

**LEGISLATIVE ASSEMBLY OF SASKATCHEWAN**  
**Fourth Session — Eighteenth Legislature**

**January 10, 1978**

**EVENING SESSION**

**Committee of the Whole Debate Continues on Bill 47**

**Mr. Chairman:** — Order!

**Mr. E.F.A. Merchant (Regina Wascana):** — Mr. Chairman . . .

**Mr. Messer:** — Are you going to read something to us?

**Mr. Merchant:** — I was going to read the whole thing. I was going to read the whole thing to you and then . . .

**Some Hon. Members:** Hear, hear!

**Mr. Chairman:** — Order! Will the member proceed please.

**Mr. Merchant:** — As soon as I finish the book, Mr. Chairman. I'm working it into line with section, subclause 18 or whatever.

Mr. Chairman . . .

Interjection

**Mr. Merchant:** — No, no, the hon. member knows that I would never get close to the Bible while speaking in this House.

Mr. Chairman when we arose the minister was defending, if I can use that word, the fact that here we have an income tax act which I suggest is being dealt with differently from other taxing legislations of an income tax variety. Under the federal income tax legislation there is the right of the same administrative review that the minister describes — the same sort of thing that exists with the Board of Revenue Commissioners. After that there is a right of appeal on facts and law to an Income Tax Appeal Board. Following that there is a right of appeal on law alone to the Exchequer Court, now the federal court, and following that a further right of appeal to the Supreme Court of Canada.

The minister said repeatedly, well, what used to be simple little candy appeals to the Board of Revenue Commissioners and we're adjusted to that and that is what we should continue to do. Well of course we're adjusted to it. Any system that is simple is easy to get used to. The question is whether it's fair and whether it really provides an adequate appeal, and I suggest to you that it doesn't.

Then the minister said, well when there was an income tax appeal, because that is different from an E & H tax appeal or some of the other appeals, when there was an income tax appeal the Board of Revenue Commissioners heard those appeals then, and therefore, Mr. Chairman, he said, that means that doing it this way now would be a fair way to do it on this income tax. Well, Mr. Chairman, it is true that when we had a provincial income tax law as opposed to an income tax law that is a part of the federal

act, under the Treasury legislation we had a Board of Revenue commissioners and the Board of Revenue Commissioners dealt with this kind of legislation, but Mr. Chairman, because they were dealing with an income tax matter, section 41 said that 'an appeal shall lie with the judge of the Court of Queen's Bench from the decision of the board'. In other words at that time, the minister when we rose, hung his hat on the fact that there used to be appeals to the Board of Revenue Commissioners. At that time there was, following that, an appeal to the Court of Queen's Bench on a question of law, (granted, I'm not arguing with that) arising in an appeal from a hearing before the Board of Revenue Commissioners. That is exactly the same kind of amendment that we propose in the amendment to section no. 18 (3). The legislation then, and this is old CCF legislation, Mr. Chairman, and I know that the NDP is a lot different from the old CCF and perhaps a little more prepared to tread on people's rights as individuals than the old CCF, and a little less interested in individual rights than the old CCF but it gives some guidance to members. The old CCF, their legislation was that they were going to protect people, and they give some review to the Court of Queen's Bench, the King's Bench as it then was. Exactly the same kinds of legislation were embodied then as the next amendment which gives the right to cross-examination and so on and the same sorts of things that are suggested in the next bit of legislation. So again, I simply say to the minister, if you want your legislation and your appeal to be viewed as fair and a legitimate appeal rather than an appearance of appeal, then I ask you to consider passing the amendment to section 18 (3) which would put us on exactly the same base that there was when the Board of Revenue Commissioners last operated on income tax.

Amendment negatived.

**Mr. Chairman:** — Section 18 of the printed bill, the amendment by the hon. house leader, amends section 18 of the printed bill by striking out 1977 in the second line of (3) and substituting 1978.

Amendment agreed to.

Amendment to section 18 (5) amends by striking out the words 'but this subsection does not apply to the minister or to any officer or servant of the Crown other than the assessor, an assistant assessor or a special assessor' and substituting the following:

and this subsection applies to the minister, any officer or servant of the Crown including the assessor, an assistant assessor or a special assessor.

**Mr. Collver:** — Mr. Chairman, are you going to eliminate section 18 (4) or are you going to go back to section 18 (4)? You are not doing it that way — section 18 all together.

**Mr. Chairman:** — We are doing the amendments as they are presented to us. We will go back to section 18 (4).

**Mr. Collver:** — You're doing amendments first.

**Mr. Merchant:** — Mr. Chairman, I move the amendment that was previously submitted. Again this is different from the other two arguments. The first argument members will recall was whether there should be an administrative review or a legal and factual review. the government says, no, we want the most narrow review we can get. The second argument is whether there should be an appeal from that narrow review, an appeal to what one might expect would be a less bias group of people than

the potentially biased Board of Revenue Commissioners. Again, the government says no, we don't want to go beyond what could be a prebiased Board of Revenue Commissioners, we don't want BPO going outside of our own shop where we have got control of the appointments and people are there for a month or two and we can appoint them and fire them and they'll do as they are told. They don't want it to go outside of that.

Now this last amendment says, well, at least when they come before this potentially very biased commission, this board, this in-house little group who will get together and decide whatever they want to decide or whatever the minister wants to decide — at least the last amendments says, put people on all fours, put people as equals. If the company has to disclose all sorts of information, make the government disclose the same sorts of information. Members will know in any kind of litigation everybody is treated fairly. If one lawyer can question the other, the other lawyer can question. If one has to disclose documents and information, the other lawyer has to disclose documents and information. This legislation says that the companies, before they have this so-called fair appeal to the so-called fair Board of Revenue Commissioners, the companies are to disclose everything but the government disclosed nothing. The government will be coming before the Board of Revenue Commissioners almost as a litigant trying to substantiate the position that they took.

Now again I say to the minister, if you want the legislation to be judged at all fairly, if you want people to believe that this is an appeal of substance, an appeal in fairness and not just the appearance of an appeal, then you would have passed the last two amendments but certainly you would pass this amendment which is the least onerous to the amendment. All it says is surely both sides will be treated in the same way before this "fair" Board of Revenue Commissioners' hearing.

**Mr. Romanow:** — Mr. Chairman, I am going to urge the members of the committee to reject this amendment as well. As I have been saying to the House, the administration and the enforcement of this act is given to the assessor or any assistant assessor or special assessor or assessors that may be appointed. That's where the administration and the enforcement of the act is given. They are the people who are going to be making the decisions. Thus I can't see any reason why any other officer or servant of the Crown should have to be examined in any appeal or in any action under this act since it is the assessor and his people who are likely to have all the knowledge and all the relevant information which is relevant to the taxpayer. That's what we are talking about, the rules of the Court of Queen's Bench regarding the attendance of examination and production of documents supplied to any appeal under the act or to another action brought under the act. That's what we are talking about here and we are deciding to whom those examination of discovery rules and production of document rules apply.

Now, the member says that somehow we are doing something which is bad or something new. I remind the hon. member that the Ontario Mining Tax Act has a provision if not identical to this, very similar to this, exact provision and it is judicially approved, that case, that statute. I keep on saying over and over again and as a result I see no merit in the proposed amendment that the member for Wascana makes.

**Mr. Collier:** — Mr. Chairman, I wonder if the Attorney General in his room has had a chance to review the entire matter of the appeal procedure under this act going in the same fashion as a sales tax is going in the province of Saskatchewan and when in fact we do have another example and that is that of an income tax appeal procedure. I wonder if he has had a chance to examine that procedure in the light of this bill and the

comments that he just made in being totally fair, so that the people should understand clearly the appeal procedure and the regulations that are going to be in the hands of an assessor as he says, who shall have the ability to decide, he says, and that's it.

**Mr. Romanow:** — Mr. Chairman, indeed I have considered the matter we talked about just before adjournment for the dinner hour. As I was indicating to the member for Wascana just a few minutes before you came, I am not impressed with the suggestion that we should go on the federal income tax route. There is a mechanism for appeal set out in this bill. Now if the hon. Leader of the Conservative Party is saying that because this appeal mechanism does not track identically with the federal income tax appeal mechanism that as a consequence, because this bill is an income tax bill, it will be in jeopardy as being potentially not an income tax act, there is no relevance to that argument. My officials indicate that that is not how the courts will look at any test of this bill. The courts will look at whether or not it is a true direct tax within the legislative competence of the province of Saskatchewan. Now we do have a very good appeal procedure set out in this bill, through the Board of Revenue Commissioners and then subsequently to the Court of Queen's Bench and the Court of Appeal. I think those are very extensive appeal mechanisms, indeed, I haven't had as extensive an opportunity to look in real detail at the federal Income Tax Act but from my very general understanding of it, it is much better for our purposes in this situation than we could hope to get under the federal Income Tax Act.

**Mr. Collver:** — Mr. Chairman, I wonder if the Attorney General could provide for this Assembly and the edification of everyone here the difference between a sales tax in the administration thereof and an income tax in the administration thereof? Does the Attorney General understand or believe that there is a difference in the means by which you can administer those two methods of taxation?

**Mr. Romanow:** — Well, Mr. Chairman, I don't want to get into the situation of whether they are administered differently or not. I am not so sure in many ways that they are but I don't want to get into the details of that but I fail to see the relevance of that with respect to this particular section of this particular bill. The relevance of, surely, any kind of questioning which compares the sales tax with the income tax must go to the route of whether or not the bill is constitutional and that surely must be the test but methods of administration, the methods of appeal may be different, may be similar, that may only incidentally at best have any impact on a court in the case of a challenge in that court as to the constitutionality of the bill. In the essence of it the court will look at whether or not the tax is a direct tax, income tax, sales tax, whatever. The sales tax has been moved to be a direct tax. Income tax has been ruled to be a direct tax. The method of appeal, I think, is largely irrelevant.

The member for Wascana doesn't even argue that. The member for Wascana argues that the method of appeal is unfair. He says we should have a fairer mechanism. He doesn't argue that because of the method of appeal set out it makes the bill unconstitutional, he says that it just isn't fair and I don't agree with him. But at least he doesn't argue the constitutionality and I commend that to the Leader of the Conservative Party. The constitutionality namely whether or not the appeal mechanism is like E & H or whatever does not affect the constitutionality of the bill.

**Mr. Collver:** — Mr. Chairman, I, with deference to the member for Regina Wascana who I don't think holds himself out to be a constitutional expert, mind you he may be, he certainly is more than I am and certainly the Attorney General is becoming a constitutional expert more than I am, but I would suggest to the Attorney General that in

the past he has had difficulties with the courts in our country, with the constitutionality of legislation that he has put before this Legislature. The reason that he has had so is because of the kind of adamant stand that he is taking right now on a reasonable suggestion that might affect, he didn't say that it wouldn't affect, he said it probably won't affect. I said to him earlier today, what is the matter with that kind of an appeal procedure? The member for Regina Wascana has suggested a problem with this particular appeal procedure. I may agree or disagree with the member for Regina Wascana as to whether this appeal procedure is reasonable or unreasonable. I am prepared to accept both your suggestion as a lawyer, Mr. Attorney General, and your suggestion as a lawyer, Mr. Member for Regina Wascana that the bill may or may not be a fair appeal procedure. As a non-lawyer I don't see the difference between one fair appeal procedure and the other fair appeal procedure.

What I do see, however, is a bill here that is labelled an income tax. It is purported to be by the government of Saskatchewan an income tax. And I see an Attorney General who is picking holus-bolus for what appears to be merely 'ease' reasons because it is easy, who is picking an appeal procedure out of a sales tax and stuffing it into an income tax and then saying it makes no difference to the constitutionality of this bill whether or not the appeal procedure applies to an income tax or to a sales tax. I suggest to the Attorney General that that may be wrong. If it is wrong, why jeopardize the constitutionality of the bill for an appeal procedure that the people already understand, that is already before the people in another jurisdiction and that you could follow in this bill that would be tailor-made for an income tax? Why not? That's what I am asking the Attorney General.

**Mr. Romanow:** — Because, Mr. Chairman, there is absolutely no reason that has been advanced by anybody, neither the member for Wascana, nor yourself, which suggests that this appeal mechanism could threaten the constitutionality of the bill.

