LEGISLATIVE ASSEMBLY OF SASKATCHEWAN
First Session — Eighteenth Legislature
44th Day

Monday, January 26, 1976.

The Assembly met at 2:30 o'clock p.m.
On the Orders of the Day

QUESTIONS

AGREEMENT BETWEEN U.S. AND GERMAN POTASH COMPANIES

Mr. R.A. Larter (Estevan): — Mr. Speaker, I'd like to direct a question to the Minister in charge of the potash industry. Is the Minister in charge of the potash aware of a recent agreement between the U.S. and German potash companies?

Hon. E.L. Cowley (Provincial Secretary): — No.

Mr. Larter: — I'd like to inform the Minister this has taken place and it has been made and they have made a deal . . .

Mr. Speaker: — Order! The Member is not permitted to give information to the Chamber any more than necessary to support his question.

Mr. Larter: — A supplementary, Mr. Speaker. Is the Minister aware that a deal has been made with a Greek shipping firm to haul potash at half rates and that U.S. surplus wheat is guaranteed on the backhaul?

Mr. Cowley: — No, Mr. Speaker, that was not, the last time I talked with representatives of the German and French potash industry, they didn't mention that particular deal to me.

Mr. Larter: — Second supplementary, Mr. Speaker. Does the Minister realize that not only could this cause a further surplus of potash in Saskatchewan, but could further bother the usual good wheat sales, valuable wheat sales out of western Canada?

Mr. Cowley: — Well, Mr. Speaker, I suspect that there have been in the past, there are at present and there will continue to be sales of potash from the people other than Saskatchewan into the American market. Obviously the level of those sales will be, has been, and will continue to be a concern of the Government of Saskatchewan. Individual arrangements may or may not be unusual. Obviously if freight rates are being cut substantially, because of particular problems the Greek shipping industry may face, perhaps because of the oil industry or something else that may have an adverse effect upon someone who transports their product by some other means.

DEFACTO UNION WORKMANSHIP RULE FOR GOVERNMENT CONTRACTS

Mr. E.F.A. Merchant (Regina Wascana): — I wonder if I may direct a question to the Minister of Labour (Mr. Snyder). In light of the attitude that the Government took towards Graham Construction on the Poplar River Refining Development, and in light of rumours that I've been hearing lately, is the Government now intending to move towards a defacto union workmanship rule for government contracts and is the Government prepared or considering moving towards a dejure union workmanship? Two questions in a way both directed to the same matter. What is the state of the Government's thinking about the union workmanship rule for government contracts?

Hon. G.T. Snyder (Minister of Labour): — Well I think I can say quite positively, Mr. Speaker, that it's been a matter that is and has been of some concern to the Government because I think it has to be acknowledged that a non-union contractor is in a position of advantage in terms of bidding on a government contract. This has been a point of view that has been expressed to us on a number of occasions and it's one that we have on occasions attempted to deal with. There is not a union workmanship policy as such with respect to contracts let by the Government to contractors. That is to say, we have not taken the position that if you were non-union that you should not apply. So I can say positively this is the position of the Government at this point in time.

Some consideration I should tell you has been given on occasion to allow for percentage differentials in order that a union contractor may bid on a government job and bid without being in a position of disadvantage, keeping in mind the additional costs, the fringe benefits and the other items of cost that a union contractor must bear, that in many instances a non-union contractor is not obliged to bid on or at least to consider when he is bidding on a government contract.

Mr. Merchant: — Mr. Speaker, would the Minister agree that that kind of policy is punishing the workers of non-union firms, indeed forcing them in some ways into a union firm whether they want to go into a union firm or not? Would the Minister agree that that is to run a defacto operation of a union workmanship rule? That the Government is voluntarily parting with more money for the contracts than if they went to the marketplace and dealt with the contractors on the basis of whichever gave the best price. And lastly, would the Minister not agree that a defacto union workmanship rule hurts the smaller contractors who tend to not be the union contractors?

Mr. Snyder: — Well, I suppose the Member is making the point that in the event that a government accepts a union workmanship policy, then it in effect places the employees of a non-union contractor in a position of disadvantage in that a union contractor will be shown preference. I think that's the point you are making and I would have to agree that this may perhaps be the case. On the other hand it has to be acknowledged I believe, that a union contractor is in a position of disadvantage by virtue of the fact that he is bidding on the same job with a different set of circumstances surrounding the costs that he will have to bear in

terms of providing that same service. So as I indicated earlier that the Government does not at this time have a union workmanship policy which restricts the bidding to union contractors only. I think I made that point in the first instance, that that is not the case. The reference to the Graham Construction tender on the Coronach project is quite another thing again I believe.

In that set of circumstances I am given to understand that the contractor who was low bidder was merely given the indication that it would be a requirement to settle out the difficulties because it was not the wish of the Government to have a contract let and have the union shut down a very important piece of work that had some time frame involved which would make it very awkward in terms of putting the program on stream.

Mr. Steuart: — Cop out.

Mr. Snyder: — Well, you know you can apply any language to it that you wish but all I'm saying is, is that they were told to settle their difficulties in order that we would not be involved in a work stoppage about the first moment the work began at Poplar River. Now how they went about it was a matter of little concern to the Government. Quite frankly it was a matter of ironing out some of the difficulties before they arose. I suppose the Leader of the Opposition may have a stroke of magic that he can conjure up in order to just have these problems melt away like dew before the sun, but quite frankly we haven't had that kind of expertise. I think we've worked at it hard and we've been more successful than you were during your term of office. But nevertheless since here you sit in a very comfortable pew at the moment and say, you know that isn't the way you should do it. At the same time you offer nothing in the way of a tangible solution.

Mr. Merchant: — Mr. Speaker, just in passing, the problem arose in part because of spot certifications and I wonder if the Minister . . .

Mr. Speaker: — Order. I wonder if the Member could assist me in curbing the Minister's long answer by giving me short questions.

Mr. Merchant: — I wasn't going to comment on the Minister's thoughts, I was only going to ask the Minister whether the Government is considering changing the legislation which allows spot certification which resulted in Graham being unionized in one place but not unionized in the Poplar River area? Are you now considering ending the legislation which allows spot certifications and instead moving towards perhaps half province's or provincial certification?

Mr. Snyder: — It's not the intention of the Government to open up The Credit Union Act this year, during this session.

THREE MAN BOARD – GRASSLANDS NATIONAL PARK

Mr. R.E. Nelson (Assiniboia-Gravelbourg): — Mr. Speaker, I have a question for the Government on tourism and renewable resources. The Provincial Government

set up a three man board to conduct hearings on the proposed Grasslands National Park in the Killdeer-Val Marie area. The three men appointed were McEwan from Calgary, Richards from Saskatoon and Beamish from Regina. All the members were from large cities. My question is, why was not the area involved and rural Saskatchewan taken into consideration? Why were they ignored in the appointing of this committee?

Hon. A.E. Blakeney (Premier): — Mr. Speaker, I see the Minister is not in the House at the moment. The lists of names for the committee was arrived at, as you know it's a federal-provincial committee, it's not appointed solely by the Provincial Government. It's pursuant to a federal-provincial agreement. The names were decided upon by the two groups, the federal authorities and the provincial authorities. I think the reasons for the names are perhaps well know. Grant McEwan from Calgary, while he will not be familiar with rural Saskatchewan in the south central rural Saskatchewan specifically, there can be few people, I suppose, in western Canada who have more feel for the rural feelings of western Canada than a man like Grant McEwan. We then go on to Mr. Jim Beamish who was a long time employee, I think he may still be, or just retired, of PFRA. As such he has travelled throughout southern Saskatchewan very, very extensively. Mr. Richards I know less well and I say it's not Mr. John Richards. He is from Saskatoon, but he also I believe is, I'm reminded again, head of the geography department at the university and is fairly well informed on matters of rural Saskatchewan.

It might in retrospect have been better to find someone who was from that area. It just happened that the two groups sat down, came up with a list of names, out of it came those three and I think that the desire to get people who will be particularly well regarded by the public was very high in the minds of those who made the selection.

Mr. Nelson: — Mr. Speaker, I think that is very important that we have someone who is very high in the minds of the public but presently they are holding information meetings around the province to assist people in approaching the upcoming hearings to this committee. At the meetings at Mankota on January 19th and at Val Marie on January 20th, two of the committee came into the hall, sat at the back of the hall, took down notes as people spoke and were not introduced and asked to be introduced at Val Marie. The chairman of the meeting did not introduce them. Does the Premier not think that this conduct is wrong; is unfair at an information meeting and that these people should be sanctioned for doing this or dismissed from the committee?

Mr. Blakeney: — Mr. Speaker, all that I can say is that I am certainly not going to undertake to sanction Mr. Grant McEwan and tell him how to conduct meetings. I think that if he is the chairman of the body, as I understand that he is, as I understand a former Lieutenant Governor of Alberta, a former Liberal MLA, I leave that aside. He is really a person who I think can make his own judgments as to how to hold hearings and I am not going to attempt to tell him how.

Mr. Nelson: — A supplementary question. If the Premier is not prepared to talk to the members of the committee then would you

go along with the resolution that was proposed at the Mankota committee that two additional people from rural Saskatchewan and preferably from the area, be added to this committee?

Mr. Blakeney: — Mr. Speaker, if any group wishes to forward that to our Government we would be prepared to discuss it with the Federal Government to see whether in their judgment it was a good idea to add two people from any particular area. As I have said before it is a joint federal-provincial decision as was made clear at the outset. We will certainly consider any proposals that might be put forward.

ANNOUNCEMENT OF ANTI-INFLATION PROGRAM

Mr. R.H. Bailey (Rosetown-Elrose): — Thank you, Mr. Speaker. A question to the Minister of Municipal Affairs (Mr. MacMurchy).

I am sure that Members on both sides of the House realize that SUMA Convention is meeting in Regina and I note on the program that the provincial Cabinet along with the Premier on Wednesday morning and the Minister of Municipal Affairs will be talking tomorrow.

The question is, does the Government plan to make any major announcement at this particular convention regarding its anti-inflation program?

Hon. G. MacMurchy (Minister of Municipal Affairs): — No, not as part of my speech. The Premier may have something to say, but not as part of my speech.

Mr. Bailey: — A supplementary question. Perhaps the Premier would be a part of this one. I am sure that the Government is aware that many of the municipal and local governments are being delayed or are delaying their local budgeting for this time of the year because of the, shall I say, the tardiness of the Government in bringing out its anti-inflation program. At what time or could you give us an approximate date that the Government will be making known, in public, their program of their anti-inflation?

Mr. Blakeney: — Mr. Speaker, I will attempt to say that once again, I have said it so many times now that I wonder whether all Hon. Members listen to what I say, and I fear they don’t.

With respect to the Government’s program on anti-inflation I will undoubtedly be mentioning this in the course of my remarks to SUMA. I will be saying rather little, but there is a bear pit and no doubt it will come up in the questions. I have indicated previously that I hope that within ten days from now, two weeks from when I think I last made that statement in the House, we would hope to be able to make a statement on where we stand.

I repeat, again, so far as I am aware only one province has so far committed itself and the results there have not been happy. They have signed an agreement. The Anti-inflation Board made a ruling; the union didn’t accept it, or the employees did

not accept it; special legislation was necessary. I think there are real problems to what any province should do.

Mr. Bailey: — A final supplementary, Mr. Speaker.

I am sure that the Government will agree, the Government Member will agree, that the municipal government boards are waiting because they have several hundreds of employees whom they have to make negotiations with.

The question then to the Premier would be, would this Government then recognize the need for the municipal government boards to know, at a very early date, as to what the Government Inflation Program will be and particularly in event if government settlements are made at the present time, what would be the reaction of the Government with the various municipal bodies meeting those and thus requiring additional grants in order to meet those settlements?

Mr. Blakeney: — Mr. Speaker, we are giving no undertaking about additional grants to meet settlements. Local autonomy means local autonomy and if settlements are made presumably these will be met out of revenues available to the local authorities. This is not to suggest there will not be increases of grants, but is certainly to suggest that there is no undertaking that we will meet increases in costs.

The other point is well taken. We agree that it is desirable that the program be made known. We have stated that we expect to announce a program which will involve the application of the Federal Government guidelines to Saskatchewan. That, I think, is known. I don't think that anyone should be in any doubt about that. But the question of the mechanism for enforcement, how we will operate it, that is not known and while that is not crucial to making a decision as to whether one follows the guidelines, it is of some interest to the municipalities and accordingly we will try to have an announcement as soon as possible.

THIRD READINGS

Hon. N. Shillington (Minister of Co-operation) moved third reading of Bill No. 16 – **An Act to amend The Residential Tenancies Act, 1973.**

Mr. J.G. Lane (Qu'Appelle): — Mr. Speaker, when the Liberal Opposition agreed to support in principle Bill No. 16 we expected from the Government its total anti-inflation package. We were surprised, of course, that the Government saw fit either not to introduce its anti-inflation package or not have one. We condemn the Government for its approach on anti-inflation. They have had the guidelines and the regulations as well, before Christmas. Question after question by Opposition Members has indicated that the Government is not ready to table its policy and will not be ready to table its policy until after this particular session in all likelihood is finished.

I think one can certainly read into the fact that we have had one month since the regulations were given to all Members of this Assembly, that in fact the Government is withholding its

anti-inflation package until this session is over, or this particular so-called fall session is finished.

It would mean, of course, that the Opposition will not have the opportunity to debate the anti-inflation package or the anti-inflation proposal of the Government opposite.

I should like to make it clear at the outset that the Liberal Opposition supports all sincere efforts of governments federally and provincially, to try and restrain inflation in this country. We make it clear at the same time that we will not support anti-inflation legislation whose main purpose is to get so-called traditional enemies of this Government or any government. We have argued throughout the course of the debate on Bill No. 16, we have asked for the Government to implement a termination period or a review period when this legislation can be brought before the House to determine its affect and, in fact, to determine its need. The Government saw fit to reject our argument in this regard. We believe that any anti-inflation package, including Bill No. 16 should have a review period or an end period or a termination date.

We believe also, and have brought in amendments on this particular legislation that the legislation should apply to the public sector. We have yet seen no reasonable argument from the Government opposite as to reasons why the rent control legislation or Bill 16, should not apply to government accommodation.

I should like to make it clear and set on record the future policy of the Liberal Party and the Liberal Opposition when it comes to any anti-inflation package that may be introduced by the Government opposite. I indicated that we support the efforts of, particularly the Federal Government and in fact all governments, to make a sincere effort to restrain inflation in our economy. We will oppose legislation notwithstanding our support of anti-inflation measures, we will oppose legislation that is in our opinion where a major effect will be to get traditional enemies of this Government or in fact of any government.

We will maintain the opinion in the future of voting against anti-inflation legislation without a termination date or a date for subsequent legislation review and it is our position that one of the main factors in inflation is the extent of participation by the public sector and we will insist for support of any anti-inflation package that where applicable it also applies to the public sector, we believe that the public sector should be under the same restraint as the private sector.

With those few comments I end our party’s comments on Bill No. 16.

Hon. N. Shillington (Minister of Co-operation): — Mr. Speaker, I am going to be very brief in replying to this as indeed was the Member for Qu’Appelle.

I indicated when we were in Committee of the Whole that it was indeed somewhat awkward to deal with one segment of an anti-inflation program separate from the others. I recognize some of the concerns the Hon. Members opposite might have. Suffice it to say that this solution and the machinery which deals with particular segment of the inflationary problem is somewhat more obvious than the rest of the package.

It is true that we have had the regulations since mid-December but it is also, I think, true that only Manitoba has indicated in an official way what they are going to do. The other provinces haven't and it simply is because the problem is so large and so unwieldy that it is just a very difficult problem to sort of deal with, I think this is why the other provinces are still struggling with it the same as we are.

The Premier has indicated that we are close to the starting line on the matter. Well I think one need not be particularly critical of Saskatchewan unless you are going to criticize governments in other provinces of all political stripes, which are dealing with this very complex problem of inflation.

I want to discuss, very briefly, the question of the time limit in the Bill. We have been around the horn on this a nearly endless number of times. I said, initially, when I introduced the Bill in Second Reading that the rent control legislation is a response to two separate problems, two separate developments. It is a response to a critical shortage of apartments. I said that we had the lowest vacancy rate in Canada, in Regina and Saskatoon. Landlords are virtually in a position of setting whatever rent they feel appropriate. That is meant that the honest and those landlords who proceed with some sense of social responsibility accept modest demands. Those who are greedy, who think only of the dollar bill, make unreasonable demands and it is a situation where the greedy are being rewarded and the honest are sort of being penalized in a way. The response to that problem we, in the election, ran on a program of rent review and that we changed that to rent control for a number of reasons, one of which was the announcement on October 14th by the Prime Minister of a total anti-inflation program. And at that time he asked the provinces to bring in rent control, and we did that. The Hon. Member for Qu'Appelle should understand that this Bill is a response to two separate problems. It is a response not only to the Federal Government's anti-inflation program; if that were all that it was then I think a time limit might be more reasonable, but it is not just that. It is also a response to the most critical shortage of apartments in Canada. That comes about, I might say, in part because for the last four years when we have had a very prosperous economy, part of which has been due to part of which the Government is asked to credit for and part of which is mere good fortune.

I said to the Hon. Members in my speech in Second Reading that I will make you a deal. If you can guarantee me that three months down the road there isn't going to be a shortage of housing, put a time limit on it. That is all that I ask. Don't come forward to us with the problems, come forward with the solutions. If you think we ought to have a time limit then just come forward and tell me how in 18 months or two years or three years, we have all those time limits in thee, just tell us how in that period of time we are going to guarantee ourselves that we can be free of the housing shortage. As long as there is a shortage, a critical shortage of apartments, as long as a landlord can increase his rent by 10 per cent or 110 per cent depending not on the market or the economy, but on his conscience, then there is going to be a need for some type of control.

I said in Second Reading that the rent control legislation is a short-term solution. We recognize that; we are anxious to be rid of this particular form of controls. We accept the responsibility together with the other governments involved in the

field of trying to induce more housing. We recognize that that is necessary. In terms of relevance to the other provinces we have a very good record in terms of housing starts and apartment starts. Our problem has been the other provinces may have a good record, but relative to the other provinces it is more severe, because the Saskatchewan economy has been booming and by and large the others have been stagnating.

So for those reasons we cannot consider a time limit, although as I say, I assure the Members that this Government views this legislation as a short-term solution, one that causes problems, it locks in inequities and it makes some inequities worse. Certainly it is going to have to be reviewed and the sooner that we can review the legislation and repeal it, the better, but we can't guarantee a certain time limit because we don't know how soon we are going to be able to solve the shortage of housing that we have.

The Hon. Member in his speech also suggested that the Government was making scapegoats out of the landlords. He suggested that we were somehow attacking our traditional political enemies. I never particularly viewed any small businessmen as my enemy and I don't think this Government has either. I think the Department of Industry and Commerce and this Government, in general, have a fairly good record in assisting and developing small businesses. That has been no small part of the economic boom that has taken place over the last four years. When the former Liberal Government was in power it did all they could to assist such small businesses as the pulp mills and so on and they worked to bring in large businesses with a very high profile. And they made a big splash when they arrived. We haven't sought to give away to the large multinational companies our taxpayers' money or resources, but we have and I think we have been reasonably successful, in assisting and developing small businesses in Saskatchewan. As I said that is no small part of the boom that is currently taking place in Saskatchewan. Our success in that field is no small part of our problem in the field of housing. It is the prosperity in the province, in a large part, responsible for the shortage of housing.

Now with those words, Mr. Speaker, I should ask all Hon. Members to join in giving Bill No. 61 unanimous consent.

Mr. Lane: — The Hon. Minister agreed to a question. You asked the Opposition for solutions and not to come to you simply with the problems. Is the Minister not aware that we in the Liberal Opposition have proposed that the Government take the following steps to ease the lack of apartment accommodation problem by using the Government's leverage with grants to private developers to encourage them to get into apartment building. 2. Doing as the Federal Government has done and giving grants per unit constructed to private developers. 3. Again, as has the Federal Government subsidizing the individual house purchasers' payments to allow the individual access to the home ownership market by grants directly to the individual as opposed to the more negative approach of freezing things as the Government has taken.

We have given proposed solutions to the Government.

Mr. Shillington: — That wasn't a question, but a speech. I don't want to give again the speech given by the Minister of Municipal Affairs on housing.

Suffice it to say that many of the things that we talked about we are doing in one form or another. I think it is so indicative of the Liberal Party that they are so bankrupt of good ideas that they trot forward programs in slightly modified form that the Government already has in place and suggest that this is somehow going to be a magical solution. Some of the things that they have been doing for several years are trotted forward as a brand new solution . . . No brand new ideas from the party.

Motion agreed to and Bill read a third time on the following Recorded Division:

YEAS — 44

Blakeney	Dyck	Malone
Pepper	McNeill	MacDonald
Bowerman	MacAuley	Penner
Smishek	Shillington	Cameron
Romanow	Rolfes	Nelson (Assiniboia-Gravelbourg)
Snyder	Cowley	
Byers	Vickar	Clifford
Kramer	Allen	Anderson
Baker	Koskie	Merchant
Lange	Johnson	McMillan
Robbins	Banda	Larter
MacMurchy	Steuart	Bailey
Larson	Stodalka	Berntson
Whelan	Lane	Ham
Kaeding	Wiebe	Katzman

NAYS — 00

ADJOURNED DEBATES

SECOND READINGS

The Assembly resumed the adjourned debate on the proposed motion by the Hon. Mr. Romanow that Bill No. 2 – **An Act respecting the Potash Corporation of Saskatchewan be now read a second time.**

He said: Mr. Speaker, I have made some extensive remarks on this Bill already both in introduction and in rebuttal the other night. I do believe that any additional comments I would like to make can really be best answered in Committee of the Whole when the Bill is finally read a second time. I think that would be the best place and the best forum for review of some of my views and some of the views of additional Members. So rather than to take up the time of the House, to repeat largely the arguments that have been stated in the past, Mr. Speaker, I now move second reading of Bill No. 2.

Motion agreed to and Bill read a second time on the following Recorded Division:

YEAS — 26

Blakeney	Lange	Shillington
Pepper	Robbins	Rolfes
Bowerman	MacMurchy	Cowley
Smishek	Larson	Vickar
Romanow	Whelan	Allen
Snyder	Kaeding	Koskie
Byers	Dyck	Johnson
Kramer	McNeill	Banda
Baker	MacAuley	

NAYS — 17

Steuart	Penner	McMillan
Stodalka	Cameron	Larter
Lane	Nelson (Assiniboia-Gravelbourg	Bailey
Wiebe	Clifford	Berntson
Malone	Anderson	Ham
MacDonald		Katzman

COMMITTEE OF THE WHOLE

BILL NO. 1 — AN ACT RESPECTING THE DEVELOPMENT OF POTASH RESOURCES IN SASKATCHEWAN

Section 1

Mr. E.C. Malone (Regina Lakeview): — Mr. Chairman, I should like to begin today's proceedings by extending my congratulations to the Minister in charge of the Potash Corporation of Saskatchewan (Mr. Cowley). I understand that today he finally entered the potash debate. Unfortunately it wasn't here though it was at the Regina Public Library. I am not sure what he said there, I hope it was certainly more illuminating than anything he has to say in this House.

I have some general questions still on Item 1, which I should like to direct to the Attorney General and these may be just a little disjointed but they cover a number of things that I am concerned about.

The first question – I am sorry I forgot the gentleman's name who is your adviser, sitting behind you. How long has Mr. Karvonen been with the Potash Corporation of Saskatchewan?

Hon. R. Romanow (Attorney General): — Since December 1, 1975.

Mr. Malone: — And prior to that where was he employed?

Mr. Romanow: — In the Department of Mineral Resources, Saskatchewan.

Mr. Malone: — And how long was he with the Department of Mineral Resources?

Mr. Romanow: — Since 1965.

Mr. Malone: — What were his duties with the Department of Mineral Resources?

Mr. Romanow: — Director of the Potash Management Branch.

Mr. Malone: — In fact this is the man who would have, or under his guidance at least, who would have looked at the financial statements of the potash companies, if the potash companies other than the ones that did produce documents, had produced them. Is that correct?

