoot the Saskatchewan Bill of Rights' by imposing these tests on drunken drivers. Why Mr. Speaker, in the first place, we put the Bill of Rights there, so I don't think we would be trampling it under. I want to point out, Mr. Speaker, that, if this is typical Socialist thinking, you would be interested in knowing that in the United States today there are thirty-nine states and 110 cities which provide for alcohol tests, and there are twenty-three states in which it is compulsory.

Mrs. Batten: — On a point of privilege. I didn't say that it was the test that was Socialist thinking; I said it was the compulsory action.

Premier Douglas: — Exactly — the compulsory feature. But I want to point out, Mr. Speaker, that in twenty-three states to the south of us these tests are compulsory.

Some Government Member: — They are Communists down there!

Premier Douglas: — Are those socialist states?

Mr. McDonald: — On suspicion? or on charge?

Premier Douglas: — Well, if my friend wants to confine it to charge, we can discuss that in Committee. We are discussing the principle now of the compulsory test. That is the principle.

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The statement has been made that no reliable authorities have endorsed these tests. I want to point out there is a little pamphlet here from the Committee on Tests for Intoxication, with headquarters at Chicago, which points out that these national organizations listed here have approved the campaign which has been carried on in the United States, where twenty-three States now have these tests by compulsion, and thirty-nine States have them, altogether – the balance of them being voluntary. The test has been approved by the American Bargaining Association, by the American Medical Association, by the International Association of Chiefs of Police, by the National Safety Council, the National Committee for Traffic Safety, and the President's Highway Safety Council.

Mr. McDonald: — Would the Premier permit a question?

Premier Douglas: — Yes.

Mr. McDonald: — They have agreed to the tests in different States of the United States, but is that not after the individual has been charged – not just when he is suspected of something?

Premier Douglas: — It is different from State to State. I wouldn't say . . .

Mr. McDonald: — Oh, no. I . . .

Premier Douglas: — The gentleman asked a question. I have no objection to you asking a question, but let me answer it instead of starting to howl the minute I start to answer.

Mr. Danielson: — You're shaking your rattle pretty hard now.

Premier Douglas: — I'll answer it just as soon as you get the member for Arm River to close that aperture that he has between his nose and his chin.

Mr. Danielson: — Tell us about the United States where it is compulsory now.

Premier Douglas: — In the United States, some of the States . . .

Mr. McDonald: — Some of the States? How many?

Premier Douglas: — Twenty-three States make it compulsory, some on charge, but some on grounds of suspicion . . .

Mr. McDonald: — What are the States?

Premier Douglas: — . . . where the police have reason to believe that the individual is sufficiently impaired that a test would be in order.

Mr. McDonald: — Would you give us the names of the States?

Hon. Mr. Walker: — Idaho . . .

Premier Douglas: — Now don't interrupt, because I want to finish what I have started to say. I will give my friends all the States when

we go into Committee of the Whole.

Mr. McDonald: — You do it now.

Premier Douglas: — I want to deal with . . .

Mr. Danielson: — You won't be on the radio then.

Hon. Mr. Walker: — Idaho, Missouri . . .

Premier Douglas: — The 'Christian Science Monitor', in its issue of February 8, pointed out that, in the State of Missouri they have just introduced a Bill in their Legislature which provides for compulsory tests to ascertain intoxication. It says:

“This would assume by operating a public vehicle within the state the driver gives his implied consent to such a test. Refusal to co-operate would result in a 90-day licence suspension and possible revocation. Drunk drivers have left a trail of death and misery over the years that cannot be excused. If the State intends to do something about its frightening traffic toll this measure offers a good beginning.”

This is a quote from the 'Christian Science Monitor' regarding the compulsory legislation which has been introduced in the State of Missouri.

Mrs. Batten: — Will the hon. member permit a question?

Premier Douglas: — I will answer questions later if the hon. members will just hold their questions until I deal with the point I want to make now.

Mr. McDonald: — Before the radio goes off!