**Mr. Collver:** — I thought that's just what I said!

**Mr. Romanow:** — Yes, but you acknowledged that you had no basis for it.

**Mr. Collver:** — You said it too.

**Mr. Romanow:** — No. I am saying that this bill is untouched by the appeal mechanism. That's my whole argument. Your argument is, well you may accept my argument but in case that it does, why don't we go this federal income tax route. Well because there is no evidence of any need to have that kind of appeal mechanism in order to meet your argument which nobody in this House raises except you on this point. My point is, therefore, that there is no need for an appeal mechanism for those reasons. There might be on the question of whether it is fair or unfair.

**Mr. Collver:** — So why not go with them both?

**Mr. Romanow:** — Because I don't accept his because I think it is fair; I don't accept yours because I think the bill is constitutional.

**Mr. Collver:** — Therefore, Mr. Chairman, the people of Saskatchewan are supposed to accept the Attorney General's sound, clear-cut, concise judgment on constitutional matters, based on his past performance as a constitutional expert with going right in the face of any advice whatsoever from this House and for no reason. He says he doesn't know that it would be any different if we had an income tax appeal procedure here. He doesn't believe that it would materially affect the bill. It would then be a tailor-

made kind of an appeal procedure and the objections of the member for Regina Wascana would be met. He says to the people of Saskatchewan, I don't agree with the member for Regina Wascana but he might have a point. I don't agree with the member for Nipawin but he might have a point. No one else is advancing it but he might. I don't really see any problem with the federal appeal procedure (or at least I am not prepared to tell this Assembly of any problem with it) but we are not going to go with it because this is the bill we are going to go with. That's what you are saying to the people.

**Mr. Romanow:** — Mr. Chairman, I only want to say one thing before I sit down, lest it be misinterpreted. I do not concede that the member for Nipawin or the member for Wascana has a point on either of these operations. I just want to make that absolutely clear. I just don't agree with their propositions.

Section 18 (5) negatived.

Section 18 as amended agreed on the following recorded division.

**YEAS — 25**

|           |           |             |
|-----------|-----------|-------------|
| Thibault  | Robbins   | Faris       |
| Bowerman  | MacMurchy | Tchorzewski |
| Smishek   | Mostoway  | Shillington |
| Romanow   | Banda     | Vickar      |
| Messer    | Whelan    | Skoberg     |
| Byers     | McNeill   | Johnson     |
| Kramer    | MacAuley  | Thompson    |
| Kowalchuk | Feschuk   | Lusney      |
| Matsalla  |           |             |

**NAYS — 12**

|           |                |              |
|-----------|----------------|--------------|
| Wiebe     | Anderson       | Collver      |
| Merchant  | McMillan       | Lane (Qu'Ap) |
| MacDonald | Nelson (As-Gr) | Katzman      |
| Cameron   | Clifford       | Wipf         |

**Mr. Chairman:** — It has been recommended to me that we revert back to section 8 I believe it is. By unanimous consent of the House I would like to revert back to section 8, which was agreed earlier today. Is that agreed?

Unanimous consent given.

**Mr. Merchant:** — Mr. Chairman, I understand that there is a government amendment. I don't know whether the minister would prefer to deal with my amendment before dealing with the government amendment or not.

**Mr. Chairman:** — I would like to inform the member that we have already dealt with the government amendment.

**Mr. Merchant:** — No. Am I correct in saying, Attorney General, there is a government amendment that is coming?

**Mr. Romanow:** — Yes, another one.

**Mr. Merchant:** — It is an additional amendment then Mr. Chairman.

I ask the Attorney General whether the amendment that he proposes . . .

**Mr. Chairman:** — I will call this one. Amend section 8 of the printed bill (by the member for Wascana) by striking out the first five lines and substituting the following:

Notwithstanding any other provision of this act, a deduction may be made for the tax payable by a person for a taxation year pursuant to subsection (1) of the section 3 in respect of any amount paid or payable by him in the taxation year, except any such amount paid or payable to the Crown under a Crown lease as on account of or in lieu of payment of or in.

Does the member so move?

**Mr. Merchant:** — Yes, Mr. Chairman. I previously described Mr. Chairman, the purpose of this amendment to the Attorney General. As far as I can tell and the people advising me, including a number of lawyers, the way the legislation now works, it works a particular disadvantage to those people who paid without paying under protest, an amount of about \$60 million to \$80 million or so we are informed, a particular disadvantage to the small oil companies because the way the legislation now reads, they get to deduct as a deduction from income, taxes paid under Bill 42 while instead they should be allowed to take the taxes paid under Bill 42 as a tax credit against taxes due under Bill 47. The purpose of this is to allow for a tax credit allotment. I think if the Attorney General examines his current legislation and I have pointed it out to him and to the Minister of Mineral Resources, you'll find that the way the law now works, a company ends up with taxable income under Bill 47 where if they had been under the same kind of income regime under Bill 42 they would not have had any taxable income deals.

**Mr. Romanow:** — Mr. Chairman, I'll be moving a House amendment which more particularly deals with the point raised, for the purpose of clarification, to the point raised by the member for Regina South last night with respect to net royalty leases and the deductions of the net royalty leases from the . . . You will recall our debate on preproduction expenses, that royalty leases, I'll be doing that in a moment after we dispose of the amendment proposed by the member here.

Mr. Chairman, what we have here in very rough terms under section 8 is the following: Section 8 really means that any royalties other than those paid to the Crown can be deducted in the calculation of a taxpayer's oil well income. Such royalties though, are taxable in the hands of the recipient under this act. Section 37 of course then is looked at. Section 37 provides an exemption to small freehold owners and farmers who

receive royalty income. While these receipts are not taxable under this act, they are deductible from oil well income by the lessee. Now what the hon. member for Wascana is doing is making an amendment to this intent, section 8. This proposed amendment that the member for Wascana makes would make freehold royalties, that is to say, royalties paid other than to the Crown, this proposed amendment would make these freehold royalties deductible from tax otherwise payable rather than from the oil well income. Now, I don't know whether or not the member intended this in the context of section 8 but I think that's the consequence of it. As drafted in the bill, as I have explained, section 8 also provides for a flow through of revenue received by a taxpayer particularly an operator, then paid by him to another taxpayer in the form of a freehold royalty, namely, as a landowner's royalty or as a gross overriding royalty. In computing his oil well income under this section the royalty payer is allowed to deduct the amount of the royalty that he pays in determining the income deduction; revenues minus deductions determines the income. In effect to offset the inclusion in his income represented by the revenue that he received and that he put straight through on the flow through. The recipient of that royalty, however, must include it in his oil well income unless, under section 37 he's a 1280 acre or less landowner. He must include that under those circumstances so that the tax is fairly distributed between the royalty payer and the royalty receiver in accordance with their respective beneficial entitlements with respect to the well and to the revenue from the well.

Now, if this proposed amendment were accepted, the proposed amendment by the member for Wascana, in the light of this explanation, what it would mean is that the royalty payer could deduct the amount of the freehold royalties paid by him from his tax, not just from his oil well income. In effect then, tax dollars that properly should be going to the government would be going to the recipients of the private freehold royalties. In fact, taken to its logical conclusion, I suppose, this amendment could mean that taxpayers could rearrange their affairs to pay enough of their oil well income out in the form of royalties to reduce their tax to nil, conceivably, with the recipients doing likewise all the way down the chain. Conceivably then, no tax could be collected under this act. So, for those reasons, because I think that we do not intend that here, the amendment made by the member for Wascana is really misplaced and should be defeated.

**Mr. Merchant:** — Mr. Chairman, let me say this to the Attorney General. As I look at the amendment, I believe that the effect is the effect as you describe it. How do you get around the problem of substance as it now exists? The wording was designed to avoid using the name of Bill 42 . . . well not Bill 42 as such, but was designed to avoid using taxes paid pursuant to that legislation because of the colorability problem. How do you get around the substance of the legislation as it now exists and that is this: Let's take a company that earns \$1,000. Under Bill 42 they earned \$1,000. They had administrative expenses and so on of \$200. They were left with \$800. Under Bill 42 you taxed them \$700 and they were left with \$100 in profit. They could keep the \$100. Now under Bill 47 that same company will be recomputing their tax for the same year. They earned \$1,000. They paid \$200 in administration and you will give them a credit . . . well, not a credit quite, but you will allow them a further exemption of \$700, an exemption because they paid the \$700 under Bill 42. They will be left with \$100 and that \$100 is going to be taxable. The problem with your current legislation is that you should be giving them a tax credit for the \$700 and instead you are giving them a tax exemption for the \$700. It's a serious fault with the legislation and it's a fault that you are going to have to correct.

**Mr. Romanow:** — No, I think the hon. member has misconstrued the argument here.



First of all, and I don't want to get into this, but he misconceives the nature of what Bill 42 was because in effect he describes in his example company A earns \$1,000 less \$200 in expenses, equals \$800, in income tax \$700, so he's computing that as an income tax. Obviously Bill 42 as the Supreme Court told us in the decision, was not an income tax, is not an income tax. Of course then his argument flows from that. I think the assumption, having been a faulty assumption it's difficult to apply, that's point number one.

Point number two, where the member says, how do we give credit for this \$700 which has been collected under this bill, Bill 42, the amount collected under Bill 42, how do we give credit for that under this amount? We have taken the position throughout the piece, I think I went through this last night at some length with the member for Regina South, Bill 47 is a new bill. We in Bill 47 do not relate to Bill 42, there is no mechanism for Bill 42 because this is a new bill. This is an income tax bill unlike Bill 42. There is a tax which will be imposed according to the various sections of Bill 47 under this particular statute from January 1, 1974 to whenever perspectively there's an amount owing, period. That's the simple fact of the matter.

Now, the member for Regina South yesterday was saying, well what happens under Bill 47 if there's a company that's paid X dollars under the November 1, 1976 royalties under The Mineral Resources Act. What happens? Well there is an offset or an adjustment provision which is allowed, I think it's section 12 where he dealt with that part of the section. Then the member proceeds further and he asks, what happens under Bill 42, under these kinds of . . . what do you intend to do with Bill 42 vis-à-vis Bill 47 and my answer (and we went through this round and round last night) was look it, Bill 47 is a tax. He says, yes, but what happens if you pay it under Bill 42? What is your position? I said, my position is we would tend to honor any legal obligations that we have, we tend to discuss and consult with the industry with respect to this operation. So if the amendment is predicated on the assumption that somehow there has to be a statutory base to tie Bill 47 into Bill 42 in order to make sure there is no double taxation and the like, is making a wrong assumption. These are two independent streams of taxation which will, in consultation, presumably, because it is not our intention to double tax (we went through this last night with the member for Regina South), our intent will, through administrative and other detail, iron itself out I hope.

Now coming back to section 8, section 8 and section 12 are the two sections which are relevant for our discussion right now. Under section 8 as I tried to explain and as I understand the bill, what we are doing here is allowing (actually it is not quite what I am going to say because section 7 does this) but we are really talking about kind of a deduction from revenue to determine taxable income, if I can put it that way. That's what we are talking about. And we are saying that if I have gotten royalties which as a flow through go straight through to somebody else, I paid them to somebody else. I must record that which I have received and, therefore, I don't get paid because it is a simple flow through, but it keeps the integrity and the wholeness of the tax and the income in place. That's what we are doing under section 8. Where I say you have misconceived your amendment, with all due respect, is that somehow you are viewing that legally we are trying to hook right on to Bill 42, or that we should be hooking onto Bill 42. We went through this last night at length. We say that these are two different streams. With respect to the offsets for other taxes paid under other legitimate operations well there are other provisions then in section 12 that look after that.

**Mr. Chairman:** — Is the committee ready for the question? The question before the House is to amend section 8 of the printed bill, that:

Notwithstanding any other provision of this act, a deduction may be made from the tax payable by persons for a taxation year pursuant to subsection (1) of section 3 in respect of any amount paid or payable by him in the taxation year, (except any such amount paid or payable to the Crown under a Crown lease) as, on account of or in lieu of payment of, or in.

Amendment to section 8 of the printed bill negatived.

**Mr. Romanow:** — Mr. Chairman, I have a new amendment which is not on your list of government amendments and this is as a result of the point raised by the member for Regina South, dealing with section 8. I would like to send a copy over to the member for Regina South if I can and then I will table this amendment the moment that I have read it, with you, Mr. Chairman. In fact, I will give Mr. Chairman a copy now, one for Mr. Cameron and one to the Chairman.