Mr. Romanow: — Yes, in the sense that he is the Director. I assume other people in the Department as well would operate.

Mr. Malone: — I suggest to you, Mr. Minister, that the fears of the potash companies are well-founded when they indicated to you that they did not want to turn over this documentation to you because it would go directly to the Potash Corporation of Saskatchewan. That was the reason for not giving the material and I suggest that you have just confirmed their fears, indicating that this man, whom I know nothing about and I don't mean to be disrespectful, but this man goes to the Department of Mineral Resources where he would have had access to the financial records, direct to the Potash Corporation of Saskatchewan. Would you not agree that their fears were well-founded?

Mr. Romanow: — No, Mr. Chairman, I would not agree. I think that it is perfectly possible for people to be in a sphere of employment and then find themselves in due course ending up being in private enterprise, or vice versa, and be able to carry the two hats separately and independently and carry on as best they can according to their duties.

Mr. Malone: — Please, Mr. Minister, that is a little ridiculous, don't you think. Here is a man who conceivably could have had the knowledge of the financial statements of the potash companies in this province, he has moved from one Government Department directly to another Government Department that is to compete with the potash companies in the market and you are suggesting to me that he will just ignore the previous knowledge that he obtained, that he is not to remember that and use it in his new office?

Mr. Romanow: — Mr. Chairman, with all due respect, the Member's arguments are really not well-founded. All of the free enterprise and Canadian scene is full of people leaving one corporation to go to another corporation at very high levels and taking with them the secrets of those corporations and carrying out as best they can. Indeed, the Hon. Member will know that there aren't all that many consultants in this field, in particular, many of them consult for competitors and have all sorts of information. The suggestion that somehow this can be used to the disadvantage of competitors I don't think necessarily follows.

Mr. Malone: — I understand, Mr. Minister, that one of the companies that you are using to study potash companies is Kilbourn Associates. Now have they, at this time, made any examinations of any of the potash companies in Saskatchewan? I believe they are at Duval. Are there any others?

Mr. Romanow: — Mr. Chairman, up until a few days ago or so I think the answer would have been to the Hon. Member, no, and the situation is that it is very possible that, indeed, Kilbourn has been in on behalf of the Potash Corporation of Saskatchewan with respect to mine or mines as of today's questioning. I am not at liberty to reveal which mine or mines that may be. So I would have to answer the Hon. Member that, yes, they have been doing some evaluation or some work for us as of today's questioning.

Mr. Malone: — Did you say that you won't reveal which mines? I am sorry I didn't catch your answer.

Mr. Romanow: — Yes, I said that I can't, and I mean by that, won't, in the sense that it is the same.

Mr. Malone: — Well, let me put this to you. As you probably know or you should know, Kilbourn and Associates were instrumental in assisting some of the potash corporations in Saskatchewan in setting up years ago. That is they designed the mines. Now will this company be going to any of these mines that they had a previous connection with, when they assisted these companies when they originally got started in business in Saskatchewan?

Mr. Romanow: — I don't know that for sure and I am really not going to worry about that from the Government's point of view. I believe that Kilbourn really will know, what, if any, conflicts of interest it may or may not have with respect to any particular job that the potash corporation may or may not ask it to do.

Mr. Malone: — Have you been advised by them of any possible conflict of interest?

Mr. Romanow: — We have not been advised.

Mr. Malone: — Have they indicated to you that if they were requested to go to a mine that they had been involved with years ago, have they indicated to you that they would not do so because of the possible conflict?

Mr. Romanow: — This indication, I am advised, has not yet been received. Again, I repeat to the Member, we take the position or I would take the position that is for them to decide. It is like me engaging a lawyer who will decide whether or not there is a conflict with some other client or some other situation that he has been in in the past. That's Kilbourn's professional judgment to make and we have not yet received any indication from them that there is such a problem arising.

Mr. Malone: — I suggest to you that another company similar to Kilbourn was retained to do the work that Kilbourn is now doing, or asked to do the work that Kilbourn is now doing, and refused to do so because of the conflict of interest. Is that not correct?

Mr. Romanow: — I can't ay yes to that to the Hon. Member's question. I think the Hon. Member will appreciate that a number of reasons could be given for refusing to take on the job requested. I don't know if the reason specifically that it would be a conflict, as suggested by the Hon. Member.

Mr. Malone: — Would you tell me when the Government first started looking into the possibility of expropriating or getting into the potash industry? Can you point it down to a month in a particular year?

Mr. Romanow: — That is very difficult for me to do, Mr. Chairman. I was asked this question on Thursday or Wednesday last and I believed that I replied to the effect that this was in a sense an evolutionary decision. It came from the ongoing developments that presented themselves to us. It was certainly after the June 11th election and quite obviously before the November 12th Speech from the Throne announcement of Government intention. I would say that sometime last September, early October, thereabouts, the idea certainly gained momentum and was becoming crystallized.

Mr. Malone: — Are you suggesting that the Government had not given any consideration, whatsoever, prior to that date?

I will come back to that in a minute, Mr. Minister. I suggest to you that you started at least in November of 1972, that you considered taking the actions that you are taking and I refer you to the Government study facts on potash that is under the name of Hon. Ed Whelan, Minister, page – no page numbers, but near the back, it says as follows:

> In his report to the NDP annual convention 1972 Premier Blakeney spoke of a new strategy for resource developments in which the public interest, not private gain must be the basis. He noted that the Government was studying the possibility of public ownership of key industries in the resource sector.

This is the publication, Facts on Potash – the seventh page from the last, under Government Potash Policy.

Mr. Romanow: — What is the question?

Mr. Malone: — I asked you when the Government started giving consideration to taking over the potash industry, your answer was that just only this year, October of September of this year. I think it is very clear from this Government publication that you at least had given consideration to it November of 1972.

Mr. Romanow: — This is to Mr. Penner. Mr. Chairman, I believe the answer that I gave earlier is still the answer which I would subscribe to, notwithstanding the statement which I think speaks for itself, and talks about the resource area.

The Members will know that there have been discussions and debates within our party on some aspects of public involvement in the resource sector, off and on, for some number of years.

I don't think there is any conflict in this statement, from what I have said in response to the specific question about the potash decision.

Mr. Malone: — I draw to your attention, Mr. Minister, that the heading under which this is found is Government Potash Policy, so I suggest to you that it wasn't just September/October of this year; at least in 1972, in some general way, at least, consideration was being given to taking over the potash industry. Now, studies, can you give me particulars as to what those studies were at that time?

Mr. Romanow: — Well, Mr. Chairman, I again say to the Hon. Member that with respect to the decision, as it relates to potash, that decision was taken in the time frame that I gave the Member. Any studies, if I may put that in quotation, and it has to be put in quotations, are no more, and I don't even recall seeing too many, if any, of these around are, if anything, had to do simply with ideas of policy, ideas that never really surfaced to the point of hard Cabinet consideration or hard Cabinet decision.

Mr. Malone: — If I can come back, this is Government studies. Now you can make what you will out of that but clearly to me you were the Government at that time, and you were studying it. Now let me be a little more specific. Mr. Burton is an employee of the Government, Mr. John Burton. Was he involved in these studies?

Mr. Romanow: — I can't answer that with any degree of precision. John Burton has been involved off and on in the formulation and the argument at an official level respecting all aspects of potash policy. I don't know in 1972, November, 1972, whether as one of my colleagues indicated, he was still a Member of Parliament or not. The point that I simply come back to, to the Hon. Member and to the House is that I know the Hon. Members are trying to point out a contradiction. I can assure you that with respect to the discussion of Bill 1 there is no contradiction from what I said earlier and the explanation that I have made here.

Mr. Penner: — I wonder if it might not be fair, Mr. Chairman, in putting this thing in perspective, to suggest that the Government, at least in terms of this document, and the paragraph that has already been pointed out, had obviously considered the matter in 1972, but that in their judgment the potash industry really wasn't ripe for the plucking in 1972, and it wasn't until after there had been a provincial election and we get into 1975, and it's four years to go before there is another election, that the Government put what they were saying into practice.

Mr. Romanow: — The Member can suggest that, but I think that someone might advance an equally opposite argument, that in 1972 there was a 45 to 15 majority, and a first-term Government. If that was at all to be considered, some might argue that would have been the appropriate time to consider it, given world potash prices, the state of the industry, and so forth,

in the light of today's potash prices and the state of the industry; so I don't accept the Member's contention.

Mr. MacDonald: — Mr. Minister, I just want to ask a few brief questions and I don't want to be repetitious, when I was away, but, yesterday, I am sure that all of us had an opportunity to watch four officials of the potash industry on television, and there were a couple of statements that were rather shocking in comparison to what the Government has indicated. The Premier and the Minister for the Saskatchewan Potash have thrown around the figure of $500 million to $1 billion to take over half or all of the potash industry, and yet the potash industry came out, and those three officials indicated a price tag that they would begin negotiations at, in relation to their individual mines, and if my memory serves me correctly, Central Canada Potash was at $250 million, Potash Company of America at $150 million, Allan Potash Company at $200 million.

Now when we start to talk, they also put a price tag on it of between $2 and $3 billion. Now between $2 and $3 billion is an awful lot more money than $500 million or $1 billion, and really, what I am asking is, what is the totality of the risk which is really the issue that is of concern to the people of Saskatchewan? Is it $2 billion or $2½ billion to take over the potash industry, or is it $1 billion? I would like to ask the Minister if he would define for me what he considers fair market value.

Mr. Romanow: — Mr. Chairman, this I think can be more appropriately asked under Section 45, I am prepared to try it here, but I think under Section 45, which does specifically deal with fair market value; in general terms, as I said in my second reading speech, fair market value in the context of the business that we are discussing here, means really, the earnings situation. That is to say, the price that one would pay for a business as a going concern. I noted that television speech that was on a television show yesterday. I was astounded by a number of things that were said there. I don't accept the $2 to $3 billion estimate. I just simply would refer the Hon. Member to the Coopers Lybrand's financial statement that the potash industry itself tabled in early December. While I think the statement cannot be relied upon, the potash industry nevertheless has tabled it for some information purposes, and if you take that statement that they have put out themselves, you will see there that the statement of all assets and liabilities, shareholders equity, to the end of June is listed at $844 million, and if you take off accumulated depreciation and depletion, you will see that reduced to $564 million, and even if you want to add some more back into that $564 million, certain other accounts receivable, and things of that nature, using that statement, you will see that the total net value is somewhere in the neighbourhood of $740 million for the entire industry. So if you use the potash industry's own figures, and we talked about this on Thursday, if you use the figures, which I don't accept nor reject because I think they are too full of questions, but they seem to rely on it. If you do, then you are looking at a value for the entire industry of anywhere between $564 million up to $845 million for the entire industry. Now I can't give you any figure as to what the mine actually is worth because as the Hon. Member knows, being a businessman, this can only be done after negotiations and a deal is finally struck, hopefully if we can avoid in the event of an arbitration.

Mr. MacDonald: — Well, I think what the Minister is relating to when you start talking about assets, capital assets were constructed in 1964, 1965, 1967. He's not talking about a replacement cost. For example, the manager of Kalium, who had the first solution mine in the history of the potash industry, if my memory serves me correctly, and of course the tremendous risk in the solution process, the tremendous amount of research and so forth, is the Minister trying to indicate that he is going to pay, is that what he intends the Government to pay for the industry? Is the cost of the capital assets as they were constructed, or is it his intention, in fair market value, the same as you would in anything else, to pay replacement costs? And most of all, it would appear by the Act that if a willing buyer and a willing seller does not come to an agreement, then it is determined by the courts, even though the Act will provide some kind of guidance, the courts may very well decide that the replacement costs, or the research and the effort and the millions of dollars spent in exploration and development, and all the other particular costs of a potash mine, the replacement costs to go and purchase and construct a mine in some other location in the world, that that mine well could be worth $200 million or $250 million.

Then, if the Government intends to purchase that mine, they are going to have to pay for it. And it may well be that the price tag, as the members of the potash industry indicate, could be between $2 and $3 billion. And, of course, if that is a fact, would the Minister not agree that this is a much more frightening Bill, Bill 1 and Bill 2 are much more frightening, as far as the taxpayers of Saskatchewan are concerned. And just for an example, if we had to pay $2 billion for the potash industry, interest alone would be something in the neighbourhood of $220 million a year, without any debt retirement for the capital investment. That is more than the profit of both, of the profit before taxes, of the entire potash industry now.

I think the Minister is aware also of what is happening to the value of potash and some of the prices that it's been selling at on the world market, and there is just no way that the people of Saskatchewan could ever pay that kind of a bill.

Would the Minister not admit that the courts may well decide that the potash industry, or one individual potash mine is worth $200 million, and if the Government is interested in purchasing it they may well have to pay that kind of a price tag.

Mr. Romanow: — Mr. Chairman, it depends on what particular mine, it depends on so many factors. I have repeated to the House, and I repeat again, that in our judgment Section 34, that's Bill 1, says that the test is an earnings test. It is possible that some other test could be applied. I don't think so.

When the Member talks about the costs in building a mine in 1965, I say that you can liken this to, for example, a car. A 1965 Ford is worth a different price today in 1975, than it was worth in 1965. We are dealing here with a machine, we are dealing here with machinery, and that's basically the test that is applied. And again, I repeat, that if you look at the Coopers Lybrand statement, this is the potash company statements, not our statements. They say $545 million to $845 million.

So again I think we have covered this so many times, on Thursday, but I simply repeat to the Member that I don't accept his propositions.

Mr. MacDonald: — I am just going to make one additional comment. When the Minister starts talking book value, and then talking about fair market value, they are two entirely different things, and the Minister knows it. And the report that the Minister's indicating the book value is of no significance in this particular argument. Now I know that this comes up under Section 45, we're going to have more to say to it at that time. But I suggest that the Minister is really deceiving the public when he starts suggesting $500 million to $1 billion, because it may well be that even though he may try to set the rules and try to steal those mines, that the risk is far greater than the implication that the Government has given to the people of Saskatchewan.

Some Hon. Members: — Hear, hear!

Mr. Chairman: — Section 1 agreed?

Mr. Malone: — I think you can rest assured, Mr. Minister, that we will return to this on Section 45. A couple of things I would like to ask you about though. In your speech, and in the Premier's speech, you indicated that this takeover is going to result in hundreds of jobs being created in Saskatchewan. I suggest to you that just the opposite will likely occur. It is only reasonable to assume that just the opposite will likely occur. Because if you take over two, three, four potash mines, whatever you decide to take over in due course, you are not going to keep these businesses operating in the same manner as they are now. You are going to have one company looking after that operation. You are going to have one president, you are going to have one marketing department, one financial department, one sales staff, and what the long-term result, the short-term results will be, surely, is that you will be laying off people, because you won't need them; you won't need four or five or three separate operations, because you will have just one operation going. Do you not agree?

Mr. Romanow: — No, I do not, Mr. Chairman. In fact I think the statements made, I would still stick by, depending up what mines are eventually purchased. We hope to add jobs by expansion. This is one of the major fundamentals of the policy, job expansion and the construction, and of course expanded jobs by virtue of the increased incremental tonnage in the capacity that is going to be produced there.

Furthermore, if all works out well, as I am optimistic that it will, we will have in effect a return to Saskatchewan of very many high-priced, skilled, highly-trained administrative business, economic and engineering people to the province of Saskatchewan, so I don't agree with the Member.

Mr. Malone: — Could you please explain to me how we can possibly get more people involved when you are going to have one company looking after the operations of three or four or five companies?

Mr. Romanow: — Well, Mr. Chairman, it is not much different from the situation now. We need at every mine the miners, those that work underground and the related functions. We will need at every mine an organization; a mine engineer and mining engineering people and technical people. We will still need sales. This might be perhaps streamlined somewhat, depending on Canpotex and things of that nature, but basically, as everybody will agree, this is simply a transference of the ownership, if I can put it in that sense, and there certainly will not be any lay-offs. Indeed, if what I say takes place, there should be expansion.

Mr. Malone: — I just don't see how you can possibly say that. I don't want to keep belabouring the point, but surely, if you are going into this as a hard-headed business decision, which are your words, not mine, the logical thing to do is to consolidate all these people into one company. As you point out, you don't need four sales staff, you need one. You don't need four controllers, you need one. You don't need four presidents, you need one. Now, you talk about expansion, but assume for the moment that you don't expand. I don't think you can expect to expand right away. Say you don't expand, how are you going to create more jobs without expansion?

Mr. Romanow: — Mr. Chairman, I say to the Hon. Member when he talks about presidents, I don't know if there is one president now that is resident in Saskatchewan. When he talks about sales staff and a reduction, I don't know of one salesman that is resident in Saskatchewan now, as a result of the present potash operation. Indeed, there might be a shrinkage of the sales staff, but if there is a shrinkage of the sales staff, it will be resident, hopefully, in Saskatchewan. As an example . . . I've given my answer to the Member.

Mr. MacDonald: — Could the Minister give me his timetable for expansion. Certainly one of the major reasons for this great threat to take over the potash industry was the need for expansion. The officials in the potash industry indicated that the present productive capacity is only at 62 per cent. That right now in the potash industry the stockpile of potash is greater than it has ever been in the history of Saskatchewan, and all of a sudden now you turn around and say that the reason you are going to hold this great cudgel over their head, the reason you are going to expropriate and seize the potash industry in Saskatchewan is their refusal to expand, and yet at the present time we are only producing at 62 per cent of capacity. We've got the greatest stockpile in history. Just exactly what is your timetable for expansion, or was this nothing more than a smoke screen? I think the people of Saskatchewan can well remember 1966, 1967, 1968, when all of a sudden there were five, six, seven, eight new mines came on stream. All of a sudden it had disastrous results on the potash industry in Saskatchewan. It flooded the world market, it caused dumping, it caused potash to be sold at prices below the world and production level or production costs, and all of a sudden you turn around now with surplus, or a huge stockpile of potash, only 62 per cent of the productive capacity, and now you turn around and tell me that the reason you are taking them over is you want to expand. That doesn't sound like good business sense.

It does not even sound logical. Could the Minister indicate if this was the great reason for the takeover of the potash industry? Have you got a timetable for expansion, and what is that timetable?

Mr. Romanow: — Mr. Chairman, as I said on Thursday, the timetable for expansion is very much related to, and tied to, the question of what mines are acquired, because for some mines a different type of expansion is needed than in other mines. In some mines it is perhaps easier to carry out the expansion than in other mines. And it is not possible to say what kind of a timetable there is until one actually acquires a mine, and once that happens, then I'll be able to tell the Hon. Member what we think in terms of months, the expansion and the incremental tonnage is likely to result from that expansion.

Mr. MacDonald: — Might I suggest to the Minister that that kind of answer is nonsense. Expansion is not related to what mines you take over, expansion is related to the potential markets in the world for the sale of potash and nothing more and nothing else or if it isn't then I would suggest that the Government is getting into a business deal that they don't know whether they're going up or down and I'm sure that the Minister would agree with me. It does not relate at all to one individual mine. Certainly it may indicate at some future time that some mines might be easier to expand and easier to enlarge than at the present time but surely to heavens the Minister isn't going to try and tell me that the expansion program and the time schedule of the Government of Saskatchewan is related to what mines they take over and not to what the market of the international community is and the demands for potash at the world level.

Mr. Malone: — What are your intentions with the potash mines right now or after this Bill is passed. It's obvious all of the miens have a high inventory and are producing at less than capacity, I don't think you dispute that. The indication is that this will be the case for a year or so, but there will be a long run recovery in 1977-1978, somewhere in there. But what do you do immediately when you say, have two or three or four mines operating at 50 per cent to 60 per cent capacity. Now is it your intention to keep operating those mines in the same manner, that is, at that capacity?

Mr. Romanow: — Mr. Chairman, a lot will depend, of course, on the market conditions and all of the other various factors that are at play at that actual time. From all that we can see this particular downturn is a temporary one. I think this was one of the points that I did agree with the potash spokesmen on television the other day. It was a little bit confusing to know exactly what their position was on expansion. Quite frankly, at one point I was astounded to hear Mr. Peter Jack, who was one of the men on TV saying that the statement of the Saskatchewan Mining Association was that we needed 12 million more tons, 12 million more tons by 1980. Expansion to capacity was wrong, especially when the president of the SMA was sitting right beside him. And I find that particularly more confusing when I look at a portion of the July 17th submission that the potash industry made to the Government in response to proposals we submitted to them and they said this, "No one knows better than the Saskatchewan Government that there is an urgent need for

major expansion. One year has already been lost, that if there are delays beyond what is now apparent it can be expected that expansions in new mines will be announced elsewhere in the world, for example, Russia is already a threat. Accordingly, industry should be encouraged into an expansion plan at the earliest date and the Saskatchewan tax policy should be consistent with such an objective." So my point is that when the Members predicate their questioning on what we will do, they should predicate that on what I say have been the agreed ground rules prior to the TV show yesterday anyway, and that is that the expansion is very much needed.

Mr. Malone: — Well, you are very good at slipping away from the question. I wasn't talking about that. I was talking about the situation right now. Now, you keep saying that this is a hard-headed business decision. Well surely the proper decision, bearing that in mind, if you have a mine going at less than capacity, is to close down a couple of mines and operate the other two at full capacity. That's the logical decision to make and I'm saying to you, if that situation arises, surely that's what you'll do, isn't it?

Mr. Romanow: — Mr. Chairman the Hon. Member can't expect any person to say with him, yes, that's the logical thing to do, because there are just too many factors involved in this situation. I don't know of any mine that's closed down now in these present circumstances, under the present situation as the Hon. Member describes. Why then should the Government or the Potash Corporation of Saskatchewan adopt a different position if it were the owner? In any event that's a speculative and a hypothetical question. We'd have to take a look at all of the options available to us and about the last thing that we would try and do is have any portion of a mine shut down.

Mr. Malone: — I'll tell you the difference, Mr. Attorney General. It is very apparent that when the Government gets involved, they'll own all the mines or three or four or five of the mines. The way the situation is now they are all individual owned. That's the difference. It's quite obvious it is the difference. Now, what negotiations have you had to date, if any, with the customers of the potash mines at this time which are normally would be, in the United States.

Mr. Romanow: — Mr. Chairman, again I am advised that there have been no negotiations, but I am also advised that there have been preliminary discussions or at least a discussion of the policy as it's been taken here by the Government with several of the potential customers.

Mr. Malone: — Have you received any guarantee or anything that would lead you to believe that those customers would remain and that you'll be able to sell directly to them as the potash companies are doing?

Mr. Romanow: — Mr. Chairman, our information to date is that the markets will remain as I indicated, this is also the indication of our studies about marketing and we've gone around the hoop

on British Sulphur already on Wednesday, last, and accordingly all of the information we have to date before us, subject to ongoing negotiations, is that the markets will remain. We have every intention, whether we're in two or three mines or one mine or whatever the figure is to continue to supply potash to all of the ongoing customers at fair prices as is the case basically now.

Mr. Malone: — Your indications are that markets will remain. I mean I accept that, but will they remain with you? What information do you have that leads you to that conclusion?

Mr. Romanow: — Well, as a result of these preliminary discussions that I have indicated and as a result of certain other advice from consultants and the like, we have every reason to believe that they will remain to the Potash Corporation of Saskatchewan. No one has indicated to the contrary.

Mr. Malone: — Is it your intention then to honour the existing contracts between the companies in Saskatchewan and their customers?

Mr. Romanow: — This again is a question which is hypothetical and I would say a little premature. I can answer in very general terms, but if we do negotiate a purchase of a mine or a company which has outstanding contracts, though they aren't the consideration of that negotiation, undoubtedly the market sales contracts which are in place, I'm quite sure we would have to honour the obligations and commitments that have been made by the company that we have taken over, much like in any other normal transaction.

Mr. Malone: — Well you're saying that you will honour these contracts. Well, answer me this then, what happens if the company you take over has another source of potash other than in Saskatchewan and they want to honour those contracts, what do you do then?