Premier Douglas: — I want to make the point that we are discussing the principle here in the second reading, and the principle is whether or not a condition of getting a licence or keeping a licence should be willingness to submit to a test. The details are quite flexible as far as we are concerned. If there is objection to the blood and urine and saliva tests, then we are prepared to take them out in Committee of the Whole, because the tests which have been carried on, and the experiments which have been carried on in Saskatoon over the past few years, would now seem to indicate that the breath test is sufficiently reliable and that in most cases the other tests would be unnecessary. I notice the member for Humboldt shaking her head; but the fact is that these tests have been carried out, and we are now satisfied, and they have been satisfied in the United States — both the Bargaining Association and the Medical Association — that these tests are reliable and reasonably accurate. It is no secret, Mr. Speaker, that we were asked by our C.C.F. provincial convention several years ago to introduce this legislation and we wouldn't do it.

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Hon. Mr. Fines: — And by the Highway Safety Committee.

Premier Douglas: — And also by the Highway Safety Committee, and we wouldn't introduce it because we were not convinced that these tests were accurate. We now are convinced. The experiments have convinced us that the breath test, the urine test, saliva test and blood test have been so close in their results that any one of these tests now would be fairly satisfactory evidence, and therefore, we are quite prepared, in Committee of the Whole, to take out the blood and saliva and urine tests because we think that the breath test through a drunkometer would meet the situation very well.

With reference to the methods of taking the tests, as the Attorney General has pointed out, that is not in the legislation. When we are discussing the Bill, or when we are in Estimates, we will point

Mr. Loptson: — We are only talking about principle now.

Premier Douglas: — I don't think the details of it are the things that we should be deciding here. The basic principle is whether or not we are going to take steps to say that those who drive cars on the highways and streets of Saskatchewan shall be prepared to submit themselves to tests at any time to prove beyond the shadow of a doubt that they have not so impaired themselves by excessive consumption of alcohol that they have become a public menace.

Mr. Speaker, I get a little bit weary of all the people who make great speeches saying we must do something about the drunken drivers, and then, the moment something practical is advanced, immediately begin to back-water. Last year in Saskatchewan, 134 people were killed in automobile accidents. Roughly in 30 per cent of those deaths liquor was involved. According to the last figures, 2,799 people were killed in Canada last year and 65,655 persons were injured. I submit, Mr. Speaker, that if we had 134 people in Saskatchewan die or 2,700-odd people in Canada die as a result of smallpox or diphtheria, this House would be in an uproar demanding that the Government take some positive and aggressive steps to stop this wholesale murder; but when it happens on the highways then we become quite acquiescent about it.

We have all seen cases in the last two or three years of a man and his family driving down the highway on a Sunday afternoon, and some person who has imbibed too freely comes down the wrong side of the road and maims and injures the occupants of that car. When we are talking about freedom, let us talk about the freedom of the rights of innocent people to drive on the highways with a measure of protection and in a measure of safety, without having to be set upon at any time by some drunken and irresponsible driver.

Mr. Loptson: — There is nobody objecting to that.

Premier Douglas: — There is nobody in this country who needs to be afraid of this except the people whom the tests will indict. Those are the only people who need to worry about it.

Mr. Loptson: — That's just bunk.

Mr. Speaker: — Order!

Mr. Loptson: — Clap-trap stuff.

Premier Douglas: — Well, my friend talks about 'clap-trap'; but I quite prepared, as far as I personally am concerned, to stake my political life on asking the people of Saskatchewan to decide whether or not they want these tests imposed or not. Somebody has to have enough courage to stand up and say a word for the people who are likely to be killed and maimed in traffic accidents as a result of excessive drinking.

Mr. Loptson: — The same old line.

Premier Douglas: — Same old bunk!

Mr. Danielson: — . . . either to take . . .

Premier Douglas: — The last minute of air time – steam her up!

Mr. Loptson: — . . . some aggressive and forthright steps with respect to this matter, or to come up with a better suggestion. There isn't any use in just imposing more fines.

Premier Douglas: — You've just got another minute; steam her up.

Mr. Loptson: — There is no point in imposing more fines or longer prison sentences, as long as you make it virtually impossible for the court to decide whether or not a man has, in fact, consumed too much alcohol. That is the great problem.

Premier Douglas: — If a man appears in court some time after an accident has taken place, the only thing the judge has to go on are the witnesses who say whether or not he looked as though he were drunk, or he looked as though he were impaired, or he looked as though he were under the influence of alcohol.

Mr. Loptson: — Now we're off the air; we've cooled off now.