Now, Mr. Chairman, the member for Regina South last night raised a good point relating to the net royalty leases. You will recall this was I think the one point in the discussion of this bill which determined a good issue which, after consultation with my officials overnight and today, I feel needs some further clarification.

What I did ask the officials to do after the point raised by Mr. Cameron, by the Liberals, on net royalty leases, was I asked the officials of DMR on behalf of myself and the minister of DMR to get in contact with certain net royalty leaseholders this morning, which they did. And I am advised that the interpretation of the relevant sections, by these certain net royalty leaseholders that were contacted, were such as to agree with that of the government as we tried to explain it last night — you will recall bonus bids and likening it to bonus bids. It was nevertheless felt that the point raised by the member for Regina south needed clarification and that this amendment which I have provided should be made.

Now the amendment will read as follows, Mr. Chairman:

Amend section 8 of the printed bill by renumbering the section as subsection (1) of the section and; (b) adding the following subsection (2):

Notwithstanding section 4 (1) of section 7 and subsection (1) of this section, in determining the oil well income of a taxpayer for a taxation year, a deduction may be made in respect of any amount paid or payable by him to the Crown in the taxation year, as, on account of or in lieu of payment of, or in satisfaction of, any net royalty or farm out share payable under a net royalty lease or a farm out agreement, relating to an oil well or the production of oil therefrom, or the output thereof, but notwithstanding subsection (1) of section 12 such amount of net royalty or farm out share shall not be deductible from the tax, otherwise payable under this act.

You will recall our interpretation last night that under section 7 (2)(c) preproduction expenses probably would look after this point and the member for Regina South said, no, we were wrong. I think he has sufficient to merit the argument, especially after

discussions this morning, we needed to clarify this.

So, section 8 is amended as I have indicated in reading this, by adding subsection (2).

Now what is the effect of this? This has the effect of allowing payments to the Crown under a net royalty lease or farm out agreement as an expense of doing business, much along the lines in my explanation to the member for Regina Wascana about the previous amendment, rather than as a tax credit or offset as is provided in section 12. The reason for this differentiation is of course, that a net royalty lease is a substitute, in our judgment, for a land acquisition and takes the form of kind of a payment to the Crown, working interest payment to the Crown. So it would seem to us that such payments should be treated in the same manner as working interest payments or land acquisition costs. We thought we could do it under preproduction expenses. Perhaps that's not quite the way it should be. Therefore, it is not reasonable to allow them to be deducted from the tax payable in the same manner as say a royalty to the Crown, but something in the neighborhood of a working interest payment or a land acquisition cost namely in the case of a cost of doing business. I tried to explain that last night by comparing it to bonus bids and the like, but I say that this should clarify this point which was raised necessitating this amendment, raised by the member for Regina South on behalf of the Liberal caucus.

So, Mr. Chairman, I so move this amendment.

Amendment to section 8 agreed.

**Mr. Chairman:** — Then is the committee prepared to adopt section 8 as amended?

**Mr. Cameron:** — Mr. Chairman, I indicated to the Attorney General that last night, of course, I raised two points. One was the point he has now just dealt with. The other was I thought I had drawn from the matter in the course of time an admission insofar as Bill 47 applies retroactively to retain what he drew under Bill 42, it would be colorable and, therefore, unconstitutional. Now maybe he can address himself to that second minor point I raised with him in respect of which I thought I had an admission from him as well.

**Mr. Romanow:** — I do not admit.

Section 8 as amended agreed.

## Section 11

**Mr. Chairman:** — Section 11 of the printed bill, there is this amendment introduced by the member for Regina Wascana. It is:

Amend section 11 of the printed bill by striking out 90 in the first line of subsection (1) and substituting 180.

Does the member so move?

**Mr. Merchant:** — I so move.

**Mr. Romanow:** — We've already amended it.

**Mr. Merchant:** — What do you mean you have already amended?

**Mr. Romanow:** — We amended.

**Mr. Merchant:** — No you didn't.

I can't honestly understand why you would say that. The past legislation deals with a number of years. The oil companies are faced with a massive problem in recomputing at their own expense all of the figures, recomputing all of the figures because of the error of this government, they're told by the government that they're not sure that the tax rates or the regulations will be in place at the time of proclamation and yet they're asked to bring forth all of their information, file all of their information within 90 days and they're not even guaranteed that they'll have all the regulations within the 90 days. Some in the industry have been told it may take six months before all the regulations are in place. Now, what possible problem could there be in granting this amendment, an amendment that just brings it into line with the same 180 days that the industry will be given in every following year? In years to come the government conceives that it will take a 180 days to reasonably file the return but for some curious reason says that when you do four at a time you can do them in half the speed and, no doubt because you're doing it for the first time and you're not familiar with how it will work, you can do it in half the speed, half the time.

**Mr. Romanow:** — I have already dealt with this partly to meet the argument raised by the member for Wascana, by a House amendment which says the words added have already been agreed to by the House, so within such longer period as may be prescribed, I know that that might not totally satisfy the member; he'll say look, I want it in black and white rather than leaving it to the discretion of the Cabinet. But I said the other night to the House that the industry itself in its review of this bill indicated that 180 days would be more realistic. That's correct, but they said that provision for some sort of ministerial discretion to extend the period would be desirable and that was basically the thrust of the remarks and what we've done is given that kind of discretion there. It's a compromise, it doesn't go for the full 180 days. I probably would suspect we'd go 180 days and still have to have some sort of ministerial discretion if they didn't make the 180 days on some odd possibility putting it to the extreme. Now, I say that this really should be looked after by the House amendment which has already been passed.

**Mr. Merchant:** — Is the Minister saying that you expect that probably you will be granting further time to the vast percentage of the industry?

**Mr. Romanow:** — I think the answer to that is yes, but I can't, you know we need a little more time down the road to meet with some decision, but I would say yes to that.

The amendment negated

Section 11 as amended agreed

Sections 19 and 20 agreed

## **Section 21**

**Mr. Chairman:** — Section 21 (1) and if I might read the amendment please.

Amend section 21 (1) of the printed bill by striking out the first six lines and substituting the following: obtaining permission from a Judge of the Court of

Queen's Bench by ex parte application it shall be lawful during normal business hours for the assessor or any assistant assessor, or a special assessor, to enter upon the premises of a taxpayer, for the purpose of making inquiries, obtaining information, and otherwise performing his duties under this act and he shall be:

**Mr. Merchant:** — I move the amendment, Mr. Chairman. Mr. Chairman, section 21 as it now reads gives the assessor massive power, more power than is given to anyone under any law except the law that we give to narcotics officers acting with a rate of assistance and they're pretty rare, in criminal prosecutions. Now, we say that it is not appropriate for the assessor to have the kind of power to just move in, in that way, and say that instead, before it should be possible for the assessor to move into somebody's property, they should in the same way that you have to obtain an order for instance before you lay a wire tap, you would go to a Judge of the Court of Queen's Bench ex parte, that means in private, the other side wouldn't know and then you would be given the right to enter during normal business hours and do the things that are described in the amendment, to make the inquiries and to obtain the information in the manner described. The power given by section 21 is just too much power, it encourages abuse, it encourages the kind of abuse that we saw with the similar legislation that exists under certain of our mineral legislation where officials from the government can enter on the land, can perform tests, can do things of that nature. Members may remember that when that legislation was passed the government said, "Oh yes, but you've got to trust us we won't do that." The minister of Mineral Resources will also tell you that one of the more embarrassing things that has happened to the government is an inspector going on to a piece of property, doing some explosions, doing a few ground tests without permission, without even advising the company, that took place two or three years ago, they apologized to the company, it created quite a bit of problem within the industry. That's the kind of absolute power that the government now takes unto itself under section 21 and we think that power is too great and move instead an application to a judge in the usual manner which would ordinarily take place in inquiries of that nature followed by the power that would be granted to the assessor.

**Mr. Romanow:** — Mr. Chairman, again I'm going to ask the members of the House to defeat this amendment. Sorry to say that in so many of the cases I have to recommend that the Liberal amendments be defeated. But the effect of this amendment would be to require the assessor to obtain a court order, virtually, before he could perform any of his duties under this act, certainly a significant portion of his duties under this act. Now, Mr. Chairman, I say to the House that this is undesirable, it would be administratively awkward if not unworkable and would apply it would seem, even where, I would like the member for Wascana to consider this, even where the taxpayer has no objection in effect to the exercise of these kinds of powers. The amendment would restrict the assessor to entering the premises of a tax payer when it is likely that many of the taxpayers' records, say accounting records may not be kept at his own premises. I say, Mr. Chairman, that section 21 does not give the assessor unrestricted powers or indiscriminate powers. All it does is require persons to give the assessors access to certain things and information that would be required for the purposes of the administration of the act and required for the assessor to do his assessment under the act. I stress, that if a person obstructs the assessor, the assessor must then go to court under another section, section 27, which must be read in conjunction with section 21 in order to obtain a court order. He cannot proceed on his own without court authority to enforce the powers under section 21 (1) in any event.

I close, Mr. Chairman, in also saying why this amendment should be defeated, by

stating that this section has been judicially approved. This section is virtually a direct copy, there may be some odd word changes, but a direct copy from the Ontario Mining Tax Act, which was judicially approved by the Supreme Court of Canada, no less a body in the case and this is an exception which comes out to do this, so I'm saying that (1) because it's been judicially approved, (2) because it's got to be read in conjunction with section 27 whereby a court order needs to be obtained in certain cases, (3) because the acceptance of the amendment would unnecessarily tie the efficient administration and the workability of this act. For all of these reasons this amendment as stated by the member for Wascana should be defeated.

**Mr. Merchant:** — Mr. Chairman, the minister says that it was judicially approved and tries to leave the implication that the Supreme Court of Canada said that it was a fair and an appropriate way to deal with the industry. All the Nickel Rim Case said was that it was constitutional for the government of Ontario to pass that kind of legislation, just as it would be constitutional for this government to pass legislation taking away my house if they wanted to and the Supreme Court of Canada would approve that too because that would be constitutional, that's a far cry from doing as the Attorney General does to imply that somehow a court said that this was a fair, reasonable, just way in which to deal with the industry. The Supreme Court of Canada certainly didn't say that, they just said it is within the power of the government of Ontario to do what they have done. Well I'm not questioning the constitutionality of this section. I'm just saying that it is too much power to take unto yourselves.

**Mr. Romanow:** — Mr. Chairman, I concede to the member for Regina Wascana that there was not, so far as I can recall, a specific section in the Nickel Rim case that said section 21 (1) hereby is officially approved. If I left that impression I retract that but that nevertheless only mitigates somewhat against the point that I make in rebuttal to the member for Regina Wascana is that this is not without precedent and that this statute was looked at, and the statute was challenged as unconstitutional, and I don't know what lower levels brought other grounds, but presumably the plaintiffs in the Ontario Nickel Rim case felt that there was some legal grounds for this kind of an attack. If there was something contrary to natural justice or whatever, it would have been in there. My only point in raising it is that Nickel Rim approved the Ontario Mining Tax Act. When the member gets up and says, "Look, this is something which is done nowhere else and you are taking too much power, etc.," he's wrong. It has been done in Ontario. all right, he still says, "I don't care if it's done in Ontario or if it's done in Saskatchewan." He doesn't like it either way. Fair pool, I understand that argument. I'm only saying to him then in response to that argument, for the reasons I have articulated, we still think there is a fairly clear circumscription of the powers and it does allow for a kind of administrative flexibility which I think it necessary under the act. I don't know what else I can say in rebuttal to this particular section but I again repeat to the House that we should be voting 'no' on the amendment.

Amendment to section 21 (1) negatived.

Subsection 2, agreed.

**Mr. Chairman:** — We have an amendment to section no. 21 by adding after subsection 3, the following subsection:

(4) any assessor or assistant assessor or a special assessor who discloses information of a private or confidential nature acquired pursuant to this section by him where it is not necessary to do so for the purposes of this act,

is guilty of an offence and is punishable pursuant to the provisions of section 30 of this act.

**Mr. Merchant:** — Mr. Chairman, before I discuss this amendment and its purpose I would like to comment just briefly on the attitude of the government in terms of dealing with the amendment and the sort of difference of opinion that existed within the Liberal caucus about the attitude of the government.