Mr. Romanow: — Well again one would have to take a look at the nature of the corporate commitments that are made and by what corporation and to whom and we are not able to tell because, the Hon. Member will agree, the very intricate, inter-corporate relations which existed in this area. So that is hypothetical. It will depend on what corporation is agreed contractively to what other corporation or individuals and we have to look at that and see what happens. If what you say happens and they can do it legally, I suppose they can do it legally, but certainly we will have to play it by ear. I don't think that's going to happen.

Mr. Malone: — I don't think that's something you can play by ear. I think that this is a very significant point. As Mr. Jack made very clear on the program yesterday, PCA has two sources of supply for potash, one here and one in the United States. Now they are contracted, obliged by contract to supply potash to certain people. Now, say they insist on supplying that potash from their other source, where does that leave you?

Mr. Romanow: — Well, again, Mr. Chairman, I don't know what . . . it's difficult to answer the hypothetical aspect of it. New Mexico operation, Members will know, is generally a lower grade ore, New Mexico is an ore which is running out and whether or not the Potash Company of America can meet the obligations to its customers through that New Mexico ore is something that we can't tell at this stage of the game. I doubt if that's the case. I doubt if they can do it. I think they have to be supplying all their customers out of the operations that are currently before them. In any event we have to examine, as I say, the very delicate and intricate inter-corporate network that exists on sales before I can be definite on it. I repeat my general position, we'd like to sell as much as we can to the existing people That's our intention, our stated policy.

Mr. MacDonald: — One further question on this. You indicated that you have had some preliminary discussions which indicate that the customers, some customers will remain. Could you tell us exactly who those discussions were held with, were they held specifically with customers in the United States and were they held among your own officials, were they held with the actual customer himself? Would you please indicate who they are and what kind of assurances that those markets will remain?

Mr. Romanow: — Mr. Chairman, I cannot tell the Hon. Member the names of the customers whom discussions have been held with. To the best of my knowledge these discussions have been held at an official level, that is to say, non-ministerial, non-cabinet level. Basically I think the one good reason for not doing so at this particular time is that not all the customers have been yet contacted and I think that it would be premature and might be prejudicial in terms of their response or attitudes for me to reveal that we've talked to three out of six or three out of seven or what it happens to be and have missed some other people.

Mr. Penner: — Mr. Chairman, just in clarification, in getting back to the expansion questions that were asked a little while ago, did I understand the Attorney General to say that at this point in time there is no time line about further expansion?

Mr. Romanow: — I can give the time line in the sense of general objectives the Premier has talked about, six months, eighteen months for the completion of Bill 1 and so forth, and then after you can build in your own time limit. But in order to be of hard line information, if I could put it in that sense to the House, no one can give any hard line estimates until we know what the mine, what mine is really actually acquired because in some mines it might be a relatively simple thing to expand, might take only six months, in some other mines it might be a very complex expansion. I note, for example, that Central Canada Potash at one time said that there's going to be quite a hefty expansion required, they need the instrumental tonnage, they put a proposal to us, I forget what it was, that's one that's going to take a little bit of time. We may not acquire Central Canada Potash and accordingly the estimate must be tailored.

Mr. Penner: — It seems to me what I hear the Attorney General saying

is that keeping in mind the point made by the Member for Indian Head-Wolseley that expansion should be based on what the market is going to be able to bear in the future, that your marketing analysis is not particularly complete and that you're unable to give the House or the people of Saskatchewan any more guarantee of expansion than the industry itself has, and yet, at the same time you've been saying that that's one of the basic reasons why you want to grab the industry.

Mr. Romanow: — Mr. Chairman, I am again sort of surprised that this line has been taken because, as I have indicated to the Hon. Member earlier, prior to the television show of yesterday, which frankly was astounding in this regard, all of the potash producers in any written brief, in any advertising, the Saskatchewan Mining Association say 12 million tons are needed right now and in fact I think one of the people on the television panel yesterday said he thought that the instrumental tonnage would expand 5 per cent a year until 1980, that's quite a significant expansion, and all that I'm saying is that that is certainly, I thought, that if any of the ground rules was settled, that one was. I've already read a statement in this area and accordingly in order to achieve the policy of expansion we would take the most immediate steps we could, depending on the mines acquired, to achieve that objective. So, indeed there would be expansion.

Mr. Penner: — Well, I didn't hear the program on television and I frankly don't care about it. All I'm suggesting is that you have said that one of the reasons you were taking over is because expansion is so important and at the same time you have no time line for expansion.

Mr. Romanow: — The Member can say that and I simply say to him that that is not a credible argument because as I said to the Members, this is being recorded, when an acquisition is obtained quite obviously one of the questions that members of the public will want an answer for is, among prices and things, do you have any expansion plans and what is your time frame for that expansion plan? Now that, I think, is a reasonable stance to take, one that we could reasonably respond to, but for the Member to say what's your expansion time frame, it's a meaningless question.

Mr. W.C. Thatcher (Thunder Creek): — Mr. Chairman, did the Attorney General, if I understood him correctly some time ago, indicate that before this Bill was introduced or before this legislation was considered, a market analysis of the entire potash picture around the world was done? Am I correct in that assumption?

Mr. Romanow: — Mr. Chairman, I have answered that I believe, generally in the affirmative on Wednesday or Thursday last.

Mr. Thatcher: — In that case, if a market analysis has been done of the entire picture around the world, I really can't understand why this cannot be tabled in the legislature so that we can evaluate this. I fail to see that – how something that would be as broad and as general as this could be prejudicial to your proposed corporation. Would you comment on that?

Mr. Romanow: — Mr. Chairman, the Hon. Member was not in the legislature when I was examined at length on this on Wednesday and Thursday and my answer in a nutshell then was, which I shall repeat for him, that for us to table the marketing studies would be, in effect, to show to the world, our foreign competitors in the world primarily, even to the prejudice, not only of the government, but to the prejudice of the existing private companies that are in the field, some of whom may very well be in the field long after Bill 1 and 2 are consummated and actions of the government are completed, prejudice them as to the marketing trends because in effect our competitors would know how it looks from the Saskatchewan point of view, how some mines would react, how the Government of Saskatchewan would react and I just don't simply think that, whether you agree with Bill 1 or Bill 2, that it would be a very responsible thing for us to do to lay it on the table at this particular time.

Mr. Thatcher: — Mr. Attorney General, with all due respect, that's a crock of garbage and I think no one knows it better than you do. A specific analysis, yes, your logic very definitely holds but when you do a general analysis on the production needs and the production requirements on the potential sales on a worldwide point of view, to suggest that it is not in the public interest is nonsense and you know full well that it is nonsense and I'll ask you once again, if this thing is as general as you have indicated that it is, surely to goodness we are not prejudicing anybody's position by supposedly asking as a reputable opposition to at least allow us to have a look at it and have it verified. Now is that such an unreasonable request if it is as general as you have suggested?

Mr. Romanow: — Mr. Chairman, that is the Member's description of the report in general. I said in the questioning on Wednesday and Thursday again, which I repeat to the Hon. Member, that this report is indeed laced with specific details. Details of individual mines and companies in Saskatchewan, individual marketing areas so it is not a general description in general terms, like, you know, we see portrayed in the part three or four story of the Saskatchewan Mining Association ads. It is a very detailed projection of markets and futures of markets for the next little while so I repeat the answer that I have given to the Member previously.

Mr. Thatcher: — If I may ask the Attorney General exactly, was this report done internally by the civil service or was it done externally by the marketing agency?

Mr. Romanow: — It was done externally.

Mr. Thatcher: — Would you care to identify them?

Mr. Romanow: — Again I don't mind being asked and answering these questions again for the committee. I mentioned it on Thursday or Wednesday last, I forget which, the British Sulphur Corporation was the lead consultant in this area for it.

Mr. Thatcher: — The Attorney General has mentioned and I believe the Premier in several of his comments outside the House is that one of the reasons for this has been the refusal of the potash industry to expand. It has been pointed out this afternoon that presently the productive capacity or the mines are operating probably at not even 70 per cent of what they are capable of. Would the Attorney General care to give us some indication of the reasoning behind the Government that expansion is so necessary when we are not obtaining anywhere near full capacity at this point?

Mr. Romanow: — Mr. Chairman, as I say again, I think this is one of the major points that has arisen this afternoon and I have already used my colourful adjectives to describe the astounding and amazing comments, among other things, in part 2 of the potash story. Now this is published by the Saskatchewan Mining Association and it appeared in the Leader-Post Tuesday, December 9, 1975. And if the Member looks at that he will see the following statement made:

> The lower chart shows estimated increase in world consumption by 1980 and demand by international markets will reach 51 million short tons, about 31 per cent more than estimated consumption in 1975.

And I repeat again the position of the industry itself in a documented brief to the Government was as I have read that we have got to get on the job of expanding because we're almost a year behind already. They said that to us on July 17, 1974 saying that the taxation didn't allow them to expand and so forth. We've been around that hoop a number of times. So if you don't accept my word for it, I would just simply ask that the Member accept the words which are here, I think put out by the organization, by the industry itself and which I think up to now has certainly not been the subject of dispute.

The first time I think that this has really risen was yesterday's television show and I quite frankly was very surprised and somewhat disappointed that the industry took that tack. Whatever motivated them to do it, I don't know, but those are the facts that I think are before us and I think we have to work on that assumption.

Mr. S.J. Cameron (Regina South): — I want to just ask you a series of simple questions to back off all the detail we've been getting into and to try and get back to one or two simple questions and hopefully get one or two simple answers.

On this matter of expansion what's been troubling me there throughout is this. Could you seriously expect to get expansion of the mines when you did this in October 1974? According, again, to your facts on potash which you published it says:

> 1. We're going to have a new policy on potash. We're going to have a reserves tax which is designed to increase tax levels five fold.
>
> 2. We, the Government, are going to get into the potash business directly.

3. Government participation in new adventures and in existing mines as far as expansion goes.

I understood that to mean the Government would want 50 per cent of expansion of existing mines. Now, can I ask you seriously, how do you seriously expect to get an expansion in a mine when the Government says we're going to increase the tax five fold. We're going into the business and we want half the expansion?

Mr. Romanow: — Now, Mr. Chairman, I think this is a variation of the questions that were asked before. We take the position that the reserves tax was not so onerous as to prohibit expansion. Well, that's the industry's position and these to them come the financial statements and the like and there's obvious irreconcilable differences now in this area. Furthermore when the proposal of the policy on October 29, 1974 was enunciated we said to them, look, can we join ventures with you or share it in this area and I would have thought that if indeed the reserves tax was such an onerous matter and the companies were genuinely interested in expansion, this would have been a source of capital and funding, sharing of liability and responsibility in order to achieve the expansion. To me those were two very fundamental and reasonable proposals that were advanced.

Mr. Cameron: — Again, I don't want to get into lengthy debate here with you but again don't overlook the facts. The fact of the matter is that your policy on October 1974 did end expansion plans. Some $100 million was up by the industry, put up by the industry to expand existing mines. The fact of the matter is that your policy announced on October 1974 killed the expansion. Now I don't know how you can reasonably say the industry should have been expanding having had that kind of announcement. We increase your tax five fold, secondly we're in the business and thirdly, we want half your expansion. It's just the most illogical thing I've ever heard of. But let me ask you another simple question. That being the case, that is to say you want expansion. The industry a year ago, more than a year and a half ago almost now said no, we're not going to expand with your policy, why don't you go out and buy a mine, a year ago, why didn't you simply go out and buy one of the mines?

Mr. Romanow: — Well because quite obviously the major problems of the industry would still be there. The major problems about the payment of the reserves tax, the major problems of the expansion as an industry-wide basis, of the lawsuits, all of that, that would not help the Government of Saskatchewan very much.

Mr. Cameron: — Well, let me take you one by one. The lawsuits would not necessarily exist. I told you the other day how you could have solved the problem with the reserves tax when it was challenged by having it referred directly to the Court of Appeal to have that question decided once and for all which would be a quick decision. That's point number one.

Point number two is, you say the problem would still be there with the industry. Let me say, Mr. Chairman, then that it would not be there. I suggest to you because you could have

expanded the mine you bought. If the industry wasn't expanding I ask you again the simple question, why doesn't the Government go out and buy a mine and expand it?

Mr. Romanow: — Well, again, Mr. Chairman, I've given the answer to one of the questions, one of the aspects of the answer that I didn't state of course is the area which related to costs and willingness to sell, all of which are factors which have to be taken into consideration. And again I think we've been around this over and over again. It's true the expansion was stopped, some of it in any event on October 1974. There's no doubt about that. The Member said it's because of the tax and we have taken this position over and over again, we say to the industry, show us.

Mr. Cameron: — Don't misunderstand me, I'm not saying it's because of the tax, I said the fact of the matter is you made a policy announcement October 1974 that the fact of life is that that killed expansion. Now whether you're right in your policy or wrong in your policy for this purpose is immaterial. It did kill the expansion. All right, that being the case, my question was why didn't you go out and buy a mine? The second question was going to be why didn't you go out and build your own mine to get the expansion you required? Now don't tell me the lawsuits are a problem because the lawsuits don't have to be a problem. You could have referred the reserves tax to the Court of Appeal and get a quick decision out of it on the lawsuits.

Mr. Romanow: — Mr. Chairman, the Member will not accept the answers and that's his prerogative not to accept the answers. To a large extent for both part A and part B of the questioning the answers are the same. Whether you buy one mine or whether you go out and build your own mine, you are still basically faced with these facts:

1. Revenues to the province are not guaranteed.

The Member will answer, oh you could have gone for a constitutional reference and I have already given my reply about the length of time that that takes and so forth, we disagree. But nevertheless, revenues would not have been guaranteed on the one mine situation.

2. The expansion for the industry, the type of expansion that is needed in order to meet the SMA advertising over the five-year haul could not have been completed in one area and,

3. The obvious position of the industry to refuse co-operation with the Government and the stated government policies throughout the piece. One mine would not really have made a significant dent in that area. And over and above everything else that I say would you look at the construction of a new mine, you're looking at a four or five, maybe even longer period to get it on the street and quite obviously there are some advantages in getting the incremental tonnage rather than the new tonnage.

Mr. Thatcher: — Mr. Attorney General, if I may refer to the television program of yesterday I happen to agree with you. I was a little shocked and amazed at it too. I was shocked and amazed that these people could so misjudge their audience so badly and I think I was shocked and amazed that they did as bad a job as they did. In fact they were so bad I noticed that the Minister in charge of the corporation even screwed up his courage enough to go and tackle one in debate.

But anyway, Mr. Attorney General, getting back to that televised debate, you mentioned a few moments ago the willingness to sell. If I am not mistaken the question was put to those four managers, would he sell, and if I ma not mistaken all four of them said, yes, they would. Now the question was just asked you, why don't you buy a mind and go out and expand – I believe there were four, at least three out of the four that said, yes, they would sell – why don't you simply go out and buy that mine and expand it? They said they were willing to sell.

Mr. Romanow: — Well, of course, of one of the hopes for us is that on passage of Bills 1 and 2 that we will never have to use the vesting order provisions of Bill 1 and that indeed a purchase-sell agreement can be arranged with an appropriate mine owner.

Mr. Thatcher: — Mr. Attorney General, the Member for Regina South indicated and I guess you agreed with him in a sort of left-handed manner, that the reserve tax may have been a factor in lack of expansion, at least that is the industry's position. Yesterday it was brought out that the Sylvite mine had a fire or was flooded, I've forgotten which, and they were shut down for about three months and yet the reserve tax went right on. One of the points that you have made throughout this debate when you have been on your feet has been the fairness of this Bill. Would you consider this fair if the situation as was described yesterday is authentic?

Mr. Romanow: — I think on the circumstances that are described, that some consideration could and should be given to changes or adjustments in the potash reserves tax formula. I think that indeed there has been an adjustment, I would say to the Member for Thunder Creek, in this regard already. I am not sure of the details but if the shutdown – I think indeed the regulations have been amended to provide for that type of a circumstance.

Mr. R.H. Bailey (Rosetown-Elrose): — Mr. Chairman, there are a couple of questions I should like to ask the Attorney General. I am wondering if the Attorney General would not admit that there is a possibility particularly with the sale of potash going beyond this continent that in the way of trade the Government may be getting themselves involved in further complications with the exchange of goods and therefore involving the Federal Government and business agencies and the like? Is that a possibility, Mr. Attorney General?

Mr. Romanow: — I say this only in a theoretical sense that it is possible. Again, the Member will appreciate that it is not open to me to say at this stage of the game that that would be

the policy for it quite obviously depends on the commodities, prices, demands, the transportation and so forth. I think as a general sort of approach, I would see nothing wrong with it, but to commit myself, I cannot do so.

Mr. Bailey: — Mr. Chairman, a couple of more questions here, you have from time to time, Mr. Attorney General, mentioned going out and having two or three mines. I wonder if it is not possible, Mr. Attorney General, that you have mentioned the fact that you may not even use the Bills 1 and 2 and obviously you are in the process at the present time of seeking to purchase two or three of these mines as you say, I wonder if it would not be advisable then if on that particular score to drop Bills 1 and 2 at this time and see what happens over the next five or six weeks where I understand this House is going to be in recess, and come back and discuss them at that time. It is quite possible that you will have made your agreement or made your purchase and we may not then or this House may not be required to go through the long detailed discussion in Committee of the Whole on say Bill 2 coming up as well.

Mr. Romanow: — Mr. Chairman, I can't accept the Member's suggestion. Whether one agrees with Bills 1 and 2 or not there is, of course, the question of eliminating uncertainty as quickly as possible in the industry and to the people in the province of Saskatchewan. The Government's policy has been stated and I have said this before on many occasions and I think we just have to proceed.

Mr. Bailey: — But surely, Mr. Attorney General, that in the negotiations and I have reason to believe that there are negotiations going on at the present time, surely in doing so that at least in the early acquisition of some of these mines that the Government shouldn't really need such sections as Section 60 of this Act in order to proceed, at least not in the initial stages of the venture into the potash business.

Mr. Romanow: — Section 60 is a somewhat unusual provision, I have admitted that in my second reading speech. I am hopeful that we will never have to use Section 60 and it may very well be true that what the Member suggests will come to pass. But in the eventuality after all perhaps the non-production of financial statements and the like to date by the potash producers, I think the Member would agree with me that some provisions of this guarantee of the security of the interest of the people has to be written into the Bill.

Mr. Bailey: — A final question, Mr. Chairman, if the Government then, and conceivably and this is not hypothetical I think the Attorney General will agree with this, that you are in the business and you have in fact two or three mines and they are operating under the Saskatchewan Potash Corporation, it puts the Government not only in the same business as the other private companies that are left operating but it, in fact, makes them the umpire. Would the Attorney General not agree that in a field if the Government has three mines that they are operating, would they not be in the position of being the real umpire in this ball

game, in this business ball game in that we can have times of ups and downs in the industry and we reach a period where the industry is down that the Government would then have to enact further legislation to control the production of the potash or to eventually control the markets of the potash as exported out of the province?

Mr. Romanow: — Mr. Chairman, government always is an umpire but the situation is not changed from say the Saskatchewan Government Insurance Office operation where in a sense you have SGIO operating in competition with the private companies in very many areas, the general insurance business. The same thing in Federal Government in respect to Eldorado Nuclear and Denison Mines and with respect to Air Canada and CP and in respect to all of the private and public combinations which exist. A government's duty as umpire is always there, a government's duty is to try and act as fairly as it can for everybody including the private and the Crown corporations.

Mr. Thatcher: — Mr. Attorney General, you have just mentioned a couple of . . .

Mr. Chairman: — Order, order please. I mentioned last week that when the Hon. Member rises I think they know that they should address their remarks to the Chair and not to the person who is giving the answers and this is vice versa for the Hon. Member for the Opposition replies, they make their remarks to the Chair. I would appreciate it if the regulations were carried out.

Mr. Thatcher: — My apologies, Mr. Chairman. Mr. Chairman, the Attorney General just mentioned the potash companies have not submitted financial statements to them. I believe Central Canada Potash has submitted one to the Government. Am I correct on this, Mr. Attorney General?

Mr. Romanow: — Yes.

Mr. Thatcher: — In that financial statement there appears to be a conflict. The Premier has made the statement, in New York was one place, I don't know where else, it has slipped my mind, that Central Canada Potash before they computed their tax paid a 12 per cent royalty to its parent company, Noranda, of 49 per cent. The president of Central Canada, Mr. Gordon, has denied this. Since we are now in committee perhaps this would be interesting, do you still stand by the position of the Premier in this matter?

Mr. Romanow: — Mr. Chairman, I do indeed stand by the statements made by the Premier. If this has not been the case then it is a relatively recent development, relatively recent in the sense of a month or two months or perhaps three months, but the import of the Premier's remarks in this regard I do indeed subscribe to.

Mr. Thatcher: — Mr. Attorney General, allow me to clarify that. This has been denied very vigorously by the president of Central

Canada Potash. In essence, you are saying that he is not telling the truth.

Mr. Romanow: — Well, Mr. Chairman, I don't agree with that, I have to look at the absolute careful comments made by Mr. Schmidt. He said that this does not take place. I haven't taken time to look at the detail of his press statement. I have, in effect, to find out when this stopped taking place, and so forth. But, I think that it is generally conceded, at least it would be my contention that if this did cease, it is of so recent a nature, that it doesn't take away from the import of the Premier's comments.

Mr. Thatcher: — Mr. Chairman, I would like to ask the Attorney General if we were to assume, and I'll grant you, this is a hypothetical situation, but if we were to assume that the financial statement of Central Canada Potash was somewhere towards the average of the industry, would the Attorney General concede or not concede that what the industry has been saying for the past three months is basically true, that the reason they have not expanded is because of the tax? Now you have their financial statement and you have certainly formed some opinion on it at this time.

Mr. Romanow: — Mr. Chairman, I can't accept that statement for a number of reasons. I have already said repeatedly on Wednesday and Thursday last, that I don't think it is possible to say that there is an average mine, and that accordingly Central Canada Potash statement would reflect an average mine.

Mr. Thatcher: — Mr. Chairman, then let's get just a little bit more specific. Your people have had Central Canada's financial statement. Would you concede or not concede, and this is not a statement, would you concede that what they have been saying about their own situation is representative and true?

Mr. Romanow: — Based on a variety of statements, I am not now referring to necessarily financial statements, because I think there is an obligation of confidentiality on those statements, based on the understandings that I have on the agreements, as between Central Canada Potash as parent, I'm sorry, as the overall company, and the two parents, Noranda and C.F., based on other public statements, I don't agree with the statement taken by Central Canada Potash.

Mr. Chairman: — Agreed?

Some Hon. Members: — Agreed.

Mr. Chairman: — Section 2, Interpretation.

Mr. Thatcher: — Mr. Attorney General, have you or your departmental people, have you actually gone through that financial statement of Central Canada Potash, have you examined it personally or have either of the two gentlemen with you examined it personally?

Mr. Romanow: — Mr. Chairman, I have not examined the statement personally. The statements that were filed, I presume were

examined by Department of Mineral Resources officials, as I have told the House before on Wednesday and Thursday last, in response to similar type of questions. There is a regulation passed in this particular matter which obliges confidentiality with respect to those financial statements, unless the Minister of Mineral Resources so specifies in writing releases that confidentiality. Quite obviously, the industry says that these statements have to be treated as confidential, and this is what the opposition has been arguing. For me now to get up and say, well here's what the statements show, I think would violate that spirit of that. I say that on the basis of the material that is available to us, the court cases, the documentation of contracts to court cases and so forth, review of the files and statements, that I don't subscribe to statements made by Mr. Schmidt.

Mr. Thatcher: — Mr. Chairman, Mr. Attorney General, I am sure that you are finding this as frustrating as I am, because frankly you are talking unadulterated nonsense. You and your people on that side of the House have made sweeping generalizations about the potash industry. You have had this financial statement at least prior to the Premier's trip to New York. I asked you before if either you or either of the two gentlemen with you have examined that financial statement personally. You have said that you haven't, I don't know about the two gentlemen with you. You refuse to answer anything on the basis of that financial statement. If you haven't examined it in your hands, we are getting up to about six weeks plus and you still make your sweeping generalizations. You will not comment whether you agree with what that financial statement says. Goodness sakes what are we supposed to think on this side?