Premier Douglas: — Here is a concrete and specific and, we think, reasonably accurate measure of the amount of alcohol the person has consumed. I suggest, Mr. Speaker, that if there are better methods we are prepared to adopt them. If this doesn't work out, we are prepared to ask the Legislature to rescind this legislation; but, I submit, if we are not to have on our conscience the blood of innocent people killed on the highways as the result of drunken drivers, we have a responsibility on our hands to take some step to try to stop this continuing mass-murder, which is a blot upon the fair name of this country.

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Mrs. Batten: — May I now have the opportunity to ask that question the hon. member said I might?

Premier Douglas: — Certainly.

Mrs. Batten: — Is the hon. member under the impression that this legislation with compulsory aspect will aid in convictions under Section 222 and 223 of the Code?

Premier Douglas: — I certainly am.

Mrs. Batten: — Does the hon. member think that it will be allowed – that these compulsory tests will be allowed in court as evidence under those two Sections?

Premier Douglas: — We take the position that if persons submit to the test, the judge will have the right to decide, of course, whether or not he will accept this in evidence. As a matter of fact, I am told that the drunkometer test has been accepted in Saskatoon where the Chief of Police there has been using it for some time. Those tests have been accepted in the court as evidence in that city. At any time at all the judge, of course, can refuse to accept that as evidence if he wants to.

Mrs. Batten: — Isn't it true (as my hon. friend must know) that those tests were not compulsory? Those tests that were accepted in Saskatoon were because the persons voluntarily took them.

Premier Douglas: — That's right.

Mrs. Batten: — Well, under the Code it is perfectly all right. The Code provides for a man to take a test if he wants to. But the Code specifically says that no person is required to give a sample of blood, urine, breath or anything, so how can it be used?

Hon. Mr. Walker: — Mr. Speaker, if I may just read the whole section that the hon. member has quoted from:

“No person is required to give a sample of blood, urine, breath or other body . . .

Mrs. Batten: — . . . question . . .

Hon. Mr. Walker: — “for the purpose . . .”

Mrs. Batten: — I am asking the hon. member from Weyburn a question.

Hon. Mr. Walker: — You'd like to be able to mislead the House, would you?

Mrs. Batten: — I am asking the hon. member from Weyburn a question and he has the floor – you haven't.

Mr. Speaker: — Order!

Premier Douglas: — Mr. Speaker, probably if I read this telegram it might deal with the point before the House. This is from R.C. Hill, secretary of the Committee on Tests for Intoxication of the National Safety Council in Chicago. He says that the following resolution was passed by their committee on tests for intoxication on October 22, 1952, and it says:

“Resolved that the Committee on Tests for Intoxication of the National Safety Council go on record as recommending to the various State Legislatures that their drivers’ licence Act be amended to provide that as a condition precedent to a driver’s licence being issued by the State an applicant for such a licence shall be required to agree to take a chemical test in any case in which he is suspected of driving under the influence of intoxicating liquor. And that refusal on his part in such a case to submit to the taking of a specimen of his blood, urine, saliva or breath for chemical analysis to determine alcoholic influence shall be grounds for automatic mandatory revocation of his licence.

“Be it further resolved that the above provision be incorporated in Act II of the Uniform Vehicle Code.”

The position they have taken in the United States is that this should be compulsory and it should be in not only pieces where there are charges but also where there is any suspicion that the person has consumed sufficient alcohol to be a menace.

Mrs. Batten: — Mr. Speaker, my . . . certainly not what is happening in the United States . . .

Mr. Speaker: — Order! Those matters will have to be discussed in Committee.

Mr. R.A. McCarthy (Cannington): — Mr. Speaker, I just want to speak very briefly on this. One would think, sitting here, that possibly the people over there thought that they were the only people that were desirous of having our highways safe. You are trying to create that impression. But I want to tell you personally, and I speak, I think, for all of us, that we are just as much interested as you are.

Hon. Mr. Walker: — Actions speak louder than words.

Mr. McCarthy: — We are just as much interested as you are, but we want to do this in a British democratic way.

Now, Mr. Speaker, I am not a teetotaller, but I abhor drunkenness. I will make my position quite clear, and I do regret that there are people who drive on our highways who should not be there. On the other hand, we must remember that we shouldn’t get into a position where we are going to

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start to take the liberties of our people away on suspicions. I was very much perturbed, the other day, when the Provincial Treasurer got up from his seat and said that I haven't the right to drive on the highways. I was in this province, Mr. Speaker, when there weren't any roads. I helped to build those roads, and I am very perturbed to think that anyone, including the Provincial Treasurer, should take unto himself or his employees the right to say whether I, or anyone else, has a right to drive on those highways.