Not long ago, it seems like a long time but some days ago at the press conference when we announced the amendments that are now before the House, my Leader, the member for Lakeview was asked, “Well, how do you expect the government will react to all of these amendments?” And he said, “They are pretty good amendments and we have put a lot of thought into them and they are valid and we rather hope that the government will listen and give them a fair view.” I thought and said actually at some later time that I thought that the government’s attitude would be a far more political attitude than that. I thought that what the government would do is they would deal with all of the amendments, and strike them all down as quickly as they could solely because the government would take the view that they already had their hands in the cookie jar over this legislation, they were already in trouble, they were already in trouble over this legislation. They were in trouble over Bill 42 and they would be darned if they were going to come into the House and now demonstrate by allowing some further amendments, the sloppy draftsmanship in bringing forth Bill 47.

Now, Mr. Chairman, with those few conciliatory words, I want to move the further amendment to section 25.

We have a law which says that if the assessor or people in his department disclose information, confidential information that they have acquired that they are told by the act not to disclose, if they disclose that information — and let’s bear in mind, Mr. Chairman, that we are not talking about small amounts of money here. It might be that the information that comes into the hands of the assessor’s office would be worth in the hands of a competitor, thousands, tens of thousands, perhaps millions of dollars. This is very, very crucial information; information that the assessor can get by going in and demanding further information. It is very important that that information not be passed from one competitor to the next. Now, the act says that the assessor is not to pass that information but imposes no penalty whatsoever for passing the information. If the assessor could only find himself passing the information in a deliberate way I suggest, and hence, Mr. Chairman, we believe that if the assessor passes that information which could be worth hundreds of thousands of dollars, some penalty other than possible dismissal from his position should be imposed and therefore the amendment that is proposed would saddle the assessor with the committal of an offence punishable under summary conviction.

**Mr. Romanow:** — Well, Mr. Chairman, I won’t rebut at length about the reason why we are rejecting the amendments, some of which would put this bill into doubtful constitutional status if we were to accept them, some which I think fall in the category of this proposed amendment, and that is, in my judgment it is simply not needed.

I refer the members of the House to section 21, subsection (1) referring to the assessor’s right to get in and look at all the material. The very last four sentences or the last little bit there says that any information of a private or confidential nature acquired by him under the section shall not be communicated or disclosed to anyone except insofar as it is necessary to do so for the purposes of this act. It says, ‘shall not’. I

presume that assessor is a person, and if you go into section 30, any person who contravenes a provision of this act, namely passes on of a private or confidential nature to anyone except where necessary in this act, I presume that is a contravention of the act because under that section it says you shall not do that. Assessor equals person, equals section 30. It seems to me that it is covered, therefore this amendment is not necessary.

**Mr. Merchant:** — Of course the Attorney General is aware that ‘person’ is defined in section 2 of the act.

If that is the position of the government, I then ask the Attorney General why you would fear in some way the amendment that is proposed, an amendment that would make certain . . . of course the amendment says itself that it will then come under section 30. Why would you not make certain that the assessor comes within the ambit of the act?

**Mr. Romanow:** — Well because, putting it shortly I think that its nature now, you don’t need to re-invent the wheel.

Section 21 as amendment negated.

Section 21 agreed.

Sections 22 to 24 agreed

Section 25 as amended agreed

Second amendment on section 25 negated

Sections 26 to 29 agreed

### **Section 30**

**Mr. Chairman:** — Section 30 — offence and penalty and we have an amendment by the member for Regina Wascana:

Strike out section 30 in the printed bill and renumber sections 31 to 43 in the printed bill as sections 30 to 42 of the printed bill.

**Mr. Merchant:** — I so move. Again, Mr. Chairman that is a section which imposes criminal sanctions in addition to the criminal sanctions imposed by section 30, criminal sanctions that, to take the logic of the minister’s comments just a moment ago when he didn’t think that criminal sanctions were necessary against his assessor, criminal sanctions again against companies and criminal sanctions again that will operate against directors of companies who may not know what their subordinates have done.

**Mr. Romanow:** — What section 30, as amended, would do here if we accepted the amendment from the member for Wascana would be clear. Obviously any person contravening the act or any regulations would not be guilty of a summary conviction offence. That’s what he is doing, he is wiping out all of section 30. I would like to mildly just point out to the member for Wascana that I think it was in an earlier amendment that he proposed an amendment to section 30, not to wipe it out but to have the word ‘willfully’ . . .



**Mr. Merchant:** — No, later.

**Mr. Romanow:** — You are going to move that one a little later.

**Mr. Merchant:** — When you vote this down.

**Mr. Romanow:** — Then comes willfully. O.K. then I apologize, actually not willfully but knowingly, I hope. But the point is, Mr. Chairman, still, speaking of the substance of the point, that is if we accept section 30, striking it out, we've got no penalty section. I say the government must have some mechanism whereby compliance of the act can be enforced. I think there is no reason to draw up a general penalty section such as this. I just simply argue that to knock this out would simply be to knock out any kind of a sanction and in some ways might render the bill meaningless with no way to enforce it. So, accordingly, Mr. Chairman, I urge the members of the House to vote, no, to this amendment.

Amendment negatived.

**Mr. Chairman:** — We have another amendment:

Amend section 30 of the printed bill by inserting after 'who' in the first line 'knowingly'.

Amendment agreed.

Section 30 as amended agreed

Sections 31 to 33 agreed

## **Section 34**

**Mr. Chairman:** — We have an amendment by Mr. Merchant.

Amend section 34 of the printed bill by striking out the first 19 lines.

**Mr. Merchant:** — I so move. I'm not going to strike out the whole section just the first 19 lines. Mr. Chairman, the effect of this section — it really is an amazing section. This section says . . .

**Mr. Chairman:** — Order please! I understand the amendment is not altogether in order. The 19 lines, I understand, would be the complete clause.

**Mr. Merchant:** — That's right, that's what it is supposed to do. It's just a little colorful way to do that, Mr. Chairman.

**Mr. Chairman:** — I understand you can't move an amendment to do that, you can accomplish the same by defeating the section.

**Mr. Merchant:** — All right, Mr. Chairman, I move that he's right.

**Mr. Chairman:** — I declare the amendment is out of order.

**Mr. Merchant:** — The purpose of the amendment as proposed, to strike out section 34, is that 34 is a section that says to the oil industry, if you do what everyone else can do, namely, you deal with your affairs in such a way as to pay the least tax necessary, then the government can come along and still impose additional taxation upon you because you have avoided tax. It doesn't say that they can impose additional taxation upon you for doing something illegal or for dealing with your tax situation in some improper or inappropriate way. It simply says that if you do what all of us do, arrange our financial affairs to that we will pay the least tax necessary, if you do that under this oil tax legislation you are subject to the government imposing some kind of special penalty against you or whatever.

**An Hon. Member:** — . . . lawyer . . .

**Mr. Merchant:** — Well, then I say to the member as an analogy you probably buy something like a registered retirement savings plan. You put some money into that, you put money into a registered retirement savings plan and \$2,500 because you are a member, that's all you are entitled to put. If you do that, if you order your affairs so as to pay the least tax necessary, the government could, under this section if you did the similar kinds of things that the oil companies can do, they could come along and say, no, you'll pay additional tax. If you own securities, for instance, and you as an individual had some securities that were down in value and you thought, well I'm going to sell them in January or February or November or December and you sold them on the last day of 1977 so that you would have a capital loss for 1977 and get a deduction from income tax, the government could come along and say, well you know, Mr. Member for Saskatoon Centre you deliberately did that to avoid paying some tax. It was legal what you did but you were trying to pay less tax than we think you should pay. Now, if you did that, you would be faced if there were this kind of section in the Income Tax Act with the government imposing a special tax against you. Now this cuts in two ways. First, a section like section 34 is unfair. We're not talking about Shell or Imperial Oil. I'm talking about little operators, the Dave Surjiks of this world, the little operators in Regina. They earn a reasonable living, they're professional people, Regina, Estevan, Swift current, they are all over the province. Those people have the right to order their affairs for the purposes of paying as little taxes as is necessary the same way I do, and I earn more than the gentleman I just named, in the business in which I am engaged and with the studies that I have taken to equip me to go into that field. Now, I'm not faced with this kind of section in the Income Tax Act and I say why are the oil tax operators all over the province to be faced with this kind section?

Now, there's another factor and that factor is that of the constitutional questions, one will be the colorability question, the other will be, is this an income tax? When they try to decide whether it's an income tax the courts will look at the legislation and say, it's part of the problem of deciding whether it's an Income Tax Act, is it like ordinary income taxes and are there special deductions, are there special penalties imposed or does it work like ordinary income tax? This sort of a section really says it's an arbitrary tax, it's a tax that the government is going to sit down and decide how much people will pay. This kind of section will be used, mark my words, will be used as part of the proof that this legislation should fail because it is not in fact a legitimate income tax in the way that Mr. Justice Spence, who supported the government in the CIGOL case, described an income tax.

Now, Mr. Chairman, I move to delete section 34 from the act and renumber

accordingly, seconded by the member for Shaunavon.

**Mr. Chairman:** — Order, the amendment before us moved by the member for Regina Wascana is to move to delete section 34 from the act and renumber accordingly. I move the amendment is out of order because he can accomplish the same by defeating this section as he does by deleting it and so, therefore, I rule the amendment out of order.

**Mr. Romanow:** — I thank you for the ruling. I just simply want to say in response to the member's colorful words with respect to section 34, with all due respect to his argument, I think he's misinterpreted section 34 because section 34 talks about improper avoidance. Section 34 comes from section 246 of the Income Act of Canada. It's an income tax provision designed to avoid the kind of improper avoidance provisions which sometimes occur in taxation circumstances. When he cites Registered Retirement Savings Plans or capital losses in the sale of shares, all of these are allowable expenses. I'm sure the member for Qu'Appelle would agree with me on this and I'm sure everybody else, my friends to my right there and opposite, they would agree that that's the case and those are all legal. Anything that is legal under the regulations of this act can be deducted, of course should be deducted and will be deducted. But anything which is an attempt to improperly avoid or reduce the payment of a tax, section 34 says no you can't do that. And what the member wants is for the House to defeat section 34 thereby not giving the government any tool to fight improper avoidance and the result would be very much to cripple the impact of the bill. Again, the Liberals are at least consistent in this operation. Unlike the Tories who are sort of you know sitting there on the fence and keeping an ear to the ground on this one, but the Liberals want to see this bill crippled and defeated and this amendment falls or this motion falls within that operation. So, I urge very strongly to the members of this House to vote in favor of this section.

Section 34 agreed as amended.

Section 35 agreed.

### Section 36

**Mr. Chairman:** — It's moved by the member for Qu'Appelle and it reads

Amend the printed bill by inserting after section 36 the following heading and section "Purpose of the Legislature" and then 37 the purpose and intent of the Legislature is to alleviate an extreme financial burden on the people of Saskatchewan and the provisions of this act are not intended to be used to interpret or construe any of the provisions of other income tax legislation as being retroactive in effect.

**Mr. Collver:** — Mr. Chairman, I'd just like to make a few comments on this particular section that we are asking the government to add to this bill. There is some concern in the minds of many, especially those in the legal fraternity, that this bill as constituted and directed does not spell out specifically that the retroactive nature of this bill should not be applied and used as a precedent in other legislation and in other bills that apply to income taxes in the province of Saskatchewan. And what concerns the people of this province is the fact that the government of Saskatchewan might be considering an income tax, a retroactive income tax, for example, for the farmers of the province. A retroactive income tax for any member of professional people, a retroactive income tax

for individual citizens. And we think, Mr. Chairman, that this particular section specifically states that Bill 47 is not to be construed as using its retroactive nature to be applied as a precedent for other income tax legislation. The people who ought to be assured that the government is enacting Bill 47 specifically to accomplish that which it states it wants to accomplish and that is that the half a billion dollars is not repayable to the corporations to the oil industry as a result of the Supreme Court decision and, furthermore, the province of Saskatchewan has the right to tax its resources as it sees fit for the future. What concerns the people is the fact that this is a retroactive bill and it applies to years gone by, even though a former bill has been struck down, and we believe that this particular section would assure the people that the government of Saskatchewan is serious about it stating that this particular bill is designed for that which it is intended to be designed for and not to be used as a precedent. I sincerely hope the Attorney General will accept that situation and will want to assure the people, the farmers and the dentists and the small shopkeepers and the small businessmen all over the province that the present government has no intention of passing any retroactive income tax legislation on them and that this is specifically designed to solve a particular problem. I am sure he will and the government members opposite will insist that that intended purpose is inserted in the legislation.