Mr. Romanow: — Mr. Chairman, I have given my answer in this area, I don't know what more I can say to the Member if he is obviously not satisfied with the answer, that is his prerogative. I simply tell the Member that the documentation checks with the court transcript of Central Canada Potash case and the questions that were asked there, the Premier's statements with respect to a certain mine I think are valid. I have indicated that there might be a disclaimer from the validity of that statement only if there has been a recent change in the last months as I have indicated subject to this operation.

Mr. Thatcher: — Mr. Chairman, court documentation can go straight to blazes, we are talking about a financial statement. You have a battery of accountants over there, have they examined it and has what Central Canada Potash have been saying been correct? Is it justified in your opinion, according to your examination of your statement? Goodness sakes they have submitted a statement to you and I am beginning to wonder if you people have even examined it. You obviously know nothing, you haven't conferred with the two people with you, whether they have examined it. If they have, go into a huddle and talk about it, we'll certainly give you time. That thing is based on facts and figures, you don't need any court records on that, you have accountants. Have they examined it and have what Central Canada's press statements been – you are as familiar with them as I am – are they valid based on that financial statement? If they are not, then tell us where they are not. You don't have to go into any degree of confidentiality about that, I am asking for generalizations.

Mr. Romanow: — Mr. Chairman, I think the Member fails to understand me and fails to understand the position of the Government. If he had been here on Wednesday and Thursday, he would have heard it over and over again. I simply tell the Member this. For the Member to ask me two questions: (1) have I examined the financial statement to which I presumably according to him, I am to give an answer. Then to answer the next question which will be as he has already articulated, do you then on your examination of the statements support the submissions or support the submissions of Mr. Schmidt I say is putting me in the same position that I don't believe the spirit of that regulation will allow me to.

Accordingly I am referring to the documentation that I am not bound to by confidentiality which is the court documentation and all the material before me to permit me to come to the conclusion that I have made. I stick by that.

Mr. Thatcher: — Mr. Chairman, have you or have you not had that financial statement examined by your accountant people, and you have lots of them, never mind the court documentation, that is supposedly a straight financial figure made up of numbers. It is either a valid one or it is not valid.

Mr. Romanow: — The answer to that question is yes.

The question being called on Section 1 it was agreed.

Section 2

Mr. Chairman: — There are amendments that I must present at this time.

Mr. Malone: — Mr. Chairman, who are these amendments from?

Mr. Chairman: — It is from the Minister.

Section 2 of the printed Bill.

Mr. Romanow: — If I could explain to the Member. There is only one amendment on Section 2 of the printed Bill.

Mr. Chairman: — Order, please. If I might just remind the Hon. Member that I must read the amendment first, then they can explain it later.

Section 2 of the printed Bill, amend subclause (iii) of clause (b) of subsection (1) of Section 2 of the printed Bill by striking out "trustee' in the first line and substituting "trust".

Mr. Romanow: — The only House amendment to Section 2, it takes off the two "e's". It should be trust rather than trustee. It is a straight typographical error, otherwise the Bill stays as it is in the printed form.

Mr. Malone: — On Section 2(1)(a) let me put this to you.

Mr. Chairman: — Order, I think we should get the amendment out of the way before we discuss anything further.

The question being put on the amendment it was agreed to.

Mr. Chairman: — May I suggest that perhaps we could expedite things a little if you can deal with each subclause as we go along.

Mr. Malone: — It may be difficult, Mr. Chairman, because they relate to each other. Your suggestion is good but it may be impossible once we get going.

Firstly on 2(1)(a) assets. It is very clear that the assets you are referring to by this definition is any asset owned by a potash company, that is, anything that a potash company owns is covered by that definition, is that not correct?

Mr. Romanow: — I think the qualifying words used or capable of being used for or in connection with the mining, refining, processing, transportation, storing or marketing of potash. Assets have to be looked at . . .

Mr. Malone: — I suggest to you that covers any asset. If they own shares in CPR, they can pledge those shares to borrow money to market potash. Surely it covers every asset.

Mr. Romanow: — I don't want to admit that to the Member though it is conceivable, I must confess. Right offhand nothing can come to mind, perhaps Mr. Lysyk can assist me here, it is conceivable they could own something which is not relating to these particular terms. It is a fairly wide definition, if the Member wants me to conceded to that I will.

Mr. Malone: — Fairly wide is one of your understatements, I believe.

Let me ask you then, what asset do you conceive of that wouldn't be covered by that definition?

Mr. Romanow: — I suppose one example would be if the company had some other asset in another mine which was not a potash mine. Or a piece of equipment not related to a potash mine.

Mr. Malone: — I suggest to you that that asset is something that is capable of being pledged to borrow to be used in the mining, refining, processing, production, transportation, storing or marketing of potash.

Mr. Romanow: — So what is the result of that? How does that change my comment?

Mr. Malone: — My point is, that by this wide definition, that when you expropriate if you go that route, which you will no doubt have to do, you, by this section will be allowed to expropriate anything that is owned by a company in Saskatchewan. I'll give you an example. Say a potash company owns land which they aren't presently mining or using in any way on their current operation. They may want to use it in the future, it may be just an investment, who knows why they own it. This definition allows you to expropriate that.

Mr. Romanow: — It has to be shown that it is capable of being used for one of these definitions.

Mr. Malone: — I just gave you the way it is capable of being used for these things, because money can be borrowed on that asset to be put to those objects. Right?

Mr. Romanow: — Mr. Chairman, I think it is a question of judicial interpretation really. I think the question is whether or not financing is looked at in these words, whether or any of these words, mining, refining, processing, etc., you can add the word financing in there.

Mr. Malone: — You mentioned specifically a "choice in action", you mentioned books of account. Well book of account, how do you use that to mine potash? It is a record that is kept of past mining, future customers and so on, it is not directly used in mining potash. You mention it specifically there. How do you use a "choice in action" to mine potash?

Mr. Romanow: — Again, I think it is a little bit difficult for me to answer the Member. You have to look at it in terms of whether or not it is capable of being used for, in connection with, etc.

Mr. Malone: — Let me put it to you in this way, if you won't accept what I have said. It is certainly capable of interpretation, that any asset owned by a potash company would fit under this section. Whether you agree with the interpretation or not that interpretation is capable of . . .

Mr. Romanow: — That is perhaps an arguable position. I don't agree with that.

Mr. Malone: — We have talked earlier in this debate about patent rights. I suggest to you that this section covers patent rights and patents is something in the federal jurisdiction, is that not correct?

Mr. Romanow: — That's right.

Mr. Malone: — I suggest that you propose in some cases to expropriate patent rights, i.e. if you want to keep the Kalium mine in operation you would have to have knowledge of the solution mining process with is under patent. Is that not correct?

Mr. Romanow: — Yes, I think the expropriation would have that interest if it is situated physically in Saskatchewan.

Mr. Malone: — There are certain laws dealing with patent infringements and so on, which is a federal statute. How can you purport to get around the provisions of the federal statute with this statute?

Mr. Romanow: — We don't intend to get around the provisions of the federal statute necessarily. It depends on who hold the patent, it depends on the interests on that patent, what rights of use there are in the patents. It depends if it is located here in the province of Saskatchewan.

It seems to me if there is an interest here and it is located here, that it is subject to expropriation.

Mr. Malone: — Then you are suggesting if the patent is here, it is owned by Kalium or any company, Kalium is the obvious example of course, you suggest that you can expropriate that patent or that right?

Mr. Romanow: — The interest in that patent. You can't expropriate the patent right, quite obviously because that is registered and handled under the Federal Government. But if there is arrangement, a lease arrangement, you can expropriate the lessee's interest.

Mr. Malone: — If the patent right for Kalium, let's say, is situated outside the province, which is a fact which we found out yesterday on the television program, how would you propose then to obtain that right?

Mr. Romanow: — I think if a patent right and the equipment is located outside, obviously there would be a great difficulty in doing that, in expropriating it. The other alternative would be to negotiate.

Mr. Malone: — You are assuming they would negotiate. If they wouldn't I suggest you would be in a very difficult position. Again, let me come back to the fact if the patent right is here, or the licence to use the patent or whatever, are you suggesting that you are not interfering with the federal jurisdiction in this regard by this statute?

Mr. Romanow: — No, I don't believe we are interfering with the federal jurisdiction.

Mr. Malone: — Could you expand on that?

Mr. Romanow: — No one here says that we have the right to expropriate a federal patent, a patent right which someone else holds somewhere outside the province of Saskatchewan. But I think as I

said earlier, it is our judgment that if there is a patent piece of equipment here in Saskatchewan, located in this province, physically located, and there is an interest in that patent by say a mining company, that certainly would be subject to expropriation.

Mr. Malone: — Well, again, I am sorry to keep coming back to this but surely that puts you in conflict with the federal statutes that gives certain guarantees and certain rights to the patent holder, and you would be going directly against that statute if you acted in that manner, would you not?

Mr. Romanow: — I don't believe so and we are satisfied that that is not the case. I just simply say that if one has to look at certain rights and the right to provincial expropriation, I think, is quite clear and the fact that a patent is based on a federal statute may not necessarily immunize that from provincial expropriation.

Mr. Cameron: — I will follow that up, Mr. Chairman, with one or two additional questions. We are talking about Kalium specifically and the information that the manager of Kalium gave yesterday is that the patent on the process is not owned by Kalium, it is owned by the parent company which is situated outside Saskatchewan. Kalium uses the patent under licence or lease. If the licence or lease from the parent company to Kalium were ended, then the Kalium mine in Saskatchewan would not have a right to the process. How would you overcome that difficulty?

Mr. Romanow: — Well, I think that the answer I have given earlier is the answer. That is to say that if the patent piece of equipment is located right here in Saskatchewan and is being used on lease from owner under the patent, under some interests, it is subject to expropriation.

Mr. Malone: — Surely, what in effect you are telling us is that if the Kalium situation is as described by Mr. Kelly yesterday on TV, you couldn't expropriate Kalium because you would need that process to continue operating that mine.

Mr. Romanow: — Well again these are variations of the same question and I think I have given the answer as to what we think that section means.

Mr. Malone: — Okay. Another thing you have is rights under contracts and agreements. Can you tell me how you can expropriate a right under contract that enforces that contract with the other person? For example, Kalium again, I'm not sure but say they have a contract with a company in the United States to supply them potash, you come along and expropriate that right from Kalium. Now you are not a party to that original contract, Kalium and the company from the United States were the parties, how do you hope to enforce that contract when you are not a party of it?

Mr. Romanow: — Well, on expropriation we would be in the potash of the expropriated party. I say if the asset is situated in the

province and if it is an owner as defined we would simply take over the obligations and the positions in the situation as you describe.

Mr. Malone: — What if the party in the United States or the customer said I don't want to deal with you? I don't want to deal with the potash company in Saskatchewan, I will deal with somebody in New Mexico. Do you feel you can enforce that contract and if so where would you try to enforce it?

Mr. Romanow: — I think it depends on the nature of the contract. You ask whether or not we would sue or could sue, it depends on what the obligations of the various parties are.

Mr. Malone: — I am putting it to you that they are obliged under contract, that is Kalium to supply and the company in the States to buy. As simple as that, you take over Kalium's interests and you go to the company in the States and say, okay, we are the owner. The company in the States says oh no, you're not, we don't have any contract with you. We are not buying anything from you whether you ship it or not. I am sure it is as simple as that, what do you do then to try to enforce the contract? I suggest you can't do anything.

Mr. Romanow: — Well, we might have to take the same action as anybody else would, lawsuit, suing for damages. It depends on a number of factors, I suppose it depends on where the writ is located, where the contract was made, under what laws the contract is to be interpreted. We might take an action outside our jurisdiction in order to enforce or seek damages. I can't be specific on that until we take a look at the actual documentation.

Mr. Malone: — So you are saying that while you can't be specific that there is certainly a possibility that you would try to enforce these contracts of this nature outside this jurisdiction if necessary, in the United States?

Mr. Romanow: — We may.

Mr. Malone: — Have you had any opinions given to you from Mr. Lysyk's department or your department in this regard?

Mr. Romanow: — Well the opinion generally as to rights of patents and the enforcement rights are opinions that we have or enforcement of contract as I articulated subject to the actual case that is before, the actual circumstances before us. We haven't looked at any actual circumstances quite obviously because we don't do that until this Bill is passed and the consequences follow thereafter.

Mr. Malone: — But surely that is going to be a consideration when you decide which mine you are going to expropriate, if you can't buy one, and I am assuming that you won't be able to for the sake of this question. This surely has to be a consideration that you must decide upon when you start your expropriation procedure under Section 60 and so on.

Mr. Romanow: — I think it is a factor in a number of factors which take into consideration whether or not the Government makes an attempt to purchase any particular mine or not.

Mr. Malone: — Would you not agree with me though that most of the potash that is being produced now in Saskatchewan is subject to sales contracts for the years ahead? Not 20 years ahead but for the foreseeable future, it is subject to contracts to supply the United States, Japan, Taiwan or wherever.

Mr. Romanow: — No, my understanding is that most of the contracts are relatively short-term contracts, say for a year or some period less than a year. They are not of a long-term nature.

Mr. Malone: — Let me turn this around then. Say you wanted to avoid the contract. Is it your opinion as Attorney General, as the chief legal officer, that you could avoid the contract? That is if the customer in the United States had a contract to buy potash at a price less than world market and you wanted to sell that potash at a higher price, is it your opinion that you could avoid the contract?

Mr. Romanow: — Well, Mr. Chairman, it depends on the contract. It depends on what is in the provisions of the contract whether or not we would even want to try to avoid the contract. I would think the general position that we would be bound by the contract as much as the party that was expropriated is bound by the contract. Whatever loopholes or otherwise that may be in the contract. Of course, it is always open to us the choice of not going after a particular right or a particular object which may be subject to some contracts.

Mr. Malone: — You open up a new area when you say that. By that I am suggesting what you mean is that you may decide with Central Canada to expropriate their mine and certain other assets but to leave them on the hook with the contract. That's possible under this Act, isn't it?

Mr. Romanow: — I think the answer is that if you are looking at it from a strictly lawyer's standpoint I suppose that that is true, that that is legally possible. Whether or not that takes place or not, no one can say, I say our intentions would be basically in broad general policy terms to substitute the ownership, our ownership in place of their ownership. As to the individual circumstances we would have to look at the hard detail of it.

Mr. Malone: — So, with Central Canada, if you decided to take over that mine and I hope you don't because I am told that it is having some problems, but if you did take over that mine are you suggesting that it would be your intention to honour the long-term contracts of Central Canada and I understand they are long-term, even though you would be selling at less than world market?

Mr. Romanow: — Mr. Chairman, I think we would just have to look at all of the facts of any one particular case. What I am saying to the Member is that it is possible in legal terms, our objective is as I stated, whether or not it is done in any case, Central Canada or otherwise, we just have to get in there and take a look at what obligations are tying us up and so forth.

Mr. Malone: — Now, it's possible as well under this asset provision to expropriate a potash lease, that is a company has a mineral lease with a private individual to mine potash. Now it may very well be that there are other things covered in that lease, i.e. oil, natural gas, coal, whatever. Now I suggest to you that under this section if you expropriated that lease you would be in a position to take all the benefits under the lease which may refer to these other minerals. Am I correct?

Mr. Romanow: — I think generally the Member is correct other than the fact that he expands them to say that it involves gas or oil rights or whatever. Really again we come back to the fact that this Bill is limited to potash only.

Mr. Malone: — Well, it is supposed to be limited to potash, what I am trying to point out is that it really isn't. If you go in and expropriate the lease of Kalium, again, that they operate under. I am not sure if it is a Crown lease but we will say for the moment it is a private lease, and in that lease it covers minerals other than potash, you are going to obtain the rights to mine those minerals by virtue of the fact that you expropriated that lease. Is that not so? You may not find them for 20 years down the road but that is what you are doing.

Mr. Romanow: — I think, Mr. Chairman, that I will preface my remarks again by saying that it really depends again on the hard facts of any one case. You have to assume on your question that the lease covers other generalities, such as other minerals and I am advised that that is not the case, that we are dealing here with a potash lease and the consequence of the scope of that. If the Member says to me, well, look it, if it has other things in the lease such as oil, etc., it is conceivable that what the Members says is right. But that is not the way that it operates nor is this section predicated on that. It is really the potash and the lease of potash we are referring to.

Mr. Malone: — This is the point. You'll laugh, but the thing is you come in and you value that lease. At some magic date, five years down the road you find oil and by virtue of this Act I suggest that you get the oil too. It is not just potash, it's everything that is covered by the lease.

Mr. Romanow: — Mr. Chairman, I cannot elaborate on this further other than the fact that perhaps over the supper hour I will ask my officials to take a further look at it because the answer that I have advanced which says that when you look at the key words, of assets, it always comes back to the possibility of being used in connection with the marketing of potash. What I am advised is the reality of the situation. When you

expropriate any interest in a lease or otherwise you are looking at strictly a potash lease and if the other ones are covered by other leases I don't perceive the circumstances the Member raises as actually occurring. But I'll see if the boys can do some thinking over the supper hour and if there is something that can be said in further elaboration it will be.

Mr. Cameron: — I think most of the mines are produced from two categories of land, Mr. Chairman. One is the Crown-owned land and the other is privately owned land and there are still significant bits of mines and minerals in this province which are owned privately. Some of the potash companies have leases from the Crown with respect to the Crown-owned land and then a set of leases from the individual land owners, individual farmers in respect of the privately owned land. This section as I read it, and correct me if I am wrong, gives the potash corporation power to expropriate the potash company leases with respect to Crown land but would also give the potash corporation power to expropriate the leases held by private farmers. Is that correct?

Mr. Romanow: — In general terms I think what the Member says is probably right. However, the Member should look at sub-paragraph K of Section 2(1), which defines 'owner' and there he will see under 'owner', sub-paragraph 3 – "but does not include a person other than a person referred to in subclause 1 and 2 whose Saskatchewan assets consist only of minerals or mining rights.

Mr. Cameron: — Let me give you another specific example that I foresee you having some problems with and tell me genuinely how you see these problems. One at least and perhaps more of the mines consist with respect of plant and equipment, this is generally speaking, the business consists of the plant and the equipment on the one hand and the market on the other. Plant and equipment in respect of the market. Potash companies generally have those two. One potash company in particular has a plant and equipment from which it produces a product located in Saskatchewan, but has rail cars, loading and unloading terminals and other assets as part of the overall operation located in the U.S. As I see it under this Act you could expropriate the plant and equipment in Saskatchewan, but you could not expropriate or acquire ownership, except voluntarily, in respect of all the other assets which is part of the business located in the U.S. to satisfy the market.

Mr. Romanow: — I think generally the Member is correct, the expropriation has to be of an asset which is located in Saskatchewan.

Mr. Cameron: — Mr. Chairman, doesn't that give you a very real practical hope in respect of the one mine in particular that I have in mind, but there may be others in the same category, where the plant itself and the production facilities are located in the province, and the potash corporation has the power to expropriate it, would expropriate it, it has in effect only half the business. The other half consisted as I say of loading and unloading terminals and rail cars and the like situated in the U.S. which is the market end of the operation

so that you couldn't expropriate the whole, you could only expropriate half. How would you overcome those practical difficulties in trying to take over that mine?

Mr. Romanow: — I think from a legal standpoint that is true. I think the only qualifier is whether or not it's the half versus the other half. I think these are important aspects of the operation but we would have to attach the Member's question directly and we would have to try and negotiate.

Mr. Bailey: — I would ask the Attorney General, in this particular section we have the term, 'personal property'. I wonder if I could just get a rough definition of subsection 5 there, as to what he can see personal property meaning under this section of the Act.

Mr. Romanow: — Well, this is perhaps not a very satisfactory answer. Personal property is generally chattels, as opposed to real property, land. If I may put in those types of distinctions.

Mr. Bailey: — Obviously the potash mines, Mr. Chairman, with their engineers, are in the process of constantly improving the machinery at the mines to make them more workable. I am wondering, would you consider under that particular clause, personal property, any potential plans or drawings or whatever, take the potash mine has at the time of expropriation? Obviously if they were doing it over again, they are moving into another field, whether in Saskatchewan or in another province, or indeed another country. This would be considered as personal property, because if they were doing it over again, they would redraft their technicians, engineers who would come in.

Let's say at the time of acquisition they in fact have this, would you consider that to be a personal property even though it was not in operation at that mine at that time?

Mr. Romanow: — From a legal point, the answer to that is yes. It would be personal property. If it is an asset, meaning the tests of the definition section, it could be capable of purchase and/or expropriation.

Mr. Merchant: — I wonder, Mr. Chairman, if the Minister would indicate why something has been excluded from the definition. The thing that most commonly appears in definitions of purchases of companies, a thing that appears in every little two-bit purchase of a corner drug store, right up to multi-million dollar purchases is the phrase 'good will'. I wonder and I will be referring to that in relation to the position that I will advance about Section 45. I wondered why the phrase 'good will' as an asset, the most common phrase that appears in the buying and selling of a business was excluded?

Mr. Romanow: — Mr. Chairman, I suppose the answer, in a nutshell I recall discussing this at one point or other that it was not necessary. When you look at the definitions of 2(1)(a) and in particular (v) of 2(1)(a) and you look at the rest of the Bill,

fair market values in a sense, willing buyer, willing seller concept that is there, it is an intangible asset, good will which is capable of being considered in a willing purchase/seller situation, perhaps even by the arbitration board.

Mr. Merchant: — Mr. Chairman, I should like to move an amendment. I have given a copy to the Minister and possibly if I could file two copies with you. The reason I am presenting it at this time is because there is an amendment as the Minister will see to (p) of Section 2 of the printed Bill, although in a substantial way the amendment is an amendment to Section 63.

In this portion of the amendment, Section 2 we define an unsecured creditor. The House may recall that when I was dealing with this matter with the Minister before, the Minister had said that the Government is concerned about the problems of unsecured creditors. I don't think that anyone, least of all I would hope an NDP Government, want to see small dealers in Saskatoon and Esterhazy in a situation where they cannot recover from the company if a vesting order follows. I think the Minister is prepared to concede that his comments at one point to the effect that they can move themselves from unsecured creditor to a judgment creditor are pretty meaningless comments in relation to the fact that the money will be back in Pennsylvania or in Carlsbad or developing resources in Britain or wherever, they are dealing with multinational companies getting a judgement against a company isn't very valuable unless the company has some assets in Saskatchewan.

When you take into consideration the ease with which the Government can move on a vesting order, there will be something said about that and the problems that could arise, I think there is every reason for this House to be concerned. The Minister has said that they would like to help the unsecured creditor. The problem that they see is that it has not been done any place else in Canada in similar legislation. That, with all due respect, is sort of in a class with saying everybody else is as bad as we are.

Secondly, I think the Minister would concede they don't want to become entangled with unsecured creditors if they can avoid it.

What this amendment proposes – I shall be moving it in its place, I explain it to the House now – is the creation of a fund similar to a mechanic's lien fund, so that there would be an automatic hold-back of 10 per cent. It doesn't have anything to do with a deal that you make. If you negotiate a deal, I have every confidence in the Government to see to it that the unsecured creditors are in some manner protected because I assume you take that into account as you negotiate the deal. If you don't negotiate the deal and if we are proceeding with the Act in the manner of an expropriation it may well be that the company will either decide well that rotten NDP Government have expropriated us and we are not going to have any further interests in Saskatchewan or Canada. Who cares about our credit rating in Saskatoon, Saskatchewan, where we'll be operating they can't even pronounce the words. Let the small creditors sing for their money and sue if they want to.

This would hold back 10 per cent in the same way that any contractor has to hold back 10 per cent. Let me say that it

is not very complicated. The money would simply be held back and the creditor would then have six months in which to move to a secured judgment. They would then file the judgment with the Provincial Secretary's office and be paid out of the money that would have been held back by the Government. If, and I am sure this isn't going to happen, I can't conceive of such a situation, if the unsecured creditors are a greater claim than 10 per cent of the whole, then the various creditors would rank pari passu with each other in payment out; of course the various creditors would then have the ordinary rights that they had namely to move to a judgment and register that judgment in Carlsbad or wherever in trying to collect the money.