Premier Douglas: — You have always had that right.

Hon. Mr. Fines: — You have had it for 40 years.

Mr. McCarthy: — All right, I say, now here is the situation before I can drive on the highway. According to the Provincial Treasurer, it isn't a right, it is a privilege, and he has control of that privilege in conjunction with some civil servant, and some civil servant has the final say whether I have that right or not. He denies me the right, and says it is a privilege, and it's a privilege at the pleasure of him and someone who works for him. Now, if I go out on a highway and misbehave myself, I am entitled to be punished; but I am not entitled to be punished by the Provincial Treasurer, or anybody who works for the Provincial Treasurer. I want to go before a judge and have this man either convicted or acquitted, and it really perturbed me when a responsible Minister would get up from his seat and say those things. I thought we had British justice in this province, our traditional British justice where, if I misbehaved myself, the Courts of the land are set up for this purpose. It isn't the prerogative of the Provincial Treasurer or anyone who works for him to say to me that I can't drive on that highway.

Hon. Mr. Fines: — Mr. Speaker, before the hon. gentleman sits down, may I ask him a question? Does he not know that ever since early in the 1920s, we have had a Vehicles Act in the province which has given to the Highway Traffic Board the right to cancel the licence of anyone who cannot drive a vehicle in a safe and prudent manner?

Mr. McCarthy: — Yes, I know that. I know that, but it was on the decision of a judge . . .

Premier Douglas: — No, no!

Hon. Mr. Fines: — No, no, not at all.

Mr. McCarthy: — Well, if it is there, it should be taken off. It is not right. Anytime that anybody outside of a judge, or someone who is qualified to judge my conduct, says to me that I haven't the right to drive on a highway, well then, we are getting into Fascism right away quick.

Hon. Mr. Fines: — Mr. Speaker, may I ask another question before he sits down? The hon. gentleman was a member of the Highway Safety Committee three years ago; did he agree with the Report of the Committee which recommended that "the matter of chemical tests for drunken

drivers be further investigated by the Highway Traffic Board with a view to bringing in legislation t an early date to provide for such tests if technically feasible”?

Mr. McCarthy: — I agreed with that, but I didn't agree with him. And there is another thing that I want to say now that I am on my feet again, Mr. Speaker. If you people over there have been conducting some tests in Saskatoon for the last four years and sliding them onto your desks, why don't you bring them out and give us the opportunity to study those tests and let us pass our opinion on them? That is the idea of making tests and coming out and saying that you are satisfied? Has the Opposition in this House no right? If you are making tests and passing a Bill on them, bring them out into the open . . .

Hon. Mr. Fines: —Mr. Speaker, may I correct the hon. gentleman. I at no time said we were making tests. The tests were being conducted by a Committee in Saskatoon under the chairmanship of a Medical Health Officer. The Government had nothing to do with it.

Mr. McCarthy: — You know about it, and you have been checking. Somebody said (I forget who it was) you were checking . . .

Hon. Mr. Fines: — We were watching it.

Mr. McCarthy: — Well, all right. If you have that information, it is a slight to the Opposition that you have not passed the information on to us.

Hon. Mr. Fines: — You could have had it just as well, if you had wanted it, if you have been interested.

Mr. McCarthy: — How? I had never heard of it until it was mentioned in the House here, today. Look, I don't want you to imply that I am not interested in safety, because I am, just as much as you are and possibly a little more. I have been here longer than you.

Mr. J.W. Gardiner (Melville): — Mr. Speaker, before having the question voted on, I would like to take an opportunity to say one or two words on it. I believe that here this afternoon (possibly it is a little bit the fault of those of us on both sides), we all seem to get heated up every once in a while about these things, and I think perhaps, if we take a casual and cool look at the situation from all angles, that maybe then we can come up with some solution to the question.

A few moments ago, the Premier in his address took his time on the air to make a very emotional appeal. There is no conviction, and I don't believe there would be to the people in this province, any conviction that he has actually given them any real facts to base the answer on as to whether or not we in this Legislature should pass the type of an Act that has been placed before us. I thought that, coming into this House as a member, when legislation was set before us we would have some concrete facts on which to base our decision as to whether legislation is good legislation and should be put on the Statute Books of this province for our people. I find, however,

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that we are to come here, take the opinions of certain people in this Legislature as to what is good and what is bad, and then we are to vote on that information.