**Mr. Romanow:** — Mr. Chairman, with all due respect to the remarks of the Leader of the Conservative Party, I can only categorize the remarks and the proposed amendments as mere political window dressing. This section 36, so-called in the proposed amendments by the Tories amounts to nothing more than a chance to justify what the editor in that paper called, ‘New Horizon’s or ‘Saskatchewan Horizons’ talks about. It’s the only attempt to do that. I tell you, Mr. Chairman, that the legal effect of this amendment is absolutely useless. The first portion for example of section 36 has the purpose and intent of the Legislature is to alleviate an extreme financial burden on the people of Saskatchewan. Now, I wonder whether or not, Mr. Chairman, what impact that statement would have on Bill 42 and what we’re talking about in terms of this legislation. But leaving that aside at the moment, “to alleviate an extreme financial burden.” Right now there is the one judgment which is against the government with respect to the Bill 42 situation — that’s CIGOL. There is a potential of a massive injustice with others, that’s true. Maybe that’s what this is intended to state, but in effect it makes a statement of fact which is not good in this situation but that’s not my biggest argument. The next part of the amendment says, “and the provisions of this Act are not intended to be used to interpret or construe any of the provisions of other income tax legislation as being retroactive in effect.” And I say, Mr. Chairman, that this is meaningless.

This second portion regarding the interpretation and construction of other statutes is meaningless in any event. To be retroactive and the member for Qu’Appelle, I’m sure would support me on this, a statute must specifically state that a particular piece, that it’s going to operate retroactively. And it would not be inferred that a particular piece of income tax legislation was retroactive simply because some other piece of income tax legislation was stated to be retroactive. I tell the Leader of the Conservative Party that it could be done that simply. I wouldn’t have put in there that last section about that retroactivity because I can give you literally hundreds of examples of taxation bills which are retroactive. Right here in this province. Let alone any other province, let alone the Dominion of Canada. And every one of them has that last little phrase saying that this bill is going to be retroactive. Without that phrase, it can’t be interpreted any other way. So when the Leader of the Conservative Party gets up and says, oh, we need to have this little statement in here so that it doesn’t apply to anybody else, he knows full well that it can’t apply

to anybody else. And if he doesn't know full well that it can't apply to anybody else, he ought to know that it can't apply to anybody else. And that's why I say the whole thing is sheer window dressing. Because it allows him a little platform to get up there and say, oh, who's going to be next? Maybe the farmers and maybe the small businessmen and maybe this and maybe that. And this is pure irresponsible, political hot air, Mr. Chairman. But luckily the people of Saskatchewan have caught on to the Conservative Leader. They know that's all he and his caucus have, is a lot of hot air. And even the hot air is now beginning slowly to seep out of the balloon which is coming down politically, as far as the Saskatchewan people are concerned. I tell the Leader of the Conservative Party, Mr. Chairman, that what he wants and what he badly needs right now is credibility, political credibility. And this amendment does not add to his credibility. He needs an amendment which is at least something credible to argue. Not something which is to be politically argued. If he wants to argue about it politically that's another time and another forum. But he ought not to come to this House with this kind of an amendment, Mr. Chairman, which is absolutely, totally one hundred per cent useless, in terms of law and is designed for only one purpose — and that is mischievousness. Political mischievousness! That's exactly the situation because I repeat again, Mr. Chairman, no law can be retroactive unless the legislature says specifically that the law is to be retroactive but for him to raise that old bogey about farmers and the intention of this government is pure hog-wash and he knows it.

**Mr. Collver:** — Mr. Chairman, I'm very pleased that the Attorney General added . . . and now we have to return to personal things, is that it? Because you can't attack the policy you want to start on personal stuff. Well, I can tell you, Mr. Minister of northern Saskatchewan, that there's lots more than personal stuff that the people of Saskatchewan are interested in. They're interested in the administration of the present government and most especially in the northern part of our province. Mr. Chairman . . .

**Mr. Chairman:** — Order, please. May I suggest to both sides of the House to try and keep in order here and deal with the amendment at hand.

**Mr. Collver:** — Thank you. The amendment at hand has nothing to do with Switzerland. Mr. Chairman, the purpose of legislation, the purpose of this Legislature is not only to create legalese which will stand up in the courts. The purpose of this Legislature is to lead the people of Saskatchewan. The purpose of this Legislature is alleviate their fears. Now, the people of this province are afraid. They are afraid that the present government is going to enact retroactive income tax legislation on them. This clause, that's not in the terms of the Minister of Finance, who decided to give an expletive similar to that provided by the present Prime Minister of Canada. I hope the Minister of Finance would say a few more of those expletives for the express purpose of bringing his true intent to the people of the province of Saskatchewan.

The fact of the matter is, Mr. Chairman, that this Legislature must assure the people of the province of Saskatchewan that they are not going to see the present government enact retroactive income tax legislation in future. And they want to be assured that this particular bill, Bill 47 is not going to be used in a year or two years or three years . . . well, it won't be in three years because they won't be there, but is not going to be used in the next year or two by the present government as an example of the kind of legislation that they can use to attack farmers. To attack the druggist because maybe the druggist had stopped co-operating with the government. Or to attack other small businessmen because they're not co-operating with the government. They want to be assured. The laborers because perhaps, the laborers are saying to the government of Saskatchewan, look, we don't like what you're doing, we want you to do something different. And you say, wait a minute we're going to have a special laborer's income tax bill that's going to

be retroactive in effect and put them all out of business. They want to be assured, Mr. Chairman, that the government is not going to use this bill as an example to extract that kind of blackmail from individuals. Mr. Chairman, since the Attorney General has suggested that this particular clause, as he says is useless. If it's merely just a statement of intent by the government that should have absolutely no objection whatsoever to its enactment, because the first part of the statement, Mr. Chairman, is from the Attorney General's very own speech. From the very first part of the enactment of this legislation. Directly from his speech. And it says the purpose and intent of the Legislature is to alleviate an extreme financial burden on the people of Saskatchewan. The Attorney General's own words were why the purpose of the bill and all we're saying is, vote for it. That's what you said in your opening speech. Vote for it. And the provisions of the act are not intended to be used to interpret any of the provisions of other income tax legislation as being retroactive in effect. And the Attorney General specifically stated in his opening remarks that the retroactive nature of the bill was only intended to ensure that the people of Saskatchewan were able to retain the half a billion dollars which he said was in jeopardy, which he said is in jeopardy as a result of the Supreme Court decision which his members criticized the Supreme Court for, deigning to call one of the bills of the NDP into question constitutionally. He said the purpose of the bill is to alleviate an extreme financial burden and he said that this bill is not to be deemed to be retroactive for anybody else, its only in this circumstance we are going to use it and we say, you say it, insert it in the bill. It's not going to do any damage, it could do a lot of good and it could alleviate your government's serious problem with the people of Saskatchewan and that is their concern that you are going to take over everything that they have and hold dear.

**Mr. Romanow:** — I say to the hon. Leader of the Conservative Party that that is just pure political hot air. The only person who is going up and down the province, although the Liberals are doing the same thing but the only person who is going about the last — well it doesn't matter you know from one Liberal over there to one Conservative over there and who knows maybe one Conservative from there back to one Liberal over there. Who knows what the situation is going to work out. But I am saying . . .

**Mr. Collver:** — Terrific.

**Mr. Romanow:** — . . . terrific the hon. Leader of the Conservative Party says. Well,

we'll see how terrific it is. But I'm saying to the Leader of the Conservative Party that that's laughable. You know when I got into politics and I did a little bit of reading about what the old days of 1940s and 1948 election, the 1944 and 1948 election, what the Liberals were doing at that day. The allegation was, you know, you had to be concerned because the NDP and the CCF were going to take over the farms of Saskatchewan. The same thing 30 years later. What amazes me is that the press picks up that simple kind of statement and gives it a great deal of highlight. Statements which 30 years ago were buried — 30 years ago. Now there is a new messiah spreading the doom and gloom of the new tyranny around which all of the right wing and all of the oil companies and all of the interests trying to rally to try to scare this whole routine together. And all of a sudden the press would think that he re-invented the wheel with all these arguments. Now I am telling Mr. Chairman and the House that this amendment is purely in that category, that's what the nature of this amendment is. Anybody who can have any kind of credibility is going around Pelly constituency trying to tell this story about seat belts and how there is no freedom now. The next thing you know they are going to tell you that you can't be farming your quarter section, you can't be doing this. The people and the farmers of Pelly taught you a lesson as to about how much they were going to accept that kind of an argument . . . (interjection) . . . Yes they did, you got whopped in Pelly and you are going to get whopped in the next general provincial election if you are still around with your caucus in this operation, simply because you've got no credibility, you've got no credibility in those kind of arguments. I am saying to the Leader of the Conservative Party and members of this Legislative Assembly that if we were ever, ever to insert this kind of a provision we would be giving credence, credence to an argument that's as phony as a three dollar bill and only could be propagated by a group which is as phony . . .

**An Hon. Member:** — Are those your own words, Roy.

**Mr. Romanow:** — Yes, my own words — no, these are not my own words. You show me where they're my own words. You pull out my speech give it to me right now and show me where they are my own words and I'll wait until this committee, until you dig that up. Even if they are my own words, yes, even if they are, even if they are they do not require insertion in the legislation.

**Mr. Collver:** — Why not?

**Mr. Romanow:** — Because I have said to you already the only way you can make a piece of legislation retroactive is by making that legislation specifically retroactive. You can't do it by this, you can't do it by anything but a specific amendment to it and you know it. So don't seize on my words and say because it's my own words you are going to put that in there. You know that's the situation. Yes, you show me where I said it but in any event even if I did say it, it still doesn't take away the argument that I advanced, the argument which is that it is as shallow and as cheap as a three dollar bill, that kind of an argument. Absolutely so and I know it's going to get the headlines tomorrow because that's the stature of the situation in the province of Saskatchewan. But I'm telling you and I'm telling the members of this House that this is an absolutely political argument only by the Conservatives. In fact all of this amendment which I'm going to talk about in a moment and I'm very, very interested about this or this next one coming up. 37, all of this is in that category of the Conservative Party. The Leader of the Tories should be ashamed of himself for moving such a thing.

**Mr. Merchant:** — . . . Nipawin before I take my place again and let him get back into the shouting match . . . (interjection) . . . I agree it's not much of a match, he's not

shouting as much as you are. What's the purpose of the word 'Legislature' as opposed to 'legislation'? I don't understand the wording.

**Mr. Lane (Qu'Appelle):** — That is the wording as given by the law clerk in drafting the legislation. That matter was raised by the law clerk in drafting the legislation, that matter was raised and she advised that historically the correct phraseology in this is the word 'Legislature' and not 'legislation'.

**Mr. Collver:** — I get the impression that the Attorney General hasn't yet taken a position on our clause 37. He hasn't yet advised his members whether or not he's in favor of this particular clause. The fact of the matter is, Mr. Attorney General, that we agreed. Of course this is a political clause, of course this clause is spelling out the purpose and intent as spelled out by the government when it had introduced Bill 47. After all, Mr. Chairman, Bill 47 is brought about through a very unique situation. This is not a new bill designed to raise money for the people of Saskatchewan, this is not a new bill designed because of some special circumstance in the oil industry that we suddenly have to bring a new bill before the House to obtain money for the people of Saskatchewan. This bill was brought about as a direct result of a Supreme Court decision on bill 42. It was brought about in the Attorney General's own words as an emergency kind of situation that had to be introduced quickly and passed quickly, according to the Attorney General. Passed quickly, it must be passed this session and as quickly as is possible. Why, because the interests of the people of Saskatchewan must be preserved, they must be protected. And we agree, the interests of the people must be protected. The Attorney General and the government of Saskatchewan have many concerns of course throughout this province in terms of retroactive income tax legislation of this kind of magnitude.