It is not a complicated matter, or to put it another way it is no more complicated than a mechanic's lien claim. Now a mechanic's lien claim quite frankly creates real problems in the construction industry. It creates real problems for the courts when they are litigated. It is a difficult area of law. But it is an area that the legislature in its wisdom has said, we are sufficiently concerned about small creditors and about tradesmen and about the sub-contractors who intend to be small businessmen that we want to see to it that those people are protected. So the legislature, your Government in its wisdom has decided to maintain the mechanic's lien legislation which puts inconvenience on the construction industry.

I suggest to you that you do the same thing in this situation that you should be just as concerned about small creditors here as you are in dealing with large general contractors. I move, seconded by the Member for Lakeview (Mr. Malone) an amendment, to add to Section 2 of the printed Bill a subsection (p) which would define unsecured creditor for the purpose at a later time of moving the addition of Section 63.

Mr. Chairman, the Minister has said they are concerned and they have looked into the matter. I don't believe they have looked into it in this way. I may be wrong. I wonder if the Minister might be prepared to take the time to look at the matter, I am not suggesting that we now call it 5:30, but possibly let Section 2 stand if we reach the end of it, I don't think we are going to reach the end of it. Perhaps when we return after the supper break we get the disposition that the Government proposes.

We in the Liberal Opposition say that this is important, that small creditors have to be protected, that it is something that the Government should look at. I say this is a positive amendment, we would be very pleased to see it passed.

Mr. Chairman: — Order. There are some questions if the amendment is in order because it may incur, I am not sure, a charge or expense on the Crown. Therefore, Hon. Member, I wish to defer my ruling on this amendment for the present time until we find that it is in proper order.

I would say if you care to, you can speak to my ruling. As far as the amendment, we cannot discuss it until we find that it is in order.

Mr. Malone: — Mr. Chairman, the Member has invited the Attorney

General to consider it over the dinner hour, could we leave it until that time and see what decision he comes up with?

Mr. Chairman: — If it is your wish.

Mr. Merchant: — Mr. Chairman, speaking to your Point of Order. I remind you that all that is required is that the Government pay out the money under a different system than paying it out in bulk. I suggest to you that almost every amendment within a narrow definition would involve some expenditure. I am not sure that it is fair to say that this specifically involves any expenditure at all. Cleary it doesn't specifically involve an expenditure of any sort, except in candour one can anticipate there might be 200 cheques prepared instead of two.

The second thing is, regardless if you, Mr. Chairman, were to find that the amendment is out of order, it would be incumbent on the Government to propose such an amendment if they consider a lien claim amendment to be workable. If they don't consider a lien claim amendment to be workable obviously they are going to use their legislative power to vote it down. I am inviting them to look at it over the supper break.

Mr. Chairman: — Could we have a comment from the Attorney General.

Mr. Romanow: — Mr. Chairman, as far as I am concerned I am prepared to let the matter stand until over the supper break. I do believe that the question of whether or not it is in order is something which should be determined first. Because even if I said to the Member that it is a great idea, if it is contrary to the rules of the legislature there is little value in my saying that. In any event I think the Member wants me to consider this point while you are considering whether it is in order or out of order. I think we should stand this particular matter and ask other questions on Section 2.

Mr. Merchant: — Mr. Chairman, speaking again to the Point of Order. I wouldn't want the Minister to suggest that they can hide behind the ruling of the Chair, if the Chair said that it was out of order. Clearly the Minister couldn't be heard to say, I think it is a great idea, but unfortunately the Chair has said that we can't do it, that ties my hands. The Minister now has the proposal before him, if the Minister doesn't approve of the proposal, it doesn't matter whether it is ruled out of order or not. If the Minister does approve of the proposal it doesn't matter whether you rule it out of order or not either, because the Minister can bring it in.

So that if this proposal or something to protect unsecured creditors doesn't come before this House certainly I wouldn't want it to be suggested that that was because it was ruled out of order by the Chair. No protection was given to unsecured creditors because the NDP Government had decided they couldn't be bothered bringing some protection for unsecured creditors, that they had then decided that they were more concerned about protecting people in a contractual relationship as general contractors for instance than worrying about small creditors in an expropriation; more intent if I may put it that way, in worrying about Bestik Painting for instance, in Regina, who

voluntarily at least had an opportunity to choose the general contractor that they were going to deal with than they are concerned about Hub City Glass and Paint Co. who didn't have any opportunity to know or to expect that a particular potash company might be expropriated.

Mr. Chairman: — Order, please. From the report that I am given I find that this amendment is in order, from the explanation that you have given us.

The debate continues on the amendment.

I should pose the amendment.

To amend Section 2(1)(a) of the printed Bill, by inserting after clause (o) the following clause:

> unsecured creditor
>
> (p) unsecured creditor means a person who immediately prior to the passing of a vesting order was a creditor but was not a secured creditor and who within six months of the making of a vesting order, obtains a judgment of any court of the province of Saskatchewan against the owner of assets expropriated by such vesting order which judgment shall state the amount owned to the unsecured creditor.
>
> and;
>
> (b) renumber clause (p) of subsection (1) of Section 2 of the printed Bill as clause (g) of the Bill.

I find the amendment in order, the debate continues on the amendment.

Mr. Romanow: — Mr. Chairman, I am prepared to give this some further thought over the supper hour. I must say to the Member that I don't want to hold out too much hope for accepting the amendment. Really there are a number of reasons to this. I suppose that the most important reason is that if the Member will look at any expropriation statute anywhere he will see that pretty well without exception in Canada anyway, there is no such provision for unsecured creditors. The question then has to be asked, why? The answer to that is, the act of expropriation of itself does nothing more, nothing less as regards the rights of a secured or unsecured. The act of expropriation gives the unsecured the same right in law which he would have had if the expropriation was not even around. The Members are shaking their heads in frustration. I would simply ask that if I am wrong in this conclusion that I feel surely other jurisdictions who have dealt with expropriation would have been just as concerned about the unsecured as the Members would have us believe they are. And some similar provision by precedent would have been there. The answer is, it is not there because the act of expropriation does nothing whatsoever to the position of unsecured.

Furthermore in this type of situation we are dealing with, the potash companies and the like, the chances of an unsecured are so very, very remote, as I would suspect to be, probably non-existent.

Mr. Merchant: — I don't want to paint the Minister into a corner, but since you are going to consider it, I just can't imagine what you mean by there will be no unsecured creditors. These companies are going to continue in operation. They are running up contractual debts, they are running trade debts on a continuing basis, probably with hundreds and hundreds of creditors on a continuing basis. You may waltz in in six months or three years or three months and serve a vesting order.

Now what happens at that point, you say that they are in no worse shape than they are in now. The ownership of IMCC, for instance, doesn't happen to be, as far as I know, a Saskatchewan company. So you expropriate IMCC and you take all of the assets in Saskatchewan. Now, surely to suggest that creditors are no worse off is to say that being able to sue an Ontario company or a Pennsylvania company is as good and as satisfactory to Hub City Glass in Saskatoon or some little company as being able to sue a company that is right here, with assets right here.

Now there is a possibility, I suppose, that if they knew the day the money was to be paid by the Provincial Government they could serve a garnishee in Saskatchewan but that would be like shooting for a needle in a haystack, in relation to the possibilities of appeals and settlements and the expropriation procedure. So that they will be compelled unless the company voluntarily pays and there will be hundreds of creditors. They will be compelled if the company doesn't voluntarily pay to pursue them in Pennsylvania or wherever. I think you said to me, one day, but surely I trust the potash companies. I, Tony Merchant, don't trust the potash companies very much and that is the reason that I would be just as happy to have this kind of protection in for Hub City Glass or whatever.

Mr. Romanow: — Mr. Chairman, really what the Member, I think, he is well motivated, perhaps, in this area but really what the Member is doing, he is writing in a complicated provision, fairly complicated provision, with minimal benefits, I would argue, to the unsecured. Really you have to go, even by your amendment, to obtain a judgment of the court first and then you have to move against the fund and so forth. That does provide some marginal advantage perhaps, as against the fund I would agree. But the fact is that an unsecured can today simply issue a judgment and a garnishee before judgment against a potash company if he has any belief that potash company is going to abscond without paying any of the lawful debts or judgments.

I simply say to the Member, suppose that The Expropriation Act is not even around, that unsecured has to do the same thing that you abhor him to do under an expropriation procedure. Why the difference, why the difference on expropriation as opposed to pre-expropriation?

Mr. Merchant: — Mr. Minister, I can hardly believe what you are saying. The company, unless I am crazy, that company is operating in Esterhazy and it runs up a debt and it continues to operate in Esterhazy and they know they are going to continue to operate in Esterhazy and they know they have accounts coming in and they know they have to maintain a good credit rating in the area of Esterhazy. So they hold back their payment of their accounts for a couple of months, but they pay off the creditors in a

continuing way. If the company is dissatisfied with the Esterhazy potash mine that is because the Esterhazy potash mine is falling into financial difficulties, so they sue. But that isn't going to happen.

Now, the difference is that you come along and you expropriate. Now they don't care about their reputation any longer. They have been forced out of Saskatchewan. They don't care about their trade reputation. They no longer are going to be operating in Saskatchewan, they have been pushed out. And they are not particularly happy with Saskatchewan of the Government for doing it. And the money is going back to New Mexico or to Great Britain or to wherever the holding company of this great multinational that you keep describing is.

To say that they are in no worse shape certainly they can sue the Saskatchewan company but it is a shell company now, because the money is being passed out of this province. If you don't concede that there is a difference between a company the day it is expropriated and the day before, in the approach of the company, then I am wasting my breath. But, clearly, there is a difference, clearly there is a difference in the approach of the company. They couldn't care less the day they are expropriated about their trade relationships in the province. And at that point they have to be compelled. They are even in a worse situation, they are less likely to want to pay than a general contractor, whom by our legislation, we compel to look after the sub-trades. They are even in a worse situation because the general contractor at least knows that its good reputation to get sub-contractors will continue.

Mr. Romanow: — Mr. Chairman, we will consider this over supper time, but again it is not as simple as the Hon. Member would have us believe because the simple fact of the matter is that once a vesting order is made and ultimately there is a payment into the fund, the Hon. Member knows full well that the unsecured creditor has the full right to act by way of a garnishee summons as against that particular corporate body prior to payment out of the fund. And that will take at least several weeks, if not months, before the operation is concluded. And in many ways that is less complicated than any of the provisions which are outlined here by the Hon. Member. I am not hopeful on this and perhaps, Mr. Chairman, we might call it 5:30.

The Assembly recessed from 5:30 to 7:00 o'clock p.m.

Mr. Chairman: — Before we broke at 5:30 I think we had an amendment to Section 2 by the Hon. Member for Wascana.

Mr. Malone: — Mr. Chairman, I wonder if we could wait for one moment on that. I have other questions on the section and the Member isn't back just yet. Would it be possible to proceed until he returns?

Mr. Chairman: — . . . proceed on Section 2 then.

Mr. Malone: — Just before we get off the assets definition I have just a couple of questions.

I assume that I am correct in saying that a bank account would be covered as an asset under 2(1)(a)?

Mr. Romanow: — I think that technically speaking it is possible that the interpretation is correct practically. Of course, it is highly unlikely that the vesting order would include it.

Mr. Malone: — One final question on assets. I suggest, as well, Mr. Minister, that it is possible for the Potash Corporation of Saskatchewan to expropriate a contract to provide potash where under that contract some of the potash may be supplied from Saskatchewan and some may be supplied from another area, New Mexico, whatever.

Mr. Romanow: — I think that is right, sub 1, rights under contracts. In other words I come back to the point I think if the thing is situated here, if it is an asset in Saskatchewan we have a right to expropriate it or the interests in it.

Mr. Malone: — Well, surely this could lead to unfairness against a company that was expropriated, that is to get out of the contract to deliver so many tons of potash to a customer in the United States some of which may come from Saskatchewan, some of which may come from New Mexico. By virtue of the expropriation you could cut out the right of that company to supply from an area other than Saskatchewan.

Mr. Romanow: — Well, not really, because if that contract, if that company has a contract to supply to other areas or other companies, I say, subject to what the contract says I would assume that we would be obligated by it, similarly as the original party is.

Should we deal with the other matter now?

Mr. Malone: — Just let me get finished with this one point. I am not suggesting that you wouldn't, that is the Government company wouldn't deal with the contract, I am suggesting it is unfair to the owner that as he may be supplying 75 per cent of the potash under that contract from a place other than Saskatchewan. And you would step in through the expropriation and take in effect his rights to supply that 75 per cent.

Mr. Romanow: — It depends, I suppose, on whether it is a right or an obligation on him. It might bind the other way. Again, it would have to be in the actual contract.

Mr. Malone: — Obviously it binds both ways.

Mr. Romanow: — I have had an opportunity, Mr. Chairman, over lunch to look at the question of unsecureds. As I suspected we don't think that we could accept the amendment of the Member. Again, I have said a lot of this before supper so I don't think that I should take too much time to repeat, but just to sum up.

The reason for us not accepting this is basically as follows:

1. As I tried to explain the whole theory behind an expropriation statute such as this is that compensation, and the compensation fund, will stand in lieu of the assets taken, or stand in the place of the assets taken. If a person had a claim against the assets then, after expropriation that person would similarly have a claim against the compensation fund. Conversely, however, if no claim as against assets was there, that is a secured debt, then there would be none as against the compensation fund.

Paraphrasing it as before, an unsecured creditor really has exactly the same rights as he had prior to the expropriation, that is the right to sue the company which has defaulted on the debt.

2. Even if we are to accept the Member's amendment, the point that should be kept in mind is that a judgment will be required there. This is no great gain in convenience to the unsecured creditor. In fact, it is almost an extra hurdle for him to jump because under the proposal from the Member you have to get the court judgment first before you can get other rights in the form of what the Member described as a mechanic's lien rights. If you have to go that far as the amendment suggests, that is to say to get a court judgment, then it is almost easier to get other natural court remedies; garnishee summons, writs of execution issued against the goods and assets and so forth. Accordingly, it seems to us that there is no real advantage in proceeding in this fashion.

Finally, I should like to say that I don't think there will be too many unsecureds and that nature of the deal we are dealing with most of these will be secured creditors, so I think, therefore, the amendment properly will not deal with the reality of a situation. And, furthermore, if it appears that in fact the companies are not acting responsibly, that there is a company who is going to be absconding without payment, then I think there is perhaps then a real responsibility that might attach and I think that at that stage of the game we might have to consider a possible amendment or some other form of action by the Government. We don't anticipate that.

Mr. Malone: — I don't want to belabour the point. The Member for Regina Wascana explained the situation very well before dinner. I want to point out to you that you are treating unsecured creditors differently than you are treating employees of the companies; different than you are treating secured creditors; you are putting them in a position whereby they will have little or no security to realize on their claim. Your suggestions earlier that they are no different now than they would be with the amendment I think is just nonsense. They are obviously going to be in a very much different situation. In fact, I suspect that any claim that they have will just be completely wiped out once the vesting order goes.

Mr. Merchant: — I don't want to belabour the point either. My colleague alluded to something that he pointed out to me and it is amazing. We were walking down the stairs and I said, if they were dealing with a union or if they were dealing with some workers, they would be worried sick about looking after their workers because

they view those people to be their traditional supporters. But when they are dealing with some small little company they couldn't care less about that little small company. And my colleague said, read Section 68 and Section 68 of the Act says – provides for protection for a worker. And it goes beyond saying let there be a judgment or let there be some decision by the courts. And that is what we say. What it says is, if in the view of the corporation you want to look after a worker, if in view of the corporation some worker has been badly dealt with, you don't even have to hear the people which you are expropriating, you will just then look after whatever you think is in the interests of that worker. I don't argue with that, I think that is a good provision, some kind of protection for the worker.

But I am amazed that you would think such a section was necessary for a worker, who according to your theory, has the same rights now that they have before the expropriation. And in the same breath say, but as far as the small creditor or the businessman in Esterhazy or Saskatoon, we are not concerned about their position. No, Mr. Minister, what you are doing is the Government of Saskatchewan can't be bothered getting involved with unsecured creditors. When you vote this down that is what you are saying. That you are not worried about Hub City Glass, if they lose $3 or $4,000, so be it, Hub City Glass probably didn't vote for you in the first place. That is what you are really saying when you vote down this provision.

Amendment negatived on a standing vote.

Section 2

Mr. Malone: — I am off assets, Mr. Chairman. I am not sure how you are going to call this, but I have no questions on b, c, d and e, but I have other questions. Do you want to call the subsection numbers in case the Conservatives have questions?

Mr. Thatcher: — I have a question for the Attorney General in regard to assets. In a situation where a potash mine does not lease its land that it is mining, but actually owns it, exactly how will this expropriation Bill pertain to the expropriation of – what in this case that I have in mind, and that is Kalium Chemicals at Belle Plain in valuation of what is very valuable farm land, exactly how will you proceed in determining the market value for this land?

Mr. Romanow: — Mr. Chairman, the valuation procedure, the valuation section is Section 45 and really the answer on the asset here, is that it has to be used or capable of being used for or in connection with mining, refining, process, production and transportation, storing or marketing of potash. Accordingly you would have to assume that the farm land in question is somehow in that definition, that it is being used for potash in that related function. If it isn't then my suggestion to the Hon. Member would be that it is not caught by the definition of asset and therefore there could be no expropriation and therefore there could be no Section 45 determination of fair market value. If, however, the land is used as a part of the potash operation for brine or for some wastes, or tailings or whatever, then it would be involved as part and parcel of the

entire operation under Section 45, fair market value. The fair market value for that quarter section or half section, I suppose, keeping in mind the tailings that are on it and the whole operation.

Mr. Thatcher: — Mr. Chairman, Mr. Attorney General, you will have to pardon my ignorance but I fail to see how The Minerals Act or The Potash Reserves Act can have any relevance to the surface value of six or seven sections of land which is what we are talking about in this case. Land which is rented to area farmers and which if the Kalium mine were to be expropriated, would very definitely be a factor coming into play in the balance of that municipality. I think under the terms of assets, I think these people are entitled to know how the Government would treat them.

Mr. Romanow: — Mr. Chairman, the Member is confusing two things. First of all he is confusing how the Act and the law would operate on the specific application of the law by virtue of an arbitration proceeding, to which my answer earlier stated is still valid. It would have to fall within the definition of capable of or being used in connection with the potash operation. If it is land that is owned by the potash company, Kalium, but not used as a part of the potash operation, not a part of the plant site, not a part of the tailings or whatever, but land is owned, then I would say as I said earlier, it is doubtful, or let's put it this way, it may be questionable whether or not any expropriation activity could be taken, because it is not land that is directly or indirectly related to the marketing or storage of potash.

Now, that is one aspect, the pure law. As to the policy of it assuming that there is a give and take in negotiations on a purchase of whatever, this was asked in oral question period, I believe by the Member for Elrose (Mr. Bailey) at an earlier date. And we answered to him, under those circumstances we would seek to maintain any obligations, contractual, lease obligations or otherwise under the same terms and conditions that Kalium or any other potash mine would have vis-a-vis individual farmers. That is the position that we would adopt.

Mr. Thatcher: — Mr. Chairman, is the Attorney General prepared to write what he just said into the Act?

Mr. Romanow: — Mr. Chairman, I don't think that is feasible from a lawyer's standpoint. Let me say that we talked about this at the time of drafting of the Bill and thought about how we could do this and it was concluded that it would be very difficult to write it into law. I can only say, if this is government policy and presumably this is recorded, if a problem should arise sometime in the future, as a Minister of the Crown, I have made this statement on question period to the Member for Elrose and I repeat it here again. I think that should be worth something.

Clause (a) agreed.

The question being put, Clause (b) agreed.

The question being put, Clause (c) agreed.

The question being put, Clause (d) agreed.

The question being put, Clause (e) agreed.

Clause (f)

Mr. Malone: — Why do you say, included potash? Surely minerals means potash, to the exclusion of everything else. The old rule, if it includes it means that something else is involved.

Mr. Romanow: — This is one of these draftsmen lawyer wordings. We are not sure that minerals, I am giving you now what the lawyers tell me to say, we know that potash is a mineral, but we don't know that minerals includes potash. That is the only reason for it. It doesn't mean that there is anything else, the definition I think would limit it but that is the situation.

Clause (f) agreed.

The question being put, Clause (g) agreed.

The question being put, Clause (h) agreed.

Clause (i)

Mr. Malone: — I'm sorry, Mr. Chairman, on Clause (i). The mining right, I suggest, Mr. Minister, could be a right to explore for potash outside of the province of Saskatchewan, and still be a Saskatchewan asset with the definition of "(m)". That is the right can accrue in Saskatchewan by virtue of the contract that was made in Saskatchewan and one of the parties being resident here to explore for potash in some other area. Is that correct?

Mr. Romanow: — I think that it is possible on the factual situation that you described. The contract being here, etc., located here. Yes.

Mr. Malone: — Would it be your intention then to pursue that right and explore in a place other than Saskatchewan?

Mr. Romanow: — I cannot say because we would have to see again, on what company is actually obtained by purchase, what rights they have and what they don't have, where it is located, value of the ore and so forth. All these factors, it is not possible to say. I think that generally speaking we are talking about a purely Saskatchewan operation.

Mr. Malone: — Well, you say you cannot say. I suppose that is right, you can't say, but I suspect it is not a very satisfactory situation. What you would be trying to do in effect is trying to force the provisions of this Act in a jurisdiction that doesn't recognize this Act. Say if you went to New Mexico and tried to explore for potash or a mining right in New Mexico,

pursuant to steps taken under this Act, surely, this Act doesn't apply in New Mexico.

Mr. Romanow: — Again, I don't know – it is up to the Member if he wants to pursue it or not – but I think that we really have to look at the mining rights tied up to where the exploration right is. In reality, when you are perhaps talking about the legal possibility, the Member may be correct. But I think that in reality that is the way it is operated. I don't see any particular extension outside of Saskatchewan, it is possible, I suppose, it is possible.

Mr. Malone: — I raise it merely to bring out the difficulty that this Act creates, in affecting third parties. You take over a mining right that is the province of Saskatchewan to mine in New Mexico. Firstly, the company you take it away from doesn't know where they stand. Secondly, if you tried to exploit that right in another jurisdiction, I don't see how you could possibly do so. And yet you say you don't know. It is just not very satisfactory.

Mr. Romanow: — I think, Mr. Chairman, the question of whether the Act is awkward or not, I will leave to everybody's subjective or objective opinion. I would simply say to the Member that in reality here as far as the other person on the other end of the contract, I don't think it should matter all that much to that person, say in New Mexico, or wherever if you change the person at this end from a potash company, and put in the name here, Potash Corporation of Saskatchewan, the rights and the obligations are the same. But again I would say to the Hon. Member, I would suggest that in many ways the question is academic, because we are almost sure that it is 100 per cent that the mining right is where the exploration is. So that we might acquire the mining right to explore, that is the one step. But getting the next step into the actual exploration is where the thing breaks down because it is not likely to happen in that way. If you want to argue that it could, yes, I think it could.

Mr. Malone: — I think if you reflected on your early comments about the person down the line not really caring, I think you perhaps would not have said that. It is obvious that they could care very much. Are you prepared to state here for the record that if such a situation arose that you would release the company here or indicate to the company here that you are not taking over that particular mining right that is in another area other than Saskatchewan?

Mr. Romanow: — I think I can say this, I can't give a commitment from that standpoint but I can say that I do not anticipate government policy to extend to the type of exploratory activity that you have described outside the province of Saskatchewan. I would also say that certainly we would try in consideration, in negotiations of anything like that to take into consideration that the company is in with respect to exploration rights or the receipt on the end is in. What I am trying to say without making a total commitment is that we have no intention, really, of pursuing it, but it is conceivable under some circumstances that we might want to.

Mr. Malone: — Just before getting off here, let me point this out. When you incorporated Saskoil, the original intent of that company was to explore for and develop oil in the province of Saskatchewan. I think it is fair comment that most of the thrust of activities have been in Alberta. Now you tell me that the Potash Corporation of Saskatchewan will not go out of Saskatchewan. I refer you to the other example which I think is a good example of Saskoil doing exactly that; got incorporated here and moved out of here as quickly as it could because of Bill 42.