Now I think we should have all the information available on something as important as the Act that is before us, something that definitely affects the rights of the people of this province and also affects (as some would say) the right for people to drive on the roads in this province and to enjoy safety. I can definitely assure you, Mr. Speaker, that I on one occasion had the misfortune to be in an accident such as the Premier mentioned here today. At least I felt it was that, though it was never carried to that extent. However, I still feel that it was caused exactly by the factors that the Premier has mentioned here today, when my wife, myself and my little boy were very close to being killed on that occasion, maybe a hair's-breadth from death in that particular car accident. So I can well realize the importance and the seriousness of the question that is at hand; but I am not prepared, as a member of this House, to stand here and vote on a question on which no information has been presented to us, no factual information. No person has come forward, as far as I know from reading the papers in the last few days; no medical man has come forward; no member of the judiciary has come forward; no member of the legal profession (outside of the Attorney General of this province) has made much of a fuss about it that I have heard, since the Bill was brought in, has actually stated and given the facts to say that the members of the Legislature of this province should put this Act into force at this time.

I would state, sir, that, as a member of this Legislature, if all the facts were brought down to us here in this Legislature by people that we feel know something about the facts, we could then intelligently deal with the question at this time. But to have the Minister come forward with an Act and say, "Here. Anybody who opposed this Act is opposing the welfare of the people of this province as they drive down the highways, if they stand in the way of it," without any facts or anything else, we should not take away the freedom and liberties of the people without any more thought to it being given by the members of this Legislature than to sit here and support an Act of the Government of this province because they say it is right.

I think that, before anyone of us in this House should place ourselves in a position of deciding whether we are going to remove some of the rights – because we are; even the Ministers across the way agree with the fact that we are tampering with the fundamental rights and liberties of the people of this province – that surely then, no matter how wrong the argument should be, we should take the time to find out what the facts are, call people to this Legislature who are in a position to give us those facts, so that we don't have to go on the story that might be given by the Minister who is presenting this Bill, and by the Premier of the province.

I regret that the Premier had to suggest that there are those of us on this side of the House who have no concern for the life and liberty of the men, women and children that might drive on the highways of this province. I don't think that that is the type of statement that should come from a man who has reached the pinnacle of control of power in this province that our Premier has, a man who has come up from a profession from which the people of this province should expect a little more decency and respect for people who sit in this House that to try and infer that the people on this

have no concern for the welfare and the feeling of others.

Premier Douglas: — Mr. Speaker, on a question of privilege, before my hon. friend sits down. Mr. Speaker, my friend has actually not the text of what I said before him, and I suggest that he read it tomorrow. I don't think he will find there that I at any time suggested that they were unconcerned about the welfare of the people of this province. Certainly I did not intend to convey such an impression.

Mr. Gardiner: — I would just like to say, Mr. Speaker, that, as far as I was concerned, the impression I received was that what the Premier inferred through his statement was a direct reflection on members on this side of the House with regard to their feelings with respect to traffic in this province. On the principle of this Bill, I do not feel that I can support the principle until I know something about the material that is in the particular Bill before us. I have no evidence, no assurance from anyone of authority in this province who should know, that this Act should be placed on the Statute Books at the present time.

Secondly, we have no assurance that the equipment is available, that the knowledge is available to put into effect this Act that has been placed before us. For those two reasons, I think we should have a definite understanding from the Government that, if this Act goes into effect, the people who have to resort to these tests will be protected, that the people of this province will be protected in other ways, and that the Province is prepared to see that sufficient equipment is available if such an Act were going to be brought into force. Without that protection, without the information I have suggested that we should have in this House, I could not see my way clear to support, at this time, the principle of this Bill until I have further information before me to decide on it.

Premier Douglas: — I understood that the member for Maple Creek (Mr. Cameron) adjourned the debate the other days and wants to speak, and we know that he is absent today because he is speaking tomorrow in another debate. Therefore I think, if they want him to speak, Mr. Speaker, someone opposite ought to adjourn the debate.

Mr. McDonald: — Well, Mr. Speaker, I was just waiting to see if there were any other members who wanted to speak, and apparently there are not. So at this time I would ask leave to adjourn the debate on behalf of the hon. member for Maple Creek and for myself.

(Debate adjourned)

The Assembly then adjourned at 10:00 o'clock p.m.