There are people throughout the province and the Attorney General knows it himself, farmers, individuals, small businessmen, people, little people, who are concerned that as a result of this bill the government of Saskatchewan will in the future hold it up as an example. They will forget, Mr. Attorney General, very conveniently forget what he said just six weeks ago and very conveniently forgets the purpose and the intent that he again spells out in his introduction of this bill. He very conveniently forgets it, and the people are concerned that the government of Saskatchewan will forget, in forthcoming months, that that is why they introduced this bill as an emergency bill and they will say to the people of Saskatchewan, possibly on one of the ads produced in the Saskatchewan's family of Crown corporations — we need your money, says the family of Crown corporations' ad. We are going to have to pass a retroactive tax to get the benefit of farm income because of all of a sudden farm income has dropped dramatically. And last year you guys had a big year and you all have cash sitting in the bank. How can we possibly pay for the roads, and pay for all the new potash mines we want to buy? How do we pay for it? We are going to have to retroactively pass legislation on your income to get last year's income in which you had a good year. Not to be concerned about. And the government says, look, we have a precedent, just as they have said on this bill. We have precedents right across the country. We have a precedent in Ontario, a precedent in Alberta, we have precedents everywhere. Look at the precedents we have, now help us pass this bill. We say to the Attorney General, yes, we are helping you pass the bill, yes we are. Yes, we voted for you on second reading and, yes, we want you to state in the bill, so that you may not hold it up to the people as an example in the future of the kind of bill that can be passed on farmers and on individuals; that it was a bill designed for a specific situation, an emergency situation, and that it was a bill that you, yourselves,



said was to alleviate an extreme financial burden.

Mr. Attorney General, I suggest, very strongly, that you realign your thinking on this. This is an opportunity for the NDP to prove, once and for all, that any reasons that we have for going out to the people and saying politically, as you say, the NDP want to use this to tax farmer's income and you say, no, we don't. So prove it, put it in the bill. You don't want the Progressive Conservatives to be able to go out to the people of Saskatchewan and say that is step one, that is step one in the retroactive kind of income tax that the government is going to impose on you, the farmer. Here is your opportunity, tonight. It does no damage to the bill, it doesn't color the bill. Here is your opportunity to insert in your bill a statement of intent and purpose that will assure the people of Saskatchewan that you do not intend to pass retroactive legislation on them in the future, using this as your precedent. Here is your chance to clear it up. It is your chance to make sure that the so-called politics that you don't want us to play will be played. Because if you pass that amendment, how can anybody play it? There it is right in the bill, right in the bill passed by the government. It was designed for a specific purpose and we are not going to use it as a precedent for the next retroactive legislation. We can't use it then. Here is your chance.

**Mr. Romanow:** — Mr. Chairman, the situation here, really the argument is almost laughable.

**Mr. Chairman:** — Order! State your point of order.

**Mr. Merchant:** — Mr. Chairman, I suggest to you that this section is inappropriate to this legislation, is irrelevant. I can cite authorities to you that the legislation has to be relevant to the act with which you are dealing. I questioned the member about the wording and the use of the word 'Legislature'. Legislature is a word that is defined by the interpretation of statutes. Legislature means the Lieutenant-Governor acting by and with the advice and consent of the Legislative Assembly of the province. So that when you read this amendment it reads: "to be added to a taxing legislation, the oil and gas taxing legislation, the purpose and intent of the Lieutenant-Governor acting by and with the advice and consent of the Legislative Assembly of the province, is to alleviate any extreme financial burden on the people of Saskatchewan. And the provisions of this act are not intended to be used to interpret or construe any of the provisions of any other income tax legislation as being retroactive in effect."

Now, while I am quite satisfied to accept that my friend, Mr. Porteous, acting by and with the consent of all the brilliant people in this House is to alleviate an extreme financial burden on the people of Saskatchewan, I am not sure what that has to do with the oil and gas legislation.

I am interested, of course, that the Conservatives have now become involved in this debate. We have been at it for six weeks. We are almost into the seventh week. We are down to the last hour and we have heard about their amendments, and I knew they were coming and every day I waited. I knew this onslaught was going to come and then in the last hour down comes the onslaught and I don't understand the amendment, Mr. Chairman. I think the amendment is out of order.

**Mr. Lane:** — Mr. Chairman, referring to the point of order, the Conservative member's amendments are designed for the Liberal Party, or the credit for the Liberal Party, but are designed for the people of Saskatchewan, which may mean that the only party in here, in the opposition, giving amendments for that basis.

I would like to advise the hon. member, as he misinterprets and misreads the legal aspects of it, that there is ample case authority and I cite, for example, the Russell case, wherein the motives for the passing of the legislation by a government are not a factor, knowing full well and stating full well, that the clause was legally neutral when it was drafted. So from the point of view of the criticisms of the member for Regina Wascana, of course, they are totally irrelevant to the point. I think the hon. member misses the point that in fact the legal position is, as has been stated by both the Privy Council and the Supreme Court, the motives of the legislation are not relevant in determining the constitutional validity of the matter. There is no doubt and I suggest that this particular clause is legally neutral, but it gives, and I suggest and I have urged that it does give, to the Attorney General a chance to reinforce and restate the basis for the legislation in the first place and at the same time to reassure the public that he will not use the legislation to run across the country and say that a precedent, a precedent, we can do it again in the future if necessary, a statement that he has used on other retroactive legislation. I think the point of order is irrelevant.

**Mr. Chairman:** — If I might just give my interpretation of the ruling as I see it. I understand that the member for Regina Wascana says the amendment is not relevant and, therefore, is out of order. I interpret that the amendment is relevant and is in order.

Amendment negatived on the following recorded division:

**YEAS — 4**

Collver  
Lane (Qu'Ap)

Katzman

Wipf

**NAYS — 26**

Blakeney  
Thibault  
Bowerman  
Smishek  
Romanow  
Messer  
Byers  
Kowalchuk  
Matsalla

Robbins  
MacMurchy  
Mostoway  
Banda  
Whelan  
McNeill  
MacAuley  
Kramer  
Lusney

Faris  
Tchorzewski  
Shillington  
Vickar  
Skoberg  
Johnson  
Thompson  
Feschuk

**Mr. C.P. MacDonald** (Indian Head-Wolseley) — Mr. Speaker I have to make a couple of comments and I would hope that the members of the House would listen to me.

We have, all members of the Legislature, all members of the press, all of the public of

Saskatchewan have been waiting for the member for Nipawin to indicate as to the reason why he is going to vote against this bill on third reading. And he wanted, after listening . . . first of all after taking the heat from the people of Saskatchewan as to what is going on, as to what kind of a representation is the free enterprise party, the Conservative Party, doing for the people of Saskatchewan, he decided that he has to justify just exactly why his party is going to vote this bill. I have never in my life in all of the time I have been in this Legislature, seen a more asinine, and I say asinine because the more asinine . . . and I would say that asinine means that it's on the back of an ass.

**Some Hon. Members:** Hear, hear!

**Mr. Chairman:** — Order please. I think I would have to rule that that is a little unparliamentary and I will ask the member to . . .

**Mr. MacDonald:** — Mr. Chairman, in all honesty if that happens to be a little unparliamentary, I'll ask a decision from the member for Moose Jaw South.

What I really want to say, Mr. Speaker, is that this particular amendment and the direction and the stance of the Conservative Party, I want to say in all honesty, that we in the Liberal opposition welcome it and I want to tell you why. Because the people of Saskatchewan have expected for a long, long time that those people who were elected as the free enterprisers in this province and who oppose the NDP socialists, would join together in a positive and constructive manner to oppose the kind of legislation that Bill 47 represents, and I want to predict to all the members of the House that this amendment has only one specific reason, to attempt to justify the member for Nipawin and his Conservative caucus for opposing this bill on third reading.

Mr. Speaker, I want to say that we have welcomed the change of heart. The only thing that we regret that it doesn't express a principle, it doesn't express any integrity, it doesn't express any sincerity for the opposition to the bill, and I would hope, Mr. Speaker, that the member for Nipawin, when he stands up to vote against Bill 47 in third reading, and the other members of his Conservative caucus will say yea, we support the Liberal opposition in all of their opposition for this bill because they were right to begin with and they will be right forever, that Bill 47 is a bad bill and has a great danger for Saskatchewan. I want to tell the member for Nipawin that has to be the most unbelievable amendment I've ever seen since I entered this Legislature, and it gave me a great deal of difficulty of sitting down, I didn't know whether to sit down, stand up or say aye or nay because I couldn't understand it. It was the most wishy washy, unbelievable amendment I have ever experienced in all the time I've been in here.

**Mr. Collver:** — I certainly welcome the comments of the member for Indian Head-Wolseley and his obvious advisor tonight, Jim(sic) Barleycorn.

Mr. Chairman, we would suggest very strongly that . . .

**Some Hon. Members:** Hear, hear!

**Mr. Chairman:** — Order! We had better, all of us, try to maintain and keep the decorum of this House a little big higher here and deal specifically with the amendment and section at hand, please.

**Mr. Collver:** — Mr. Chairman, I certainly withdraw. I don't know that the member for

Indian Head-Wolseley had any advisors tonight. The fact of the matter is, Mr. Chairman, that it is impossible for the member for Indian Head-Wolseley to know or understand the position of the Progressive Conservative Party because he is not a Progressive Conservative and because he doesn't understand the issues facing the people of the province of Saskatchewan.

There are two major issues involved in this entire bill and perhaps it is incumbent upon me tonight to pass it along to the member for Indian Head-Wolseley. One issue is whether or not the present government botched up its production of the legislation under Bill 42 in 1973. In that regard, we believe very strongly, Mr. Chairman, that the NDP did that.

Does the NDP government of Saskatchewan, or any government of Saskatchewan have the right to tax the resources that belong to the people of Saskatchewan as they, the provincial government sees fit? In our judgment, yes they do. Those are the two issues. And which is the stronger issue in our minds over Bill 47? The stronger issue to us is whether or not the province of Saskatchewan and the government of Saskatchewan have the right to tax those resources as they see fit, that they are not to be dictated to by the government in Ottawa as the members to my right would have us believe, and they are not to be dictated to by major multinational corporations whose head offices aren't in the province of Saskatchewan, as our friends to our right would have them do.

We believe that the government of Saskatchewan has the right to tax resources as they see fit and that is why we are in support of Bill 47 and that is why we have supported Bill 47 all along. The fact of the matter is, Mr. Chairman, that the NDP in creating Bill 42 to solve the situation, to solve a situation, did so badly that now they are coming back with a piece of legislation to try to correct their mistake from four years ago and we must as representatives of the people of this province support the efforts of any government of Saskatchewan to protect the rights of the province of Saskatchewan to tax its resources as it sees fit. Now the fact that we would like to make this a better piece of legislation by introducing amendments is after all the purpose for this session here tonight. That is the purpose of Committee of the Whole. That's the purpose of making amendments and the amendments don't always have to be legal as suggested by the member for Regina-Wascana. Sometimes a good amendment to a piece of legislation can be legally neutral but can state a principle in the legislation that is spelled out that makes better law in the words of the member for Regina Wascana because it does make better law. It spells out the principles for which the bill was designed and it spells out the fact that the people of Saskatchewan can be assured that the present government isn't going to use this clause or use the bill as a precedent for the future.

Now government has voted down that legislation, has done so with the tacit support of the members to the right, has voted down that amendment. They sat in their chairs, did nothing in terms of that particular amendment so they must believe that retroactive legislation is O.K. with the farmers, it's O.K. to use this bill as a precedent for the next bill which will produce retroactive income taxes for the farmers, retroactive income taxes for everyone else in Saskatchewan. Well, I can tell you, Mr. Chairman, and members of this Assembly, that it's going to be the people of Saskatchewan, not the member for Indian Head-Wolseley and not the members opposite who make the decision on who shall form the next government of Saskatchewan and I support the common will of the people of Saskatchewan, and I say to the members opposite that they will find a dramatic change come the next election.

**Mr. Merchant:** — We would have liked to have voted for this section, we would

have overcome the fact that the section does not make any sense and we might have voted for it even so. We listened to a lot of gobbledygook in this Legislature and I don't see why we shouldn't vote for some of it every once in a while, so we probably would have voted for it because we agree with it in principle even though it does not make an awful lot of sense. But the fact is that beyond any question Mr. Chairman, this would have contributed to the colorability of the act and the inclusion — beyond any question Mr. Chairman, to tie Bill 47 so closely to the financial disaster into which this government has placed the Saskatchewan taxpayer and to include it in the act so that you would not even face the problem of having to get the legislative comments or the comments in the press into the record, to go so far as to include it in the act and to say this is the purpose of the legislation to lift the financial burden by implication the financial burden caused by Bill 42, to do that clearly, Mr. Chairman, would have made far more colorable the act. Though we approve of the sort of motherhood principle that the section includes, we couldn't possibly have supported making the legislation more colorable when our reason for opposing the legislation is that we do not think it will do the job of extricating the Saskatchewan taxpayer from the mess in which the NDP has placed him.