Mr. Romanow: — I will try and pass on to the Minister in charge of the potash corporation, that he should not follow the bad habit of the Minister in charge of Saskoil.

Clause (i) agreed.

Clause (j)

Mr. Malone: — Who is the Minister in charge of the potash corporation?

Mr. Romanow: — The Minister in charge is the Member for Biggar, the Provincial Secretary (Mr. Cowley) of course. Under Clause (j) no assignment can be made under the Act until the Act is passed. I assume the Premier will reconfirm that.

Mr. Malone: — I'm not sure that is right. I think the Member for Regina South pointed out the other day, your Orders in Council indicate that the Minister of Mineral Resources is still by Order in Council in charge of the potash corporation. Have you passed an Order in Council?

Mr. Romanow: — I don't think that the Member for Regina South (Mr. Cameron) was making that point unless I totally missed it which was possible in the last few days. I would have to check the Order in Council but I think there is no secret about it, it is common knowledge that the Member for Biggar is the Minister in charge of the Potash Corporation of Saskatchewan. If the OC is legally or technically wrong, we would have to take the appropriate steps.

Mr. Thatcher: — Mr. Chairman, the Member just brought up an interesting point. Of course being a rookie in this legislature and perhaps not comprehending all the tricks that go on, perhaps the Attorney General could tell me if it is an unusual practice for a Minister not to take his own legislation through the House?

Mr. Romanow: — Yes, it happens quite frequently. I recall during the days of Bill 2, perhaps the Hon. Member might remember Bill 2. On that occasion I believe it was a labour Bill and was engineered by the then Attorney General for whom I have a great deal of respect. This happens from time to time.

Mr. Thatcher: — Mr. Chairman, Bill 2 seems rather insignificant as one turns back the pages of history. But here we are into perhaps one of the momentous debates that has ever affected this province, in this century and for that matter will ever affect it. Consequently would the Attorney General not agree that it is a most unusual procedure, when a Minister does not take part in debate, does not take part in the Committee of the Whole, but, mind you, lines up a defenceless potash president to supposedly chew him to bits and pieces and I understand he didn't even do that today, would you not consider it a most unusual procedure; something of this magnitude and the Minister does not have the courage to take his own Bill through this legislature?

Mr. Romanow: — I have given my answer and the answer is in the negative. Members must surely appreciate that as a lawyer it is difficult enough with the legalities of this Bill – pushing the Bill through the House, as a lawyer piloting it through as opposed to being a Minister in charge of running the corporation. There are a number of reasons that can happen in this area. I don't agree that there should be anything special about that.

Clause (j) agreed.

Clause (k)

Mr. Malone: — Why in (k) do you include as "owner" a person who immediately prior to the passing of a vesting order "had", you know past tense, any right or title, etc.? Surely the "had" takes him out of consideration.

Mr. Romanow: — Mr. Chairman, again it is the question of drafting I suppose. The question is strictly a legal draftsman interpretation one. It says, on the passing of the vesting order, he no longer has any rights, but as a consequence there are a whole number of things that have to take place, the arbitration, evaluation and so forth. It is just the word "had" in there on the assumption that once the vesting order is passed he has lost his right title, etc.

Mr. Anderson: — Pardon me, Mr. Chairman. It would seem under Clause (k) that the owner with any vesting interest is the private land owner who has mineral rights.

Mr. Romanow: — No, that is clearly not the case. If the Hon. Member will look at internal subclause (iii) he will see a further definition there that it does not include a person whose Saskatchewan assets consists only of mineral or mining rights. Basically we are talking about the scheduled companies, Schedule I companies only.

Clause (k) agreed.

Clause (l)

Mr. Malone: — Mr. Chairman, Clause (l). What other substance could be produced with potash? If you read the section it includes

any substance found in association with or produced or capable of being produced.

Mr. Romanow: — This is something where I have to rely on the engineers behind me and they say that sodium chloride, common salt, I gather is a by-product which would in chemical terms be a part of potash.

Mr. Anderson: — Would you include with potash as a nonviable substance, also petroleum products as being unviable?

Mr. Romanow: — No. You have to look at the balance of the definition that contains the element of potassium, etc., etc., unless oil has that element in it, I doubt that it does.

Mr. Anderson: — You say that oil is a viable product as opposed to potash.

Mr. Romanow: — No. I say to the Member that he seizes one word out of context. "Nonviable or viable" has to be read in conjunction with the entire definition. If you read it says, "Means any nonviable substance formed by the process that contains the element potassium". Now that would be the exclusion factor as far as oil is concerned.

Clause (l) agreed.

Clause (m)

Mr. Malone: — Mr. Chairman, I trust you understand, I am sure you do that Saskatchewan assets means as situated or deemed by law to be situated, including such things as stocks, shares, bonds, anything that is physical, situated in this province. The example I gave earlier, shares in Canadian Pacific Limited, owned by Cominco, situated in this province are deemed by law to be situated in this province. That is correct, isn't it?

Mr. Romanow: — I'd like to just come back on the tail end of that because I was about to agree generally with the Member up until that time and just the tail end that you said, I didn't quite hear. Could you just repeat the tail end.

Mr. Malone: — My point is, stocks, shares, bonds, other securities, securities in the broadest sense, that are situated in this province are deemed by law to be situated in the province. Right?

Mr. Romanow: — Yes.

Mr. Malone: — So again, I go back to the point I made earlier that when you expropriate and if it's an all inclusive type of vesting order saying all assets of Kalium Chemical and if they have stocks and shares physically situated in this province, you would be expropriating those stocks and shares.

Mr. Romanow: — Well, not quite totally correct. I said yes, because that is the case, but I think the other thing is that one has to look at, in addition to where the physical assets are actually physically located, that is to say where the shares are physically located, one also has to look at other things, such as the contractual aspects of that share, where, for example, it can be transferred. It may be deemed under the laws of Ontario or under the laws of Quebec of whatever, which might have a considerable impact on whether or not the Member's statement is true or not. But assuming that everything else is true, I think the answer probably is yes.

The question being put on Section 2 it was agreed to.

Section 3

Mr. Malone: — I just want to make sure I understand this section. As I read it on the expropriation provisions where you talk about any or all assets, I put the emphasis on the word 'any' and I suggest to you what you can do with a company is you can decide which assets are valuable and which assets aren't valuable and move in and expropriate only the assets you consider to be valuable. Is that correct?

Mr. Romanow: — Again from a theoretical standpoint that is possible, but I would again say to the Member that quite obviously looking at it from the Potash Corporation of Saskatchewan's point of view they would be wanting to take such of those assets which in fact comprise the actual enterprise that they will be taking over by the expropriation or actually by the expropriation. So it's technically possible, but realistically not probable.

Mr. Malone: — Well, I don't know why it's there, because in effect what this section allows you to do is to strip the valuable assets from several potash companies and leave them with the assets that aren't so valuable. That is, you could go to X company and agree with it to purchase certain of its assets and you get an agreement, you don't have to expropriate. You can't get an agreement with other parts of its assets so you could do one of two things. You could expropriate or you could say, no, we'll go to company Y who have similar assets and just expropriate those particular assets from company Y.

Mr. Romanow: — I think that that's possible, I don't think I could quarrel against that as a legal possibility but the question is what is the reality, in the practicality of it, what would the situation really boil down to? I'm sure that the Member would agree with me that the distinct possibility of different equipment, in different mines and all of that makes it very difficulty in reality to do what the Member suggests. I suppose in legal, strict legal terms, his interpretation is right. But I just don't see it happening in fact.

Mr. Malone: — I suggest to you as well this section permits you to expropriate 51 per cent of a company. That is you could go into, again I'll use Kalium, and expropriate 51 per cent of its shares, if they are situated here and I think they are. Put

yourself in a majority position and then just in effect run out the minority owner, because you would have the voting rights of 51 per cent. That is according to this section technically possible, is it not?

Mr. Romanow: — Mr. Chairman, again I think the people should be clear on this that I haven't done any enact check on this but I'd be awfully surprised if there were any companies in potash mining in Saskatchewan that had any shares situated in Saskatchewan in the true sense of the word 'situated'. Most of them are American and I'm sure that that answers that and the one or two that do have a Canadian connection I'm sure are governed by Ontario situs and so forth.

But leaving that as an aside, the other comment that I wanted to make is that we are dealing here with, throughout the piece, essentially in physical assets. There may be, of course, intangible assets, which are a part and parcel of it, we talked about the patents earlier, things of that nature. There would be no advantage accordingly for the PCS to take over only 51 per cent of a physical asset, have the half rather than the whole. What could we do with it, what could any other mining company do with it?

So I say to the Member that in strict technical terms perhaps it's true what he says but again in the practicality of it, there is not much change I would submit.

Mr. Malone: — Of course, you keep referring me to the practicality of it and I keep referring to what the section says. What we're concerned with right now is what the section says. I point these things out to you because I think all Members and the public should be aware of what this really means. I suggest to you as well that this section permits you to expropriate perhaps just the mine, no other assets at all of a company. But by doing so you effectively take over the company. Their other assets may become worthless. I suggest that's possible. Furthermore, it allows you to expropriate just mining rights. That is, you could move next door to an existing mine and take over the property that they hold the mining rights to and do nothing with their assets at all, but you could make the company almost valueless by taking over their rights to get into other areas to search for potash.

Mr. Romanow: — Well, in strictly technical terms I think that I would have difficulty finding many things to disagree with the Member, but I've given the answer in the early questions.

Mr. Merchant: — Mr. Chairman, with all due respect you can't keep flogging us off by saying in strictly technical terms, particularly where, in expropriation of land there are protections built in against just this kind of situation. For instance, you can't go in and expropriate just the land you need to drive your highway through the corner of a man's land. The courts will step in and say, no, that's not proper, you have to compensate for the damage that you've done. You have to compensate for taking over really the man's whole quarter section. But this section which you now ask us to pass is the same thing that is true of the deemed assets, the same thing

was true of tangible rights to mine permits you move into, for instance, getting the right to mine in New Brunswick. And your answer on each of these matters that are raised is to say, Yeah, but we're nice guys – we wouldn't do that." And I suggest to you, Minister, that that's not good enough. That's the whole reason that you keep advancing to us as answers you keep saying, I'm here to bring this and not the Member for Biggar because the Member for Biggar understands what we're trying to do but I understand the legalities of it, and when the legalities are called to your attention, your answer is to say, "Oh, but we're not going to do that, because we're nice people. We're not going to move in and strip a mine, we're not going to move in and take what's good and not what's bad." Yet by the same token, you said, on Wednesday, I believe that it is your intention on your theory under Section 45 that you can take on the going concern price that you might take a new mine or that you might consider whether there are problems with the shaft or whether there are problems with the water. Now all that I'm suggesting to you is those things aren't consistent and I don't think it's good enough for you to say to us and to the press and to the people, "Oh, but we're nice people, we won't do what the law says."

You know, the only time I've ever agreed with an NDP position taken in Ottawa was when they used to continually say to the Liberal Governments through Pearson's years, that it wasn't right to pass laws and say, "We won't use those laws." And that was the position taken by people like the Member for Moose Jaw to say it's not good enough to say, "We're good people, you can trust us, we're passing laws you don't need," yet that's exactly what you're saying here. You're bringing before us a Bill, which you say won't be applied in the way it clearly could be applied. You may be able to pass it but don't then suggest that it's right or proper to say to us, "Well, we're nice people and we're not going to deal with the potash companies badly."

The potash companies of Saskatchewan have seen what they can expect from the NDP Government of this province and if we're a little suspicious of some of the things that we thing you may be putting into effect, then I think that there is every reason for you to say more than, "We won't use them on them" and you may well not use them in the expropriation or in the courts of law but I'd be a whole lot more interested in what a George Taylor is going to say when he sits down with Bill Elliott trying to negotiate and says, "Well, it's there you know and if we want to pick on you, we'll pick on you, if we want to take the surface rights, we'll take them and you can take your K_2O and do whatever you want to do with it, you won't have any right to expand." No, I don't think that's a good enough answer, Minister, and I suggest the way that you keep saying to my colleagues and indeed have said it to me that, "Oh, we're nice people," just isn't borne out with the way you've dealt with the potash industry in the last few years.

Some Hon. Members: — Hear, hear!

Mr. R.H. Bailey (Rosetown-Elrose): — Mr. Chairman, this is the first section as we are going through this now that deals with the acquisition of assets and I'm wondering, we have other sections coming up, Sections 23, 25, 29 – the question I ask is strictly for information from the Attorney General. It seems to me that these sections

perhaps should have been grouped together, we're dealing just in parts with the various forms of acquisition and I'm wondering why they are spread out through the Act – just as a matter of interest.

Mr. Romanow: — We've tried to make them as consistent as we could in the drafting of it but I can just simply tell the Member that it's sometimes just not possible. We try to make the Bill read like a – you know, continuously if we can but it's just not possible in all legislation and obviously to your mind, this is one of the cases.

Mr. R. Katzman (Rosthern): — Yes, I have a question on 3, it probably cross-references to 29 also. When I was in a potash mine, I wonder how they are going to value all the equipment that's there, and the fair method that you will use? I assume that it's probably covered by both sections.

Mr. Romanow: — Well, the question of valuation – what you pay for what you take, failing an agreement is covered by Section 45, which is fair market value.

Mr. Katzman: — How do you figure out fair market value on something that's being used, and the salt has got to it? Who's really going to decide and be fair to both sides and on standby equipment that isn't being used but is held in stock for when something breaks down?

Mr. Romanow: — Well, if we can't agree to that, then the mechanism in the Act is that the arbitration board decides. So you ask the question 'who' and the arbitration board will.

The question being put on Section 3 was agreed to.

Section 4

Mr. Malone: — Well, no, Section 4, Mr. Chairman and Mr. Minister, and I also have to deal with Section 5 on this, asking these questions so I hope you'll permit me to anticipate that. Firstly, I can find nowhere in the Act any assurance potash companies, that is the owners, I guess to describe the Act, are free from being sued by other secured creditors or unsecured creditors for interest they may have in the property that's taken by the vesting order that is what I'm saying could be dealt with in another section, I suppose this is appropriate, as well. How is it that you can come in and expropriate, the arbitration board can come up with an amount for compensation, say $50 million or whatever. The potash company itself could owe to secured creditors more than $50 million, the money would be divided up by the courts if necessary but a secured creditor could still not be paid out and he would still have a right in law to sue the owner of the potash company for the balance owing to them. Now, my question is, have I misread the Act or is there something in there that protects the potash company from this type of situation arising?

Mr. Romanow: — Oh, as you say it.

Mr. Malone: — Well, does that not strike you as eminently unfair? What you've done is you've not only taken away the right from the potash company, you've taken away the ability of that potash company to pay its debts, you've also affected creditors – innocent creditors who in good faith entered into agreements, secured or otherwise, from collecting on the money that's owed to them.

Mr. Romanow: — Let me give you an example, supposing you have a piece of land worth $40,000, half sections or whatever, and there happened to be $200,000 worth of mortgages outstanding against that land. Now there is an example of where our situation perhaps arises. What would happen? That if the value of the land is only $40,000 that's it. The mortgage company has the right to come back against the owner for any balance.

Mr. Malone: — Well, that's hardly a good example, because what happens in that particular situation is that the owner still has the land to earn income to pay off his debts and a second mortgagee may have known full well what the situation was, that he was prepared to take the chance of loaning money on a second type of security arrangement because he was getting more interest, because he felt that the situation was such, that over the years his security would become a first security in due course, that he's be paid off.

Mr. Romanow: — I think, Mr. Chairman, that what the Member says is partly true, but let's assume that there is a default and an action on the mortgage. What does the second mortgage company get? Or the third mortgage company get? After the first one collects the $40,000, if the assets total $200,000 they end up getting and going after the owner of the land for any unpaid balances owing. The same thing would apply here.

Mr. Malone: — But you are assuming that there is a default and I'm assuming that there isn't a default.

Mr. Romanow: — Oh, well . . .

Mr. Malone: — But you are assuming there is a default and I'm assuming that there isn't a default. Well, what do you mean, "Oh, well?" The situation could easily arise. What is relevant? Surely it is very relevant, I don't know how the potash companies did their financing but I suggest to you it's very possible that there are first and second mortgages of these properties. And the people who hold the second mortgages would enter the arrangement knowing full well that they may have to wait for their money, that they read the same market forecast that apparently you read, that they felt the situation was such that they could afford to wait. They accordingly charged a higher interest rate – 18 or 20 per cent perhaps; I don't know, but what you are doing by this particular type of investment is first of all cutting out those second mortgagees and maybe even the first mortgagees for that matter. And you are putting the potash companies in an intolerable position.

Mr. Romanow: — Mr. Chairman, as I have said again that under those circumstances those who would have a claim could take an action against the potash companies. As I say by my example on a default of mortgage the same situation would take place.

Now, the Hon. Member says that that again assumes that the potash company is long gone and doesn't care about any obligations that are here and that is perhaps for the judgment call to be made as the potash company. I don't think that will happen but even it if does the right of the second, third or fourth mortgage is the same as it is in law. He can sue on it if the proceeds are not enough to cover it.

Mr. Malone: — It is not right. You say long gone, well where else would they be? Cominco, it is the only mine that they have is the one here. You are expropriating it and it has perhaps, I am not sure what their assets are, but assume for one moment they have no other assets in the province. There is no way that interest of the second mortgagee can be pursued in Saskatchewan because what good is a judgment in Saskatchewan? There are no assets here. You say that they can be pursued in other jurisdictions, well maybe that is the case, but surely you are limiting the right of the creditor to make him go to another place, and maybe there are no assets in another place, maybe they are all here in Saskatchewan.

Mr. Romanow: — Mr. Chairman, I think it is important for the Members to keep in mind, and I am sure they do, that we are talking here about an expropriation Act and we are talking here in terms of payment, compensation payment for that which is taken. To adopt the Member's reasoning we should be paying into the fund, not only the value for that which is taken, but the value for all of the other encumbrances that may be against it, regardless of whether or not it represents the true value of the asset taken. That would be, if we came in with that type of a provision, I am sure it would also be considered so by Members opposite. So this is an expropriation statute and the important thing is that the owner has, like in any other expropriation statute, the right to get fair compensation for that which has been taken. That is what this Bill provides for.

Mr. Katzman: — . . . I can't hear the Attorney General at all, what he said on that last answer.

Mr. Chairman: — I think your Point of Order is well taken. If the Members would please confine their remarks strictly to themselves, at lease, they are annoying the House.

Mr. Merchant: — . . . to converse with the Liberal Party and they are about to cross the floor and as happens in these matters there is a great deal of joy and happiness when the fallen sheep rejoin the Saviour in heaven. And that is the reason for the joy and I am sure you will share with the Liberal Party in this joy.

Mr. Chairman: — Order, please! I don't think either the last remarks are relevant to the clause we are on, however, it would perhaps

be a good time to interject here, as I have been quite aware that today there is another birthday celebrated within this House. I understand it is the birthday of the Leader of the Opposition (Mr. Steuart).

Some Hon. Members: — Hear, hear!

Mr. Chairman: — I am sure that I am expressing the feeling of all Members when we wish him continued health and happiness for many more years.

Hon. Members: — Hear, hear!

Mr. Merchant: — I wonder if the Minister would ask his expert from the potash corporation whether within the earnings test that you hope will be accepted under 45, it is from the gentleman's perusal from the various information that he picked up while he was in Mineral Resources, if the situation that my colleague has advanced is possible, are there companies – it is a dicey situation, where the first and second and perhaps the third mortgages and the secured creditors might exceed the amount of money to be awarded within your test, based on the tax set-up that you propose to be considered by the expropriating body?

Mr. Romanow: — Mr. Chairman, I should answer that it seems unlikely, I am advised, that that situation can occur.

Mr. Merchant: — What you are saying is that it is unlikely that even on your very narrow earnings test that the secured creditors would not have a greater equity in the company than the real (Minister of potash has just passed you a note). Does it confirm my question?

Mr. Romanow: — I think that is the best information that I have, that it is unlikely.

Mr. Merchant: — Then I won't belabour the matter except to say one brief thing. What are you really saying in 45 is, we will impose an earnings test and then you are saying, we will steal the potential. That is what you hope to do, is steal the potential, then what you have done is you have taken over an investment that is paying 5 per cent to the potash industry and you have borrowed money from the multinational companies and you are going to pay 10 or 11 per cent on the interest to the potential, if you pay full market price for the potential then you have made a very, very bad deal indeed.

The example that you placed was a man who owns a section of land and he has a first and second mortgage and when the first and second mortgages were placed those mortgages were placed against the value of the land. There is a far better example. The example of an apartment building, for instance. An apartment building before you brought in rent controls might well have had a first and second mortgage which has a larger value then, of course, the value has plummeted as a result of your

rent control legislation – but might well have had a larger value than the value now because in advancing the money the real value that was placed by the appraisers would have included potential. If you don't succeed in stealing the potential, as the Government of Saskatchewan hopes to do, then I suggest to you that the kind of problem that my friend from Lakeview has advanced might exist.

I am given some joy in being advised that it is unlikely on the practicalities of the industry. But I say, again, to you that it is important for you, and I am starting to believe that the Government didn't look at the kind of legal niceties that this Bill obviously holds. I am starting to get even more concerned not about the direction that the industry is going but a little more concerned about the draft or the intention of the Bill.

I have looked at, my colleagues have looked at it and we find that it is a 'loopholey' Bill and is a little surprising.

Mr. Katzman: — The Member used an example a few minutes ago about a farm. Taking that a little further if I have a first, second and third mortgage on a farm and I am about to go belly-up and need money, the third person can pay the two out ahead of him and then have the land and hopefully be able to get his revenue out. Under the system that you are suggesting I gather they second and third are totally lost and get nothing because you are going to expropriate and they have no way of getting their share out by way of taking a gamble as with that piece of farm land.

Please explain a layman's language, Mr. Minister, not a lawyer's double-talk.

Mr. Romanow: — I think the way the Member describes it, it is certainly my understanding that this can be worked this way and on occasion is worked if one wants to take that kind of a risk.

The question at issue here is, that once the expropriation has taken place and there are the second and third mortgages against it, the issue is, what happens if the fund for which the value is paid for the taking of, the values of the object taken is made, what happens if that does not cover all of these other encumbrances.

The argument of the Liberals is, wrongly so, that there should be some form of compensation for the second and third and so forth. We say that in an expropriation Bill, which is the only correct way to put it, that an expropriation Bill, what we pay is what we take, for the value of what we take according to fair market value. Accordingly, if somebody down the line is a second and third mortgage finds not sufficient funds around, what is his remedy? His remedy is to go against the potash company, to go against the owner, to get to the balance of funds available.

Mr. Katzman: — . . . to do the same as you do with the farm land, take over the risk?

Mr. Romanow: — Well, because the ownership for one thing, is changed. The owner is no longer the private company, or if you will, the private mortgage company, it is now the Potash Corporation of Saskatchewan in the right of the Crown, through a Crown corporation. We become the owner.

Miss L.B. Clifford (Wilkie): — I have been trying to figure out, Mr. Chairman, and Mr. Attorney General, at what appropriate place this should be asked and I think this may be the most appropriate.

I mentioned one other time that some of these companies are giving considerable assistance to the community by donating funds. Grants for recreational facilities, grants for salt, capping facilities for buying salt for roads. They also give 50 per cent of fertilizer cost to the farmers of the land that they have invested in, things like this. Now when you take over this as a Crown corporation would you endeavour to continue these additional things to the communities that are involved in these areas?

Mr. Romanow: — I would hope so. I don't know whether or not every mining company does what the Member says they do. I think it they do, that is commendable. I know from my own experience that it is not a uniform practice and in some areas there is no sort of community involvement and some areas there is. I don't know if this is true, did I hear you say Sask Minerals buys hockey sweaters for the boys in the area? I assume if we have one Crown corporation which does it we can continue it here.