**Mr. Lane:** — I would like to make a comment. Now since day one, we have heard the Liberal Party say, we don't know what we are going to do about the bill, we don't know what stand to take. It took about eight or nine days before they made up their minds and found out that the other parties had already made decisions and they are down so low that they might as well go against it and see what happens. So tonight now we see after having had speech after speech after speech for the last six weeks about how bad retroactive legislation is, the Legislature finally had the opportunity tonight to say, "We do not like retroactive legislation, we do not like the retroactive provisions of this bill although we recognize that to alleviate our financial burden this particular bill had to be retroactive." The Liberal Party has opposed retroactivity in other speeches and I'll tell you Mr. Chairman, when they finally had a chance to put that intention into the legislation without affecting the operation of the bill, they bombed out, they failed and they sat there silent again, not being able to make up their minds. The member for Indian Head-Wolseley says one thing, the member for Regina Wascana says the other and again we sit there and see tonight the Liberal Party sitting on the sharpest picket fence in the province of Saskatchewan and we are waiting for the hon. member for Moose Jaw North to say a few words and to give his position on retroactivity and to tell this House why he is in favor of retroactive income tax legislation and I am sure the hon. member will stand up as soon as I'm finished and tell us why he favors retroactive legislation.

This was a serious attempt to give to this Assembly an opportunity to say that we would support the bill, support the operation out of necessity on behalf of the people of this province and at the same time to say to the people of this province, we do not accept retroactivity as a principle of sound legislation or a principle of government operation and government management. It was an opportunity and tonight we found wanting the Liberal Party when it came to the crunch on retroactivity, the Liberal Party notwithstanding weeks and weeks and weeks of speeches about how they opposed retroactivity and how the retroactive part doomed a bill to defeat by the courts and that's all we have heard, that's all we've heard, all we've heard, retroactivity will kill this bill. When they finally had a chance to vote against retroactivity, tonight we found out that what we have been getting is verbal diarrhoea over there and nothing for the people of Saskatchewan and no substantive principle for the people of Saskatchewan.

**Mr. J.L. Skoberg (Moose Jaw North):** — I would like to suggest if I may, I believe that those opposite are suggesting that they are not in consideration of whether that they be Moose Jaw North or Moose Jaw North or South or whether or not they may be in consideration of the, what we're consideration of the entire consideration of the, I would like to ask after sitting in the Moose Jaw consideration insofar as our (sic)

**Mr. Chairman:** — Order, I think the member has made his point and I wonder if we could proceed with Section 36.

**Mr. Skoberg:** — I would like to say this if I may, I would like to ask those people here right this evening, after finding out that they haven't found out whether or not in fact, whether or not in fact, those people that had the right to find out and I would like to direct my address if I possibly could to those people and especially those individual members for Moose Jaw, the individual member for Thunder Creek which I have some difficulty in trying to remember. I would like to find out, Mr. Chairman, whether or not in fact, he finds out after what he has said, after what he has said, insofar as it's concerning, whether or not he is correct in saying and I'd like to ask this your worship whether or not that individual member that is sitting opposite to me right now. Has the corrective individual that will say to me or anybody else in the Moose Jaw constituency, whether or not he will say right to me, to right now whether or not in fact, this is a fact, will say he say this right now? Will that member opposite to me right now say this, will that member, Mr. Chairman, say this type of a situation . . .

**Mr. Chairman:** — Order, order please, if the member is going to speak he must confine his remarks to section 36 and I think he has made his point and I wonder if we could proceed?

**Mr. MacDonald:** — I thought that maybe I could supersede the member for Moose Jaw South and despite the generalizations of the member for Nipawin, and I say I look forward to the opportunity at some future date to taking that issue on and I say that in all sincerity, Mr. Speaker, there is one comment the member for Nipawin made that I think should be very pertinent to this House, which has characterized the debate of the Conservative Party and the Liberal Party and that is that I believe that the Province of Saskatchewan has the right to tax the resources of this province as they see fit. And I would like to suggest, Mr. Chairman, that that has been the argument of the Liberal Party and unfortunately the Province of Saskatchewan or no other province has the right to tax the resources of this province as they see fit, they must follow the Constitution of Canada, the BNA Act, and that is the issue that CIGOL has brought before us and that is the shallowness of the argument or the member for Nipawin.

Section 36 agreed

### **Section 37**

**Mr. Chairman:** — Section 37 — exemption of certain owners. We have an amendment in section 37, by the member for Qu'Appelle.

Amend section 37 of the printed bill by striking out subsection (1) section 37 and substituting the following: (1) notwithstanding any other provision of this act, the taxes imposed under this act do not apply to the owner of oil and gas rights where the owner is a corporation and (a) the corporation is incorporated pursuant to the laws of Saskatchewan, (b) the corporation has its registered head office in Saskatchewan, (c) a majority of the shareholders of the corporation are ordinarily resident in Saskatchewan and (d) the majority of the directors of the corporation are ordinarily resident in Saskatchewan.

Then (2) on the same section. Notwithstanding any other provisions of this act, the taxes imposed under this act do not apply to an owner of oil and gas rights in producing tracts for their aggregate area of oil, producing tracts beneficially owned by him and persons associated with him or in respect of which he and such persons hold any beneficial interest other than a lease does not exceed 1,280 acres.

Does the member so move?

**Mr. Collver:** — Mr. Chairman, I would just like to make a few brief remarks on this particular section that we are adding to the legislation. The members opposite and the government have suggested at all times both during the discussion of Bill 47 and also discussion of Bill 42, that it was the huge international corporations that they were concerned about leaving the rent (sic.) revenue out of the province of Saskatchewan to feed the directors and to feed the shareholders in other parts of Canada and other parts of North America. Well we are giving the government opposite an opportunity under this particular bill to exempt, to exempt the small Saskatchewan producer, small Saskatchewan owner who has enough trouble competing with the big guy anyway and to prove to the people of Saskatchewan that the NDP government in reality are for the little guy, we say and suggest that this bill should not apply to that little guy. Give them a break, give the local Saskatchewan oil producer a break, give him an even edge against that multinational corporation which has unlimited capital resources and give him a break by exempting him from this legislation. You'll have two effects, Mr. Chairman, Number 1, it will provide some capital, not very much, but some capital to the small Saskatchewan producer to be able to re-invest in the province of Saskatchewan and that would enable us to build up the kind of oil industry in Saskatchewan, to give them the capital that they need as opposed to the capital that is coming in from outside. Number 2, it would prove to the people of Saskatchewan that the present government in fact wants to see the small Saskatchewan producer become self sufficient and become viable and really be able to compete against the major multinational giant from outside our borders. And it will prove once and for all I'm sure if the members opposite vote for this clause, it will certainly prove that the deals that they are making for the past number of months and years with the big giant corporations in their so-called joint ventures, that in fact those deals are not what they want, they don't want to join together with the big guy, they want to support the little guy and let him grow. That's an opportunity we're giving the government to take today.

**Mr. Romanow:** — I want to express fairly strong exception to what this particular section does. I don't want to be misconstrued as being opposed to perhaps a general intent in a very general way but I'm asking the members of the House to look at what the effect of this House amendment will be if it's accepted. And I say the following are the effects: Firstly; an exemption of this kind would be almost impossible to administer. It's

not so much a matter of administration, Mr. Chairman, it's a little more than that, tied into administration however. I say that if this House amendment were accepted there would be little if anything to prevent any of the large multinational companies from arranging for the incorporation of a number of small companies in Saskatchewan with Saskatchewan head offices, Saskatchewan residents as nominal shareholders, actually owned behind the scenes by the companies and Saskatchewan resident directors, and then claim for each one of those companies as an exemption. I invite the Leader of the Conservative Party to tell me how indeed this can be answered. This result would be in my judgement a serious erosion, of the province's tax base and tax revenue in reality it would be to defeat the purpose of this bill. That is a very serious and major problem an objection that I have to this amendment. Secondly, Mr. Speaker, this act is an Income Tax Act and it is part of the traditional theory of an income tax bill, of an income tax, that it be applied generally to taxpayers in similar circumstances. I think a good argument can be advanced that any attempt to tax only one class of taxpayer, in this case non-residents of Saskatchewan, could seriously jeopardize the constitutional validity of the act as an income tax. Thirdly, any exemption of this kind could lead to the constitutional difficulties in the act that I've talked about. In the CIGOL decision the Supreme Court of Canada ruled that Bill 42 intruded on the Federal power to regulate interprovincial and international trade and commerce. If Bill 47 were to exempt Saskatchewan companies and tax only non Saskatchewan companies which is what this intended amendment seeks, the courts could again say that the province was really attempting to tax away the profits of those companies doing business in the province, but residing outside the province and thereby interfering with the federal power of Trade and Commerce. I know that the hon. member for Qu'Appelle knows of what I talk legally, the Leader of the Conservative Party may choose to ignore this but it is there. In fact the courts could even go so far as to say that Saskatchewan was not only trying to levy a tax on oil companies in general but rather was attempting to keep non-resident companies out of Saskatchewan or at least make it much more difficult for them to carry on oil business here. In addition to the prospects of transgressing on the federal power of Trade and Commerce this might also be said to be a violation of the exclusive federal jurisdiction over other aspects of the constitution, perhaps even argued over immigration or aliens or the resident non-resident situation. Mr. Chairman, I would say that those are three very serious problems in these amendments in extending section 37. I say that it would be impossible to administer this and indeed would open up the possibility for re-incorporation to abort Bill 47 if so put forward. Secondly, this would tamper with the traditional concept of an income tax and thirdly, in the light of the CIGOL decision this amendment could very seriously place Bill 47 into a constitutional challenge as an attempt to interfere with trade and commerce.

Now, Mr. Chairman, the Leader of the Conservative Party should know that these are three very substantive concerns and I believe that if he takes counsel within his own caucus he will know that what I say here is indeed all legally possible. It is probably probable — that's awkward wording — but probable in any event in the light of the proposed amendments and therefore I can only recommend to the House that these amendments be defeated.

**Mr. Collver:** — I would like to answer the three points raised by the Attorney General as they relate to these amendments. First of all he says that the administration of the act would be extremely difficult to administer, if not impossible, and would bring about re-incorporation by the major multinational companies of small corporations in Saskatchewan. That very suggestion we put to our legal counsel who helped us to draft the particular amendment and they are of the opinion and of the subsequent opinion that clause (c) or part (c) of that clause, the majority of the shareholders of the



corporation are ordinarily resident in Saskatchewan. If you wanted to pin it down. Yes, not shares, shareholders, the majority of the shareholders in Saskatchewan are ordinarily resident in Saskatchewan. In our opinion that that pins that down and says no, re-incorporation would not occur. If you wanted to take it a little bit further, you might add to it and I would be prepared to add to the amendment if the Attorney General would indicate that he would otherwise pass the amendment not only a majority of the shareholders but a majority of the shares must be owned by residents who are ordinarily resident in the province of Saskatchewan and that way you might tie it down even better but our legal advisors say the majority of the shareholders is sufficient. But you might go on to say, the majority of the shareholders and the majority of the holders of shares or the shares held must be ordinarily resident in Saskatchewan. We believe that that would tie down the situation. That's on the first objection. Our legal advice is that that is not correct. If the majority of the shareholders are ordinarily resident in Saskatchewan that that would prevent the re-incorporation.

Secondly, in terms of exemptions, I would like to direct the attention of the Attorney General to The Income Tax Act as it relates to individuals and corporations in Saskatchewan and in Canada. First of all there are a great many individuals who are exempted from the act in terms of income tax. People who are below a certain income level, people who are drawing certain kinds of income, such as unemployment insurance, people who are in receipt of certain kinds of pensions are exempted from income tax legislation, certain kinds. There are a number of exemptions to income taxes in terms of individuals.

In terms of corporations, corporations that earn less than a certain level of income are exempted from income tax legislation. Corporations who are allowed certain write offs are exempted from income tax legislation. There are organizations for example, such as charitable organizations that are exempted from income tax legislation. Therefore, exemptions to income tax legislation are quite prevalent and precedents are there for the provision of exemptions to any income legislation. There is nothing new in exempting people or individuals or corporations from certain aspects of income tax legislation.

Now the Attorney General's third comment on the colorability of a section that exempts Saskatchewan corporations as it relates to trade and commerce and as to the Supreme Court decision I think is probably the most serious objection that he raised. The first two I don't see. The first two I believe we have covered totally in this act.