Miss Clifford: — I don't want to debate the point, but things as hockey sweaters and that amount are fine but when you come to contributing $1,000 a year for a golf club or $2,000 that is a major sum and I would suggest that perhaps it might be a consideration when you do become involved in that type.

Mr. Romanow: — I would hope that the PCS is a good corporate citizen, if I could put it in that sense.

Mr. Stodalka: — Just a comment. I belong to a constituency in which Sask Minerals has one of their plants in Ingebright and my experience in that particular area as compared to some of the things that are happening where Dome Petroleums are and where Pacific Petroleums are in the area near Burstall, what the communities receive in the form of financial help and the forms of services certainly exceed in Burstall what they do in the Fox Valley area. I was just wondering if the Minister would be able to identify which area did really receive those hockey sweaters?

Mr. Romanow: — If I can just say this, the substance of the question is: — will we continue these practices and I would say that I hope that we do. And my information is that, indeed, we have in some other areas.

Section 5

Mr. Malone: — No, Mr. Chairman, this section and the following section have this phrase, "as soon as practicable". As I read this, of course, the meaning is that the Lieutenant-Governor-in-Council can pass a vesting order and not serve the orders and not serve the creditors, until they deem it practical to do so. My question is, why is this wording here? Why not the usual wording of forthwith or something to that effect?

Mr. Romanow: — Mr. Chairman, I think the words, "as soon as practicable" do have a meaning in law and, indeed, imply and I think will so be interpreted by the court to mean service as soon as it is convenient. I don't think the type of wilful or at least the implied wilful refusal to service would be in compliance with the statute.

I think the other point is, of course, that there are other sections, Section 20 and thereon, which do indeed set certain specific days and time limits once additional information is provided to the corporation about secured and so forth. What I am saying is that in the totality of the notices, etc., from five in the Bill there is, indeed, an adequate timetable which the corporation must follow in order to make sure that people can get notice.

Mr. Malone: — When you say as soon as practicable, practicable for whom? The Government?

Mr. Romanow: — Mr. Chairman, I think that "as soon as practicable" must be viewed in how a judge would view it. If this matter were taken to court and somebody alleged that it was not done as soon as practicable I think that it would be incumbent upon the Potash Corporation of Saskatchewan, might even be some evidence about where you could not locate owners; whether you could locate some of the secureds, that type of thing, all of which would be evidence to determine what, indeed, could have been done and what, indeed, would be "as soon as practicable" according to the law. To a certain extent it is a matter of the fact. All that I am saying is that I do believe that those words are frequently around in legislation and do imply with them that meaning that I tried to convey.

Mr. Malone: — Why not forthwith?

Mr. Romanow: — The same problem would exist there, that scratch out "as soon as practicable" and put in the word "forthwith" and your argument might still apply, namely, when is forthwith, forthwith and what if they don't do it. Again, we're playing with I suppose the English language which is a very colourful language and all the variations of it. I don't think there is much difference there.

Mr. Malone: — There is a very significant difference, many cases say what forthwith means, it means immediately, as soon as possible. "As soon as practicable" has an entirely different meaning to me. You say you have seen it in other statutes, well, name one. I

can think of one, under the Criminal Code provision on breathalizer tests. That is the only one.

Mr. Romanow: — I don't have the statutes with me, if the Members wants I suppose I can send a lawyer to get the list of statues, but I don't think that would help the committee, I don't think the Member really wants that. I think the question really resolves itself as to whether or not the words "as soon as practicable" do mean something in law. In my judgment and the judgment of the law officers who have looked at this and have assisted in the drafting, those words, keeping in mind the qualifications I have talked about, do have an input.

I think also it has to be looked at and I repeat again, in the totality of all the notices.

Mr. Merchant: — Mr. Minister, I don't want to belabour you, but Section 23, if "as soon as practicable" means forthwith, then, and that is the clear meaning you said. I say "as soon as practicable" means whenever you get around to it. Section 23 is in exactly the same words. That says after you enter into negotiations. If "as soon as practicable" has a clear meaning, then I gather that the meaning is that you will begin negotiations at the same minute that you tell them about the vesting order, or else it doesn't have any meaning. Either there is a difference or there isn't a difference. Is there a difference between the time when you are going to being under Section 23 or is that the same time that you are going to serve the vesting order under Section 6 or again can we rely on the fact that the NDP Cabinet are all nice people and they wouldn't do anything unkind to anyone? I see the Ministers are nodding their heads.

Mr. Romanow: — Mr. Chairman, I repeat again to the Member, what do the words "as soon as practicable" in law mean when you look at all the sections? I am saying that there are a number of factual statements that must go into this. It is conceivable that the time limitation under Section 23, of the time "as soon as practicable" could be at variance with Section 4 under consideration. The facts of the case will determine that, but the point is that in both of the cases, whether it is 23 or 24 and even under the explanation that I have given, those words in law imply the sense of urgency, if you will, to get the thing under way, either by negotiating or otherwise. That's what my view of the matter is.

Mr. Merchant: — It's not the end of the word, but Section 6 begins with exactly the same words as 23, "as soon as practicable after the passing of a vesting order" and 23 says, "as soon as practicable after the passing of a vesting order" and you clearly imply very, very different times. Then you said to us, as soon as conveniently possible. I think that is just what you just said unless I've been half dreaming. I gather that what you are saying is that the Government will serve their vesting order as soon as they get around to it and they will begin their negotiations as soon as they get around to it. Now the only other case that the phrase "as soon as practicable" exists as far as I know is in the Criminal Code over .08 and then they say, "as soon as practicable" but them limit it as well to two hours. I clearly think that when you move from the

ordinary word of “forthwith” to “as soon as practicable” it means something else. Indeed I think that forthwith applies to six, and as soon as practicable after the passing vesting order is what you really had in mind in 23. Now I just don’t understand frankly why you would insist on proceeding with what would appear to us to be a clumsy, improper, misleading and potentially dangerous kind of section. It is just another example of a section that if abused could result in an unjust, unfair dealing with these companies that you now are about to expropriate, or considering expropriating.

Mr. Romanow: — I don’t agree with the Member, I don’t think that the Member, well I won’t say that because he might take offence, but I don’t think that the suggestion as is advocated by him is a reasonable one. I don’t agree with him. I think the words as I have explained do have a meaning and on the facts before them, it would not be as soon as practicable if indeed it did mean as the Member suggests in our own good time. That is not the criterion of it, there are a number of factors which enter into it. Well, he and I disagree on this.

Mr. Malone: — I have another question. Before I get to it, I just can’t follow your reasoning. It is clear to me that you can pass a vesting order and you don’t have to serve anybody with it, you don’t have to file it anywhere and the Act specifically provides that type of a procedure if you so choose to follow that type of a procedure. As you say, you won’t or again this is a case where you say, oh, we wouldn’t do that. I go back to my colleague for Wascana who commented about when this Act comes into force you are not going to be doing the dealings with it, your lawyers are going to be dealing with it. And they are going to use every single provision in that Act that they can use to their advantage. That’s why you have them, but you obviously don’t see it that way and I suggest that you chose not to see it that way for some reason that you haven’t explained to us.

Let me go on in this section where you talk about the corporation “believes to be the owner of such assets.” Again what’s that mean? Why can’t you just say that the corporation will serve the owner? You can find out who the owner is, you can search the Land Titles Office, you can search all the records so why do you have, “believe to be the owner”? That suggests to me that you just believe that somebody else is the owner.

Mr. Romanow: — Mr. Chairman, again it is getting late in the consideration of this Bill so I am not going to be strong in the arguments of whether or not the Member can understand me because sometimes, quite frankly, most times I find it very difficult to understand their reasoning. I didn’t say that we wouldn’t do it because we are good guys, nothing of that nature. I am saying that the law and those words place an onus on us to do it. You say that’s what that means, okay, you can draw that interpretation. I say that it means what I said it means.

The point about the, “of whom it believes to be the owner of the assets,” is the attempt to get early service as early as it is practicable or as soon as it is practicable. And if you wanted to take your suggestion and go through the searching

and the whole operation, one might not have as soon as practicable the service as quickly as we would have hoped. So the idea is to try and get as practicable, thereafter a whole series of other time limits come into play, other time limits with respect to specific secured creditors and giving them notices, who we can give the appropriate and the exactly identical legally identifiable person correct notice. That's the situation there, the purpose behind that is to give as full notice as quickly as we can to all the people involved.

The question being put on Section 5, it was agreed to.

Mr. Chairman: — Section 6 – agreed?

Mr. Malone: — No, Mr. Chairman and Mr. Minister, this section and other sections I have this question about the filing, that is the date of passing the vesting order and the date of filing in Land Titles Offices or whatever. The Act obviously assumes that that is not going to happen the same day, that is you could pass the vesting order one day and a week later you could file it. Now my question to you is, what happens if there is an intervening right in between that period or a bona fide purchaser for value intervenes and buys some asset? Where are they left?

Mr. Romanow: — Mr. Chairman, the Section No. 4 talks about all right title, etc., vest immediately upon the passing of the vesting order, so that in law the title would fest as of that date. The Member says what happens if there is a time lapse between the date of the vesting order and the date of the filing of that vesting order in the appropriate Land Titles Office if there is an intervening third party. Again, under those circumstances, in all likelihood the bona fide third party I think would be stopped by Section 4 because the title would pass there. If damage occurred to the third party he may have an action against the appropriate Land Titles Office or the Land Titles Office of the department.

Mr. Malone: — Well, what happens if the asset disappears, say it is trucks and the potash company decides to sell its fleet of trucks, say between the time the vesting order comes and the time it is filed, they sell all their trucks and the trucks are driven down to New Mexico. What can you do about it under the circumstance?

Mr. Romanow: — We would have to follow the normal remedies I suppose in terms of trying to seize or obtain the trucks as we would in the course of civil action. That's about the only remedy that is available.

Mr. Malone: — What you are doing again, that is the result of that would be the bona fide purchaser for value would lose his money and I suppose the only thing he would have would be a right to sue the potash company, the owner for non-performance of their agreement.

Mr. Romanow: — He might have an action against the appropriate Land Titles official or government department. I put it no higher than might, but in addition to what you say, yes.

Mr. Malone: — How could he have such an action against the Land Titles or the Central Registry Office? How could they become possibly liable? They get the order one day and they file it that day. What I am talking about is the period of time between which the order is passed and they get it.

Mr. Romanow: — I think the primary course of action would be as the Member has described. He would have to take a civil action. I don't know how one might read in total what the import of Section 4 is and what duty or obligation if any there is on a Land Titles Office or other persons. I am not sure of that but I am only offering that as another possible source of remedy for the person you described.

Mr. Malone: — Well, pursuing it further then, I understand that some of the potash companies have been dealing with freehold minerals, that is you have a lease from a private individual to, in due course, mine the potash under that person's land. Now in such a case what happens to the land, that is there is perhaps a caveat protecting the right to in due course go onto the land to mine the potash? Now a vesting order is issued that covers that land, does the title then come out automatically in the name of the Potash Corporation of Saskatchewan, the private title holder would have his rights extinguished?

Mr. Romanow: — In due course, yes, it would come out this way, the passage of the title, of course, Section 4 speaks for that, in a sense immediate, in due course the title comes out.

Mr. Malone: — So what you are doing, is not only trying to get at the potash, you are taking away the surface rights as well. As I read the section the registrar has no alternative but to cancel the title and issue a new one.

Mr. Romanow: — As I say, I think I have given the Member the answer on this. The situation is, of course, quite obviously the service of the vesting order, the filing of it, should be carried out as quickly as possible. The effect of it legally is as I described in case that doesn't happen.

Mr. Malone: — What remedy then does the owner of the freehold land have?

Mr. Romanow: — I think that the Member has suggested the answer, I was just checking to see if there is any other one available here. Probably the action against the potash company and there may be an action against the Land Titles people.

Mr. Malone: — Why would he have an action against the potash company? His only relationship to the potash company is on a mineral

lease. They have no agreement whatsoever as far as surface rights and if the effect of the filing of the vesting order cancels the only surface rights, how could he ever get at the potash company?

Mr. Romanow: — Mr. Chairman, again I think that the Member is jumping from point A to point C without covering point B fully or at least if he is perhaps I am not understanding it. But if there is an expropriation of the surface rights as opposed to mineral rights, if I can talk from that standpoint, then of course there would be compensation for those surface rights in the ordinary course of circumstances. I don't see how that would particularly apply to the thing we were discussing, namely the question of the late filing of the vesting order and something happens in the interval.

Mr. Malone: — Well, I'm not talking about late filing at this point. Sorry. I am talking about a situation of a private land owner near one of the mines at Rocanville or Esterhazy. I have leased the mineral rights underneath that land for the potash underneath that land to the company. Now you come in and you pass a vesting order. And as I understand the Act you file the vesting order in the Land Titles Office, it would cover that land that I own because the company has a right to mine potash under that land. Now as I understand the registrar of the Land Titles Office has no alternative but to cancel my title even though all you are after is potash, he is cancelling my title for the surface rights.

Mr. Romanow: — Well the assumption is that on that vesting order the surface rights are cancelled as well and I am not sure that is as I say, that that is the consequence. I think we would have to take an appropriate vesting order to cancel the surface rights as well.

Mr. Malone: — Well 13, I am sorry I am getting ahead, but it arises under Section 6, but you go to 13, "the registrar shall upon being served with notice under subsection (1), Section 12, cancel such certificates of title, and duplicate certificates of title" etc.

Mr. Romanow: — Well, again perhaps I am not understanding the Member but I am asking to see them, I am not understanding this because that is possible. What the Member is saying that on the expropriation of the mineral rights as a consequence under 13 or other legislation you also expropriate and take over the surface rights. I don't think that follows. You would have to have a separate vesting order.

Mr. Malone: — I will come back to it on 12 and 13 if you wish, but that is the way I read it. Okay, I am sorry, Mr. Chairman, bear with me for a second. Yes, why would the vesting order be filed in all Land Titles Offices?

Mr. Romanow: — Just as an abundance of precaution if you will to put on alert all of the Land Titles Offices, in case the land

is located partially in one or partially in another, or whatever the circumstance happens to be. But the point that we really want to do is to put it on notice at all Land Titles Offices in order to give it an abundance of precaution to all of them.

The question being put on Section 6, it was agreed to.

Section 7 agreed to.

Section 8 agreed to.

Section 9

Mr. Malone: — I assume that what this does is cancel out any debentures that the company has given?

Mr. Romanow: — No, it doesn't cancel any debentures that the company has given. The cancellation in quotes would only come after the vesting order. All that Section 9 does is in effect give notice to the Provincial Secretary and as of the date of that filing in effect tells the Provincial Secretary that he can't deal with anything. "No instrument dealing with" etc., can be dealt with thereafter unless it is agreed with by the Minister.

The question being put on Section 9, it was agreed to.

Section 10 agreed to.

Section 11 agreed to.

Section 12

Mr. Malone: — Okay, now this is the section. If you read it with 13 when you see 12:

> The Corporation shall as soon as it is practicable after the passing of a vesting order expropriating any land or interest therein.

Okay, interest therein would be a mineral rights of potash. You go to 13; this says, the registrar shall, upon being served with notice under subsection (1) of Section 12 cancel such certificates of title and issue new certificates of title, so what you could intend on doing under 12, is simply take the company's lease with an individual land owner, that's all you're trying to do. But what the registrar had to do, under 13, is cancel the title to all the properties, surface and minerals and otherwise.

Mr. Romanow: — Again, I think I see what the Member is getting at, and I, at least, think that's the same position I thought we were at some time ago. The point that has to be kept in mind, I think, is that the interest therein as well. That has to be set out in an expropriating or a vesting order, before you have to set interest therein as well, and i.e. the surface rights, if you will. At least I think that that's the interpretation that the potash corporation would put on it, from which thereafter, would flow all the same consequences.

Mr. Malone: — Sorry, I'm obviously not getting through to you, and perhaps some other Member can try it. I know what the potash company intends. All they want is the lease to the potash, they don't even care about the surface rights, presumably. All they want is the lease, but when you go to 13, it doesn't matter. If all they're taking is the lease, the registrar still has no alternative under 13, except to cancel the title and issue a new one, covering the surface rights and everything else.

Mr. Romanow: — You know, I understand what you're saying, but you know, again you can say what you want about whether or not I understand, but perhaps the Member doesn't fully understand, and I simply say that the question is whether or not, as a consequence of 13, surface rights, for example, are also cancelled. That's the point you were making way back. And the point that I was making way back then, is that in my judgment, the answer is no, that it would require a vesting order. Now that's the interpretation as I see it on Section 13. I have with me now additional legal counsel to buttress myself against the array of legal talent opposite me, and maybe I'm interpreting it wrongly. Let me just check again, to see if I am interpreting it wrongly.

Mr. Chairman, again I am satisfied on the basis of the best advice that I have in front of me here, trying to make a snap legal judgment, that using the surface rights example, under Section 13, if you read on the balance, it says "endorse such memorandum on any certificate of title and duplicate certificate or title or enter such memorandum in the instrument register or general record as is necessary to register the land or interest therein in the name of the Corporation" and the legal opinion that I am offered here is, they argue that what I say is true, that the surface right is protected. What you do if the surface rights is in the name of the Potash Corporation of Saskatchewan, I'm sorry the potash company, and is a caveat that the potash company has, and now you expropriate that interest, and you put in place a potash company A, Potash Corporation of Saskatchewan under 13, what would happen is that the registrar would take the appropriate steps to report that new fact.

Mr. Malone: — Well, again 12 too, well it's both, we're still on 12, but I was referring to 13, but with 12 too, certainly it indicates that this type of action is anticipated, because it says in 12 too that you serve the owner from whom land or interest therein was expropriated. Now that could be somebody other than the potash company, and likely will be somebody other than the potash company. Is that not correct?

Mr. Romanow: — Yes, except that, you know, when you're talking about surface rights, for example, all that you are taking away is the potash company's interest in that surface rights, if you will, and substituting therefore the Potash Corporation of Saskatchewan's interest thereof, then 13 comes through and you find the proper endorsement which changes that.

The question being put to Section 12, it was agreed to.

Section 13 agreed to.

Section 14 agreed to.

Section 15 agreed to.

Section 16 agreed to.

Section 17

Mr. Malone: — Section 17 has to be just a little ridiculous. In effect, what you are saying is you can make all the mistakes you want, and notwithstanding all those mistakes, you can patch and repair any time you want and still go back and try and attempt what you blew the first time, by making all the mistakes. Now surely there should be some provision to recompense innocent third parties who have become involved in this, if you make a mistake in drafting a vesting order, or drafting any of the notices that are being sent to Land Titles Offices. Now, has any consideration been given to that?

Mr. Romanow: — Mr. Chairman, just two points on this. Number one, the correction section here is one which in our judgment is necessary because really after all the substantive act of the vesting order is the thing that is important and that if there is, as the Act says, a misstatement or some omission or error, the substantive act should not be allowed to be thwarted, thus the amendment. As to the question of damages that might apply in this area, again no specific consideration was given for the inclusion of a specific section for damages in any hypothetical situation. I assume that under some circumstances, perhaps a claim could be made against the Assurance Fund in the Land Titles Office, or something like that. So, we considered it, but we rejected it on balance, for the reasons I have advocated there.

Mr. Malone: — I suspect you are just going to keep giving me the same answer, but that doesn't mean the situation has cleared up any. How can you possibly make a claim against the Assurance Fund of the Land Titles Office, when it's not the Land Titles Office's fault? They just register what you give them. It's the company, the potash company's fault if they make the omission, misstatement or error. In fact, what conceivably could happen is that you go to one potash company and mean to take away some and forget to do so, and the potash company will think, oh boy they didn't seize this section, so I'm going to sell it as quickly as I can. Then you could find out about it years later.

Mr. Romanow: — Mr. Chairman, again I would have to repeat what I have said before. Add to that that I am advised not that this section is similar to existing legislation in The Expropriation Procedure Act, Section 68, which exists as well under The Expropriation Procedure Act for the province of Saskatchewan, so this is an Act which is fairly widely used and acted on. I don't know if there has ever been an action for damages against whom I don't know, I suppose that the Potash Corporation of Saskatchewan might be liable for a negligent, wilful act of error or omission, but again, we can't foresee of a circumstance

that would arise like that, and The Expropriation Procedures Act is the source from which we can draw.

Mr. Malone: — I won't dwell on it, but I am sure you see the point, and I'm sure you must acknowledge that what I say is correct.

The question being put on Section 17, it was agreed to.

Section 18

Mr. Malone: — Now can you possible enforce that? If the owner just says I am not informing any secured creditors, I'm not going to do anything?

Mr. Romanow: — One answer comes to my mind immediately, and that is, of course, that the Act does set out penalties and offences, and presumably this would be an obligation on the owner which if he does not comply with, therefore a penalty or an offence, possibly a penalty. One of the lawyers back here says that perhaps a declaration could be sought forcing the owner to do so.

Mr. Malone: — I'm not sure the penalty section, there is a penalty section, covers this. There's the penalty about obstructing an officer of the corporation, and so on, but I may be wrong but my recollection is that there is no general penalty section that you usually find, that you know, anybody who breaches any provisions of this Act is guilty of an offence. I don't see it anywhere.

Mr. Romanow: — We might have to amend Section 63, and make it a general one. But I think the answer is, in addition to that, the business of going to court, trying to compel the owner to perform Section 18.

Mr. Malone: — Under this Section 18, the owner has to serve the corporation with notice. Later on in the At it refers to how the corporation is to be served, one of the methods of serving it is to deliver notice to the head office of the corporation, and I'll ask you now, where is the head office of the corporation?

Mr. Romanow: — I would have, I'll just have to take notice of this, because I believe the head office is located for legal purposes in Regina, of the Potash Corporation of Saskatchewan, I think that's what the PCS and everything says, but if you just take notice, Mr. Chairman, where the PCS head offices are located, and I'll give you an answer later this day or tomorrow.

Mr. Malone: — Can we consider that as an announcement?

The question being put to Section 18, it was agreed to.

Section 19 agreed to.

Section 20

Mr. Malone: — Now just a minute, on 20 here. I have a note about the corporation having 70 days to act, and a creditor having only 20. How do you explain that, Mr. Minister, why do you . . . just a second, my notes may be wrong too. I'm sorry, that's 21, just hold on. Yeah, go to 21.

The question being put on Section 20, it was agreed to.

Section 21

Mr. Malone: — I just question the 20 days. It's conceivable that the secured creditor has no office in Saskatchewan or even perhaps in Canada. I suggest that it works a hardship on them to give them only 20 days within which to move, and you give the corporation, I believe, something like 75 days, within which to move after the vesting order.

Mr. Romanow: — I think the point here that has to be emphasized is that the 20 days runs from the day after the copy of the vesting order is served on the secured creditor, so that to the point that you address yourself to should be covered because the secured creditor gets the notice, thereafter he's got 20 days in which to serve notice on the corporation of his claim, etc., and I think that's a reasonable time.

Mr. Malone: — I am inclined to disagree, but it's not a big point. The next thing that causes me concern in this section is the provisions where "the Corporation believes to be owed by the owner to the secured creditor". Now surely this is taking too much power to the corporation. The point is, the owner could come in and say, I don't believe that's right. The corporation says, well, we believe it is right, so that's how we're going to act. Now surely there should be some recourse through the courts or something by the owners, if he disagrees with the corporation.

Mr. Romanow: — I think, Mr. Chairman, again the key words here are where a secured creditor who is served, etc., fails to comply with this provision, will take you into place. If he does comply, then of course it does not work, and the rest of the proceedings will go as set out. There has to be some mechanism, of course, where there is a failure to comply.

Mr. Malone: — I agree, there has to be some method, but why should it be the corporation's deciding? Why not the owner? If the secured credit has not bothered to comply, surely the corporation shouldn't decide what's owing, surely it should be the owner.

Mr. Romanow: — The answer for that has to be that in the end result it's the corporation that is making the payment. In a sense the owner can make the decision, and without really tying up the corporation. I think also that, I'm just going to say that also, the sections here shall be deemed, for the purposes of Sections

26 and 27, and those sections have to be read as well, and these are the very, very limited purposes, in other words just those two sections. Partial agreement, Section 26 and where claims exceed amount of compensation.

Mr. Malone: — I think you're missing what I'm saying to you, is that why does the corporation have to have this power? I mean, what happens if the corporation and the owner disagree, in the case where the secured creditor fails to make a claim? By this Section 21 is says that the corporation can make the decision. Now surely if you call it justice it should say that the owner should be able to make the decision. It's his money.

Mr. Romanow: — Mr. Chairman, this is, I repeat again, that in a sense it's the corporation who is primarily involved in this or directly involved in this.

I think another factor that has to be considered as well is the question of whether or not the owner can be really relied upon to give the most accurate of the figures in there. After all he may very well have invested in this to keep it as low as he can and that would not be right.

Mr. Merchant: — That's like saying that a bank, when a bank acts on my cheque that the bank has the most at stake because it's the bank that's paying out the money but what the corporation is arbitrarily going to be able to do is pay out the money of the company that you are going to expropriate. I know you don't have a lot of regard in the section for what you would characterize as the multinational companies but you are going to take their money and pay it out to secured creditors in any manner that, according to this section, in any manner the corporation, you, think is appropriate or proper.

Mr. Romanow: — Mr. Chairman, the Member has, I think made not a good analogy about the bank in drawing the cheque, because the important point to remember is that the owner has got an invested interest. He gets the residue, he gets what is left over, so it's to his advantage to make the amount as low as possible so that he can get more at the bottom end. So you can't draw the analogy that he gets the same money because there are obviously if you had a garnishee summons attached to your bank account and if you could have the right to say that I shall determine the amount to be "X" dollars, it would be to your advantage. That's the same situation to the owner.

Mr. Malone: — How does the corporation come about its knowledge under this particular section except by going to the owner, then saying what have you done, this creditor for some reason hasn't filed a claim? How does the corporation find out how much is owing without going to the owner and saying, well, how much do you think you owe the creditor?

Mr. Romanow: — You have to have access to all the information that you can get, searching records on this matter, perhaps getting information from the owner, perhaps getting information from the secured creditor.

Mr. Malone: — Why is this restricted to the secured creditor to get this information? Why can't the unsecured creditor get the same information?

Mr. Romanow: — Well, Mr. Chairman, the answer, I think, stems from the little discussion that I and the Member for Wascana had on the position of secured creditors and as I have indicated, the Hon. Member for Wascana may not take the same position, basically the Act is silent on the secured for all the reasons that I have argued, there were these previously comment on and accordingly it seems appropriate that that would be consistent in this area.

Mr. Malone: — Well it's silent, that right. You give us an explanation as to why the other secured creditor doesn't seem to have any protection under the Act. I'm merely saying now, why shouldn't he be entitled to this information, that he is a creditor, surely it has nothing to do with what steps they are going to take to realize in this security but surely he should be allowed to have the information if it's available to the secured creditors?

Mr. Romanow: — Again I can't give anything better than to repeat the answer that I gave on the immediate question and the earlier questions. I can simply say that the unsecured person in effect under this Act is in the same boat as he was prior to the expropriation and after the expropriation. He has no right to appear at the hearing. Accordingly it makes not much sense to give him all the rights of access to information. What can he do with it? He can't appear before the information and he has to sue in a court of civil law for his remedies as he sees fit at a later date. So it's consistent that the reasoning behind the Bill is not having it secured there.

Mr. Malone: — I'm not going to belabour but surely this will allow the unsecured creditor at least to find out where he stands if he has access to the information. Surely he should be allowed that one small right.

The question being put on Section 22, it was agreed to.

Section 23 agreed to.

Section 24 agreed to.

Section 25 agreed to.

Section 26 agreed to.

Section 27

Mr. Chairman: — We have an amendment, a proposed House amendment proposed by Mr. Romanow:

> Section 27 of the printed Bill, Clause A, amend Clause C of Section 27 of the printed Bill by striking out "the Corporation shall;" in the sixth line and Clause B, amend

Section 27 of the printed Bill by striking out Clause D and substituting the following therefore to D;

where a secured creditor serves on the Corporation within 30 days after expiration of the period mentioned in Section 24 notice that the secured creditor desires compensation payable by the Corporation for the assets expropriated to be determined by a board of arbitration proceeded in accordance to subsection 2 of 29.

Mr. Romanow: — I should like to just give a brief explanation to this.

Section 27 of the printed Bill, it is proposed will be amended as suggested here to strike out the words in the sixth line of Clause C the words ‘the Corporation shall’. These words, we think are redundant in that they presently appear prior to Clause C and modify Clauses C and D. In addition Clause D is to be substituted and the substitution is to delete the reference to the compensation payable by the Corporation for the assets expropriated to be determined by the board of arbitration as that direction appears at the end of Clause D to a direction to proceed in accordance with subsection 2 of Section 29 which, in fact is the section initiating the appointment of a board of arbitration to determine compensation payable for assets expropriated.

With respect to new Clause D the substance of the clause is the same as the substance of the present Clause D of the printed Bill with the new wording follows the wording ‘the Corporation shall’ which is again the wording throughout here.

There is nothing here really of any major substance at all. It’s the striking of some words because they are redundant and linking them together. The words that are struck out are the words ‘the Corporation shall’. There’s nothing to modify the principal of the section.

Amendment to Section 27 agreed to.

Section 28

Mr. Malone: — What happens if they are wrong? This is the section where they think the arbitrating board will find compensation in excess of the amount owed to the secured creditor. What happens if they are incorrect and the board of arbitration comes in with an amount less than was owed to the secured creditor and the money has already been paid out?

Mr. Romanow: — Mr. Chairman, the answer to what would happen, the answer is the corporation, I think would be stuck for any amounts that obviously are not covered by the amount covered here. The Member will know that this is a discretionary section only and in such an agreement there would be adequate safeguards for both the corporation and the owner and the secured and in all likelihood would not be moved unless there was virtually 100 per cent certainty that that would not occur. If it did then I think the corporation would be liable.

The question being put on Section 28, it was agreed to.

Section 29

Mr. Malone: — Again we have got sort of an artificial time of 75 days put in here. What happens if they go over 75 days? Are they then stopped from asking for an arbitration board? Say negotiations are going well and that there is a possibility that arbitration isn't needed and you go 80 days when one party has decided, well we're not going to be able to make it on a negotiation basis, are they then stopped from ever requesting an arbitration board?

Mr. Romanow: — No, I don't think so. I think that if you read that it really has to be read as a minimum period. You have to wait the 75 days and any time after that they can start her off, so he can rest within the 75.

The question being put on Section 29, it was agreed to.

Section 29 agreed to.

Section 30 agreed to.

Section 31 agreed to.

Section 32 agreed to.

Section 33

Mr. Malone: — What happens if somebody does resign or dies or something like that, does the board continue to sit as a two-man board?

Mr. Romanow: — Mr. Chairman, I am just checking to be clear on this. If, of course, the resignation or death occurs prior to the hearing, I think the practical answer of that is there be the appointment of a new member. If the resignation or death took place after the hearing had gotten under way then I think there's a problem here to appoint the third member, might put the entire arbitration board under some form of legal attack because the new person has not heard all the evidence before it. I think in reality what would probably happen is one of two options. One is to start all over again. That, I think would only become an option depending on how much time has already been spent, what has gone into it, that's one thing, but if they're six months into it, that's another thing, and the other option is to keep going with the two and the opinion of my people is that that would be satisfactory, in other words, we could do it that way too.

The question being put on Section 33, it was agreed to.

Section 34 agreed to.

Section 35

Mr. Malone: — When a board engages the technical table, who pays? The board?

Mr. Romanow: — There is a section a little later on, I think the section is that it's a 50-50 operation, I can't remember it either. Yes, that's right, the professional person on staff of any board.

Mr. Malone: — Well, professional person on staff may be different than accountant, evaluators, appraisers and so on. I read professional person on staff to be a secretary to the board, perhaps counsel and so on.

Mr. Romanow: — It's possible that that interpretation can be placed on it but again judging from the best that we can we think that that wording, professional person on staff, will I include people from the variety of people set out in Section 35, accountants, evaluators, appraisers, technical advisers. The argument that the Member is making is that that's one thing, professional staff is another thing. We think that professional staff encompasses both.

Mr. Malone: — If that's the case then surely the corporation and the owner should have some say in what professional staff is hired. I can anticipate a case where, say the owner takes violent exception to one of the evaluators hired by the board. Surely he shouldn't have to pay his salary as well.

Mr. Romanow: — I don't see how that would prevent anything. The owner would certainly be able to make a representation to the board and in due course if the board didn't see fit, I assume that he'd have to have a ground for it, grounds of bias or something of that nature and if that was the case then the person would be under remedies available to him. So I think the hearing opportunity is there and I don't think that there will be too many reasons why you really shouldn't object.

The question being put on Section 35, it was agreed to.

Section 36

Mr. Malone: — Where does it say in the Act if it says it at all when the board must sit, what period of time? There are all sorts of provisions about appointing the board and calling witnesses and so on but I can't find, I may have overlooked it, provisions that says the board must sit within a certain length of time.

Mr. Romanow: — We wanted to leave some flexibility for the board. Obviously it should be free to determine its own procedure much like a court would be and I fully anticipate what would happen is that the board would hear submissions from various parties and decide when they were read to go. It's true, I don't think there is anything specific in the Act I can put my fingers on for that reason.

Mr. Malone: — There are provisions in the Act, of course, that the Lieutenant-Governor-in-Council make regulations about the

board's hearings. I can envisage the case where the owner may not want to sit at all, he might want to draw it out as long as he can and unless there is some rule or regulation that says they must sit within a set period of time, I suggest the board can't sit unless everybody agrees.

Mr. Romanow: — I think that if that happens certainly in arbitration cases like labour cases and so forth if that happens sooner or later the chairman of the board is going to have to say, I'm sorry this is it, we're going on in your absence as they do in courts.

The question being put on Section 36, it was agreed to.

Section 37 agreed to.

Section 38 agreed to.

Section 39 agreed to.

Section 40 agreed to.

Section 41 agreed to.

Section 42

Mr. Chairman: — We have an amendment submitted by the Member for Rosetown-Elrose (Mr. Bailey).

> Amend subsection (3) of Section 42 of the printed Bill by striking out 47 in the third line and substituting 46.

Mr. Romanow: — Mr. Chairman, I wonder if I might just speak to this. I don't think the Member for Elrose would object if I made the suggestion. This is a consequential amendment to a subsequent amendment that he proposes under Section 45, which should strike out Section 45. That's really the substance of the whole series of three or four pages of amendments.

It just so happens that you have, in order to be consistent to move a re-numbering. If I may suggest, the real argument will be on Section 45 tomorrow. I should just ask the committee to defeat this amendment, the Member for Elrose wants to speak on it, we can argue Section 45 in substance at a later date. He agrees to that.

The question put on the amendment was negatived.

Mr. Malone: — I notice the wording in this section. I am not sure if it is deliberate or not, it says, "where the Corporation has agreed to purchase assets from an owner". What happens to the case where the corporation may have agreed to purchase but the owner hasn't agreed to sell? Surely they both should be there to give the section any meaning.

Mr. Romanow: — I think the only answer is the corporation in this case. In the real world everywhere except in political life here in the legislature, a corporation has to have somebody to

agree with. It can't agree to something by itself with itself. Only politicians can agree with themselves and by themselves and to themselves. I am just making a bit of joke. What I am saying that surely must carry the legal import that there has to be an agreement to purchase, i.e. an agreement to sell. Without an agreement, you can't agree by yourself, there have to be two parties for an agreement.

Mr. Malone: — I suggest to you that is not right. The corporation can come along to any potash company and say we want to buy your property and we are going to offer you X number of dollars. The corporation has agreed among itself, the Board of Directors of the corporation has agreed to purchase. The owner hasn't agreed to sell. Furthermore, you continue, "the Corporation and the owner may submit to a board of arbitration." Surely it should be one or the other or both. The way it reads now it has to be both. I suggest to you what could happen and again I know you are going to get up and say it wouldn't happen, the section is just there for some reason.

You could have a situation where the corporation can go to an owner and say, we have met and we have agreed to buy your potash mine, we are prepared to offer $20 million for it. We are not going to pass any vesting order, we are not going to expropriate, we are just telling you what we have agreed to pay. The owner can't, by himself, request the arbitration board, it must be both the corporation and the owner. This is a device whereby the corporation, if it chose to do so could tie up a company or an owner indefinitely, simply by making, in effect, an offer to purchase.

Mr. Romanow: — No, Mr. Chairman, with all due respect to the Member. Again I don't want to offend anybody's legal sensitivities, I just simply say that that just can't be. Any plain reading of the English words say or simply imply that 'agreed' means agreement. This situation and section is clearly intended to cover a situation where both the owner and the corporation have agreed to a purchase and sale, they know what they are going to buy, they know what they are going to sell, but they can't agree as to what the purchase price is.

They decide, okay, we have agreed to everything except the dollar price so that the two of us will lockstep together to the board of arbitration and let them decide.

The question being put on Section 42, it was agreed to.

Section 43

Mr. Malone: — This is an interesting section. I am not sure you want to continue it tonight, or call it 9:30 or what.

Let me suggest this to you. This section in my view is completely unfair, completely puts the owner at a disadvantage, and puts the corporation at a decided advantage. I think from reading it is clear that the effect of it is, the corporation can decide what documents it intends on using before an arbitration. Obviously it is going to use the documents in its possession that are most favourable to its case. If it has documents in its possession that are not favourable to its case

there is no provision in this section that forces them to divulge those documents.

If this was the same position for the owner, the section might be understandable but it is not that position for the owner. The owner must declare all documents that are relevant to the issue, whether they are favourable to him or not favourable to him. Now my first question, Mr. Chairman, is that correct, my reading of that section?

Mr. Romanow: — Yes, I believe that essentially there may be some word differences that I would object to but for the purpose of this I think I would agree with the Member's interpretation of this. I think there is a simple answer to it. The Member can label the section unfair or otherwise, but there is a simple and perfectly logical explanation for it and that is that we are dealing in these arbitration proceedings with valuation mainly, the worth of a particular mine, which is the subject of either a voluntary agreement to purchase/sell or the subject of an expropriation hearing. The simple fact of the matter is that under those circumstances, information which is going to turn on the valuation of the mine is going to be in the hands of the mine owner, quite clearly. And under those circumstances it seems to us that appropriately that the section should reflect that.

Mr. Malone: — As far as the owner is concerned there could be information in the hands of the company, using the definition of the Potash Company of Saskatchewan, which should be relevant to the case and help his case. But according to this section the potash company doesn't have to divulge that information and I suggest that's completely unfair. It offends every rule of justice.

Mr. Romanow: — I think again the important point to remember here is that somewhere in the law, if I don't know, I can put the finger on 'the rely on' section. Yes, again it's broad as it's long, if the corporation has some information which it has respecting valuation, that section says the corporation must list the documents that it intends to rely upon during the arbitration hearings and can't rely on it if it isn't listed on the operation. And the point is that under the Member's hypothetical question the way he prefaced the question in the first place is that we would have information (the corporation) in its possession, in this regard that somehow would prejudice the operation of the valuation and I just don't see that. I say that the mine, the value of the mine, the costs, the acquisition costs, the financing, the state of depreciation and so forth, that is information which falls within the jurisdiction of the potash company. We don't have that information. Any information we have that we intend to rely on will be there for the board to peruse and for the opposite side to question.

Mr. Malone: — I may be a bit cranky and it is late in the night. I say that is nonsense, you'll have that information because by virtue of Section 60 you will have Kilbourn or any other companies you intend on retaining to go through all of the material that these companies have in their possession before the hearing even starts. What you are suggesting is that Kilbourn go to

Kalium, again to use as an example, and come in with a valuation which may be very, very high, it may be higher even than Kalium expects to be paid. What you are saying by virtue of this section is that the potash company doesn't have to disclose that. But if on the other hand Kalium has some information which is not in their favour they have to disclose it. I say what is sauce for the goose is sauce for the gander. Surely you are setting a double standard on this.

Mr. Romanow: — I think, Mr. Chairman, there is very little that I can say to repeat the argument. The Member sees fit not to accept it and that, of course, is his privilege. One of the important things, of course here is to consider the determinations of values and we are here attempting to, among other things, determine the value to the seller. The value to the Potash Corporation of Saskatchewan perhaps does have some relevance, quite a bit of relevance, but basically here we are looking at the mine, the owners of the mine, the encumbrances and the valuation and the interpretation that are in the possession of the owner. I simply say that the section takes it into account and I see nothing unfair in it at all.

Mr. Merchant: — Mr. Chairman, what is this section trying to do? Indeed I am surprised that the Minister, a lawyer, with two lawyer colleagues and lawyers sitting around him, doesn't follow through with what this section is obviously trying to do. You are not a lawyer, Mr. Chairman, this section is comparable to the passage of a statement of documents in an ordinary lawsuit and exposure of those documents, the right of anyone to go in and look at the opposing side's documents. In an ordinary lawsuit that tries to be fair to both parties, what happens is that both sides have to disclose whatever documents they have, all of their documents. Both sides in an ordinary lawsuit have to disclose all of their documents, whether their documents are favourable to their cause or unfavourable to their cause.

Now what does Section 43 do? It comes in and says, in this kind of a takeover the potash corporation can decide which documents it will disclose but the company has to disclose all of its documents. It is meaningless for the Minister to say, well the potash corporation is in the same situation as the company being expropriated because the potash company has to list their documents. Big deal. What that means is that at least you can't catch the expropriated company off guard, at least they have to know the documents they have to produce. What you are doing is, you are moving into the statement of documents and the exchange of documents kind of procedure that goes on in any litigation but in this Bill you throw in a hooker. You say unlike all other litigation it will be different for the Potash Corporation of Saskatchewan. Unlike all other litigation for the Potash Corporation of Saskatchewan they don't have to disclose documents that they have in their possession which are contrary to their interests.

If you are expropriating Central Canada, I know you are not going to, they have a document that says, that the company is worth $250 million and they have another document that says the company is worth $200 million, you would have them both in your hands and you would put them both before Mr. Justice MacPherson or whoever is hearing the matter. But if the potash corporation has sent Kilbourn out to do a study

and it has said the company is worth $225 and you have sent someone else out and it said $175 or $275, the potash corporation can decide which documents they are going to put in. That is just not a fair provision. You are moving into a litigation kind of circumstance and the ordinary rules of litigation ought to apply. You are a lawyer, Mr. Minister, and you have told us this is a fair Bill, then deal fairly with the potash companies. You have repeatedly said that we are going to be fair. This is a fair expropriation Bill, we are very proud of its fairness. And then in this section it is most unfair, what is sauce for the goose is not sauce for the gander. The potash corporation will be able to hold back its documents and you are just moving it out of the ordinary kind of litigation rules, because keep down, I suggest, the Government knows that if they don't steal the potash companies they will have made a very big mistake in gambling the taxpayers' money.

Mr. Thatcher: — Mr. Chairman, I feel very remiss intruding in a lawyer's dream argument, but perhaps the Attorney General could tell me, as a layman, this sort of Bill, are there precedents for this sort of enactment in this country, or for that matter in the western world and, if so, what are the precedents and what country or countries have they been used in?

Mr. Romanow: — The Member will know that expropriation Bills are or have occurred, I don't know how frequently, but they are not unusual in Canada. B.C. Electric expropriation authority, I don't know if there was legislation for Brinco or not; in Newfoundland, a Conservative Government, I think that there was. And expropriation procedure Bills exist, generally, with respect to highways expropriations and things of that nature in many provinces, if not in all of the provinces.

Of course, this Bill, Bill 1 itself, the expropriation power with respect to the potash is an unusual Bill. There is no doubt about that and I would accordingly have to say with the Member, subject to the reservations that I have made, that this is probably a Bill number one, not only in this House, but a Bill number one in all the other Legislative Assemblies of Canada.

Mr. Thatcher: — Mr. Chairman, would the Attorney General inform me, and I ask this question from total ignorance, this Section 43, would you consider this to be an unusual clause in the normal expropriation Bills?

Mr. Romanow: — Mr. Chairman, again, it is difficult to be precise on this because I am advised they have varied in some areas. For example, in the case of the expropriation of the Julien Mine ore body in Newfoundland by the Newfoundland Progressive Conservative Government. The expropriation Bill just simply wrote in a figure and accordingly anything with respect to fair marketing values and other sections pertaining to it, such as Section 43, are not necessary because a dollar figure was written in. In some other expropriation sections the question of determination is referred to a Court of Queen's Bench, for example, and acted on by a Court of Queen's Bench. In some an arbitration proceeding is the mechanism.

So it is difficult to be precise as to whether or not this is unusual in this type of provision.

Mr. Thatcher: — Mr. Chairman, again, from total ignorance of legal matters, can the Attorney General, can you cite any legislation where a section similar to Section 43 has been used specifically?

Mr. Romanow: — Mr. Chairman, since I note today we are not going to finish the Bill obviously today I have to ask my people to check on this to see indeed if there is a section. I would be very doubtful if there is a section which is identical, there may be provisions similar. Of course, you get the lawyers looking at other sections determining how similar or how dissimilar it is and so forth. I am almost sure that there are no identical sections similar to this. Because this is as I say a fairly unique situation that we are dealing with here in Canada. But one ought not to read too much into that because as I am trying to indicate to the Hon. Member, they do vary as to the mechanism for the determination like I have outlined.

Mr. Thatcher: — Mr. Chairman, again I apologize for my ignorance in legal matters. Would the Attorney General not concede that with what appears to be a unique section, unusual points in it as it would appear, are you in essence not just bringing in a lawyer's dream here right now that is going to make the lawyers for you and the lawyers for the potash companies rich beyond their wildest dreams? We have got other sections to go into, but from your own answer, don't you really believe that this thing is obviously, just this one section alone is going to end up in litigation since there seems to be some degree of gray in your own assessment of it? Believe me, I am not trying to trap you into anything politically. I don't pretend to know law, it is completely out of my element. But just listening to the dialogue that is going on between you, the area is obviously gray. When you are walking into a gray area are you not automatically looking for trouble?

Mr. Romanow: — I think, Mr. Chairman, that the law books are full of instances where sections and indeed entire statutes are tackled in a court of law. There is no doubt about it that if the potash companies want to challenge sections or otherwise there are interpretations which are open to them. You have seen some of that today. In the end result I suppose it will require a judge to determine whose interpretation and whose lawyers and the advice is the one that is correct. I would simply say that in terms of the policy of this or the politics, I repeat again the stated position of the Government is, we hope that an actual expropriation vesting order will not be necessary, with the resulting consequences that that order triggers. I know that the Member for Thunder Creek will understand that. In view of the lawyers who are here, of course, for their own reasons I don't want to accept that as an answer. If, however, that doesn't happen, if the Member for Lakeview's prediction as to what the potash companies are likely to do is true, for all I know maybe he is closer to what they are going to be doing or what they're thinking than I am. Maybe they will take this on. After all he has been defending and putting forward their position for the last 45, 46 days. Anybody under any circumstances can take any section or any legislation to court

reasonably and challenge it. I want to tell the Hon. Member even if we were as precise as the boys here say that we should be there may be a problem. For example, take the extreme like the PC Government in Newfoundland and say, Julien Ore Mine is worth $750,000, nothing could be more simple than a two-page Bill that says that's it, that is what you are getting, and you are getting it in cash. You might be able to avoid some law action. But even in Newfoundland they didn't avoid it because here we have the company, Javelin Holdings coming at them saying the whole thing is unconstitutional and it doesn't take into account fair compensation. The British Columbia Electric case, all of these things are thrown into it.

Even the simplest of Bills can always be challenged by somebody under some circumstances. We have a difference of agreement, I think the Member has put it right. They say one thing, I say another thing. They suspect me for saying it because I am trying to paint the best case for the Government. I suspect them for saying it because they are trying to put the best case on the potash corporations for the potash corporations. So we disagree.

Mr. Chairman, I try to be as non-partisan, and as non-political as I can be in this matter. I think I have succeeded. This is a good time to adjourn. Mr. Chairman, I move the committee rise and report progress and ask for leave to sit again.

The Assembly adjourned at 9:31 o'clock p.m.