Now there are a great number of people including the present government of Saskatchewan, including the Premier of Saskatchewan, including in the last two or three days the Premier of Alberta, who believe that the Supreme Court of Canada in that portion of their judgment where they referred to the trade and commerce section went too far and went beyond the constitutionality of our country. There are a great many constitutional lawyers who believe that and they also believe that any further incursion in that trade and commerce section or that that trade and commerce section of that judgment could be used to totally castrate provincial governments' rate of taxation in every field, in every area across our country. We do not believe that that was the intent of that judgment nor do we believe that the Supreme Court necessarily would rule that way in any other piece of legislation. Certainly if the Attorney General is using his trade and commerce section of the CIGOL decision as a means of holding up this particular bill, Bill 47, as being totally constitutional, he must realize and his own advisors I am sure have spelled out to him that if that trade and commerce section of that judgment is applied to this bill it will be ruled unconstitutional as will almost every provincial tax

legislation across our country. That is how broad and wide that the trade and commerce section of that judgment could be interpreted. Therefore, we suggest to the Attorney General that exempting small business and exempting Saskatchewan-owned small business no more colors the bill with reference to the trade and commerce section of the judgment than does the bill itself. No more colors the bill than the bill itself and, therefore, we believe that the three objections that the Attorney General has put forward this evening have not taken away the reason that he accepts, and he says the intent is good to make Saskatchewan small owned business, small owned oil industry stronger and to give them the capital to help develop our resources right here in the province.

We suggest to the Attorney General tonight that those objections of his are not rational in the light (a) of the amendment and (b) of the precedents that have been established by other income tax act and in the third objection in that colorability as related to the trade and commerce section we don't feel that this amendment adds any more or any less to the present bill than the present bill itself.

**Mr. Romanow:** — Mr. Chairman, I think just a further comment has to be made before we take a vote on this. First of all, I want to say and to repeat that the question of the problem of small Saskatchewan producers is a problem which we as a government have attempted to be sensitive towards and we have attempted to understand these problems as well as we can. It may very well be that under this bill, once the regulations are set, something can be done which would deal with all taxpayers of a certain size in an equal fashion, not on the basis of provincial boundary residency but on the basis of, perhaps, size or the particular problems that a small producer has and I said in my first remarks and we have indicated this all throughout the piece that we're prepared to look at this once we look at the regulations. Having said that, I do repeat very quickly the difficulties of this amendment. First of all, the amendment says "a majority of the shareholders of the corporation are ordinarily residents in Saskatchewan" and that, precisely, is the problem that I speak to. The majority of the shareholders could be located here, the majority of the shares could be located elsewhere and you could have a control. Well, this is something that you raise that as a cover off. The second point that I raise is the question with respect to exempting or to defining taxpayers based on provincial boundary; that simply can't be done. Look, you have all kinds of categories of taxpayers but you don't base them . . . Interjection . . . Mr. Chairman, my point is that a discrimination based on the kind of discrimination which the member for Nipawin here raises is a discrimination which in my judgement does attack traditional concept of income tax. Thirdly, I find and I say this now, as the last remark with respect to trade and commerce. I find it interesting after all of these weeks of debate on Bill 47 the position that we find the trade and coerce provision of CIGOL in. For seven or eight weeks it was we've lost Bill 42 because of the incompetence of the Attorney General and the incompetence of the government. Just a few minutes ago in his last remark, the Leader of the Conservative Party says in effect, we lost it because of the exception with the definition of trade and commerce that Supreme Court said in the CIGOL decision. And that's the position we're in, and I say, Mr. Chairman, that those are the kinds of little games that can be played by the Leader of the Conservative Party. And I know you'll say oh, the first indirect situation that was. You know if you look at direct and indirect carefully and get good legal advice you'll see what the impact of CIGOL decision there is. Just look at your own counsel in that area. In any event, Mr. Chairman, I don't think much more can be gained by this kind of a situation, I simply say that here the Leader of the Conservative Party has provided a loophole for some larger companies who would want to incorporate to take advantage of this loophole for them, has provided a

loophole which if we could allow it even constitutionally, would certainly defeat the purpose of this bill. I think, Mr. Chairman, we can't simply allow that and I urge the members of the committee to defeat the amendment.

**Mr. Collver:** — I would like to make a remark and that is that the Attorney General made one comment in which he has just said which is totally without any kind of reason at all. He said that you couldn't recognize provincial boundaries in an income tax and yet here in the province of Saskatchewan we see 58 per cent of our taxes, our income taxes are resident in Saskatchewan and next door we find an Alberta corporation with 26 per cent. We find corporations in Saskatchewan paying a higher percentage income tax than we find corporations in the province of Alberta pay and to suggest that you can't use provincial boundaries to delineate income taxes is absolute and utter nonsense.

**Mr. Merchant:** — I ask the minister a couple of questions. I can certainly see as I suppose I'd like to vote for this bill, for this provision if I understood it better. I can certainly see what the minister says about Imperial Oil, for instance, transferring all its assets to Gary Lane and his partner in trust and Gary Lane and his partner own the shares of Imperial Oil and then they're the only shareholders of Imperial Oil and they'll be the only shareholders and then Imperial Oil would be entitled to the exemption. That's simple enough, but curing that problem is simple enough as well. The minister knows that it can be cured in exactly the same way that we cure that problem when we deal with the foreign ownership of land. Would you tell me though, whether, and I also understand the colorability argument and I suspect that it does make it colorable or arguably so. I ask whether the intention of this is that all Saskatchewan companies would be exempt completely from tax, they would pay no tax whatsoever under this if this provision came into effect? And if that were the case, as things now stand with companies that are legitimate Saskatchewan companies, can you give us an estimate of how much money that would cost, 40, 50, 80 or 150 million dollars a year, what kind of dollars are we talking about as a direct subsidy to these companies? Member for Nipawin says that it would be nice if we got these companies going on an active footing. Well, I can assure the member that I'm sure I'll own a small oil company in Saskatchewan from my spot in Ottawa if this kind of an amendment were passed and I wonder if that's . . . interjection . . . well, I'll be ordinarily resident here. John Diefenbaker gets to be the Chancellor of the university and you ordinarily have to be a resident to be a Chancellor of the university, there is a special exemption as you may not know that makes you ordinarily resident even though you're mostly out of the province.

Now I ask the minister those two questions, would this be an absolute exemption in clearance, they would pay no tax and how much money would be involved?

**Mr. Romanow:** — Mr. Chairman, I want to emphasize I take no credit for the authorship of this amendment. My interpretation is that this would be an absolute exemption. That's exactly what they are intending to do here, and that means something so far as I know the small Saskatchewan producers always understood would be his role, he would pay some taxes for Saskatchewan, he would not be exempt. Secondly, as for the financial side of things, I'm trying to get an estimate from the officials to see that kind of a tax break would be for the oil companies.

**Mr. Collver:** — How much a year?

**Mr. Romanow:** — Well, it would be about \$12 million a year. Something in that neighborhood, \$60 million would be the effect if this amendment went through and

presumably Saskoil being Saskatchewan based of course would be exempt as well.

**Mr. Collver:** — The minister has already said, I don't like to explain it to the member for Regina Wascana either but there would not be 'no tax' there would be no tax under the oil income tax. There would certainly be corporate taxes to pay, there would be individual taxes to pay, there would be income taxes normal income taxes to pay after expenses on the business that was involved in Saskatchewan; so the Saskatchewan government would not lose \$12 million, it would lose \$12 million under the oil income tax legislation, but would gain whatever profits tax that these organizations, companies or individuals would be paying, their share of it on the other side of the coin.

**An Hon. Member:** — I don't understand it.

**Mr. Collver:** — Mr. Chairman, I really think that the Attorney General is for such a small amount, less than \$12 million certainly because of the recovery of income taxes that the government would make, such a small amount that would encourage the small businessman in Saskatchewan and certainly the Attorney General's comments about the majority of the shareholders, certainly if the Attorney General is prepared to say yes, we will go along with that. That is the only objection we have. Then put in 'the majority of the share-holders and the majority of the shares' and if the Attorney General would give us that indication we would be happy to adjust our amendment, to readjust it and put in that the shareholders and the shares are held in Saskatchewan by Saskatchewan residents and give the smaller guy a chance, a break, to compete more favorably with the large companies.

**Mr. Lane (Qu'Appelle):** — A further comment as well to the minister. In addition to the tax or the savings to the local Saskatchewan and the small Saskatchewan oil company, I suggest that the government say they would not have needed the decap program and the small companies being given special consideration under Bill 42. I think if we recall the situation at that time the blanket tax would hurt the small independent operators, the small Saskatchewan companies and necessitated secondary legislation by the government to turn around then bring in . . . no we are suggesting to you that given the past situation under Bill 42, then in fact we suggest to you that perhaps you will be forced to give special benefits to the small Saskatchewan operator either through different tax rates under the regulations or do it this way. We are faced now Mr. Attorney General with your earlier statement that the principle of this you accept. Now I am wondering that you could agree with the principle of helping the local Saskatchewan oil companies, that's the intent and I think the Attorney General will accept that. If that's the case, if the government does accept the principle of helping the small local Saskatchewan oil companies, would the minister then give us the assurance that special benefits will be given to the small Saskatchewan oil companies, through the rates and regulations to be promulgated.

**Mr. Romanow:** — Mr. Chairman, I have indicated that we have made no decision in respect to the rates. We are looking at it, part of the question of the rates will be dealt with once we have dealt and talked with the small Saskatchewan based producers as we will with CPA and others. You see, what is being proposed here in this amendment is in effect a blanket exemption for Saskatchewan based producers and the tab to the taxpayers of the province of Saskatchewan could be upwards of \$60 million by this approach based on the estimates that I have given. O.K. less than \$60 million, \$50 million, that is a lot of money and it's a blanket exemption to some companies that may not even need it. Some Saskatchewan, purely because it's Saskatchewan based doesn't mean that they all need it. Now if we are looking at a form of assistance, if we are looking

at the form of assistance for small Saskatchewan based companies, I say we have to look at it a different way. We have to look at it a different way than putting in amendments to the Bill, which amendments I think are of questionable constitutional, legal and administrative impact for the reasons I have articulated. There may have to be some other way in a legal and proper way to give incentives and give assistance to Saskatchewan based. I have already said that it is our general objective and our general intent. I don't know what those words mean — a commitment, because I can give you any kind of a commitment, the only question is whether or not at this stage in the game not having talked to the Saskatchewan producers or the independents or anybody else in the industry, that's a commitment of any meeting. I'm saying that if we want to do what we can to assist the Saskatchewan based oil producers, this is not the way to go about it because of the large size of the tab, the administrative, legal and constitutional problems that are attached to it. We have to go about it another way, I can give the House a commitment that we are looking at that problem and I will give the House a commitment that something will be implemented because it's not foreseeable at this stage.

**Mr. Merchant:** — We in the Liberal caucus would very much like to see some kind of assistance given to the Saskatchewan based companies and the small companies. The problem that I see at first blush with this amendment, notwithstanding the colorability in some of the legal problems is that the kind of blanket, the lack of subtlety that's involved in the amendment. It would mean that the companies that are now getting about 40 per cent of the return a barrel of oil, \$12 barrel they would be getting about \$5 when it moves to that price. They would get about \$5 then they would get \$12, a \$7 increase, not just 50 per cent more but more than doubling. Now the member for Nipawin says well they would pay tax. They rag out those depletion allowances in perpetuity. They don't pay tax in an ordinary way that other companies pay tax. If the Saskatchewan taxpayer is to get any share of the money produced by these companies, then it has to be through some form of tax here. In the same token Mr. Chairman, I think that consideration has to be given to assisting the small Saskatchewan company, and I hope that the government will carry through on what I thought was close to a commitment the other day when I was asking questions and the indication seemed to come to me that you were going to have a differential tax rate with a lower tax rate for the companies earning a smaller amount of money which would encourage the juniors and perhaps give some assistance to the Saskatchewan based companies.

**Mr. Romanow:** — Mr. Chairman, I gather that the Conservative caucus at least does not want to stop the clock. That's quite clear. We'll come back tomorrow. O.K. that's fine. My understanding was that we would finish off the bill tonight, but if that's the situation that's fine.

Mr. Chairman, I move that the Committee report progress on the bill.

The Committee reported progress.

The Assembly adjourned at 10:05 o'clock p.m.