

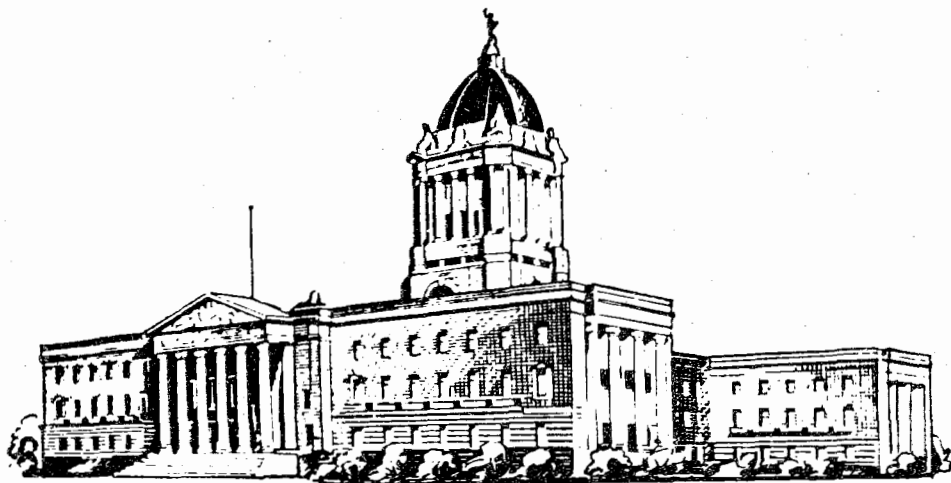


Legislative Assembly of Manitoba

DEBATES
and
PROCEEDINGS

Speaker

The Honourable Peter Fox



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THE LEGISLATIVE ASSEMBLY OF MANITOBA
8:00 o'clock, Thursday, May 6, 1971

INTRODUCTION OF GUESTS

MR. CHAIRMAN: I would like to direct the attention of honourable members to the gallery where we have 21 cubs of the 93rd Cub Pack. This Pack is from the McLeod School and is under the direction of Mrs. Bell and Mrs. Gretschman. The school is located in the constituency of the Honourable Mr. Speaker. On behalf of the honourable members I welcome the Pack to the House.

COMMITTEE OF SUPPLY

MR. CHAIRMAN: 21(c) -- pass. The Member for Portage la Prairie.

MR. G. JOHNSTON: Mr. Speaker, I believe we're on 21, Mr. Chairman, I listened with interest to the Attorney-General's defence, first of all last week, and then again today, and I did miss some of his spirited remarks in between, I wasn't present at all times in the House. But I must say, Mr. Chairman, that the Attorney-General is the old-time, old style politician, if I ever heard one. When he has a weak case he feels that if he speaks loudly and angrily that somehow he will defend his position, so that he has learned his political lesson well, I believe, that whenever you have a weak case you act offended and enraged and shout and yell and speak at the top of your lungs, with the hope that perhaps the Opposition who have you under fire will be distracted to some other part of his presentation that perhaps isn't so dangerous to him and doesn't make him so vulnerable; but unfortunately despite his best efforts, two or three hours of his best efforts, I don't think he has convinced many people in this House of the justification of his case. I would even go so far as to say that some of his more fair-minded backbenchers and colleagues find it very difficult to sit silent and then when the vote comes have to justify his actions as Attorney-General of this province during the last few months.

When he spoke in rebuttal to my opening statement about a week ago, he suggested in effect that there was some temerity on my part because I wasn't a lawyer and I didn't really understand the ramifications of the Attorney-General's job - really I didn't have quite this right to go about it in the way I did and attack him without special knowledge that only a lawyer has. -- (Interjection) -- Well, this is the feeling I received from the Honourable Minister's statement that as a member who wasn't a lawyer, he stressed this fact, that there are certain things I didn't know about the law, and I admit it. But, Mr. Chairman, as a member of the Opposition when I see something I do not think is right, that doesn't deter me nor I hope will it deter any other member in this House.

Now, after he with great relish got through with me, he turned on my Leader and said, "Well here's a man who is a lawyer, but a tax lawyer," and I think his words, if I can paraphrase them - he said, "Well of course, he's a tax lawyer who helps rich people avoid paying tax." -- (Interjection) -- Well, by this gentleman's own words, "I would hate to go to him when he returns to the practice of law for some advice because obviously he's going to help me to pay more and more tax than I really should if I should happen to ask him for that kind of advice." However, I would ask the Attorney-General to check with members of his own party, how many of them have gone to Mr. Asper for tax advice. It would surprise him to know that certain members of this party have sought tax advice from Mr. Asper and they didn't think they were breaking the law, I'm sure; they didn't think that they were being shady or some way avoiding their duty to their country. I think that they went to him with the feeling that within the law they would like to know what their situation is and they appreciated the advice and they're willing to pay for it. After all in this country there are specialists in all fields and certainly there'll be specialists in the field of tax law, corporation law, and so on.

But then he moved on, he moved on to say well, a layman, he doesn't know that much really, he doesn't know what he's talking about; a lawyer, yes, but a tax lawyer, that's different, he's really not with the duties that I'm charged with. Then he moved on to take a few cracks at the Western Manitoba Bar Association. He didn't say all of them, he said certain lawyers who are the establishment there and words to this effect. Now I find it very difficult, Mr. Chairman, to espy the Attorney-General in open quarrel with the members of a legal fraternity, some of them, for practicing the law within the law and they are subject to this sort of criticism.

(MR. G. JOHNSTON cont'd)

However, Mr. Chairman, I wish to return to my original statement about a week ago, when I charged the Attorney-General with a serious case where he's handled his position in a way that is not in keeping with the Chief Law Officer of this province. I read a letter into the record from him to the defence lawyer for this gentleman in Brandon, and I feel I must repeat a part of this letter again, because apparently it escapes certain people that the Minister in his instruction to his Crown Attorney in Brandon made a statement that is almost unbelievable - unbelievable that an Attorney-General of this province would make a statement like this, and I must quote it again. This is in his letter . . .

MR. CHAIRMAN: Order for one moment, please. Does the honourable member intend to present to the committee something which portends to be a letter?

MR. JOHNSTON: Mr. Chairman, I'm quoting out of a letter written by the Attorney-General; it's a copy of the letter, it's not the true copy, and I'm willing to table it if I have to.

MR. CHAIRMAN: Table the letter from the Attorney-General.

MR. JOHNSTON: Yes.

MR. CHAIRMAN: Thank you. The Member for Portage la Prairie.

MR. JOHNSTON: So the Attorney-General, and I quote in part and I hope not out of context: "If Mr. Smith should be convicted on a charge of assaulting a police officer, my instruction to Mr. Bowering not to request imprisonment must not be considered a statement of policy for persons convicted of a serious offence." Mr. Chairman, this is obviously a statement that the Minister emphasizes is not a statement of policy, but it's for this one person, no one else, it's for him. I submit to you, Mr. Chairman, that this is not fair, it's not right, it's not proper, nor does it fit into that old axiom that the law must only not be done or be served but it must appear to be done. In this case I don't think that is the case at all.

MR. CHAIRMAN: The Attorney-General has a point of order?

MR. MACKLING: Yes, I have. Now that the Honourable Member from Portage la Prairie is speaking, I wonder if he would now file the mutilated document he intended to file or undertook to file when he first spoke on this matter.

MR. CHAIRMAN: Order, please. I'm sorry, I couldn't accept that as a point of order, because that particular issue is not before the committee. The Member for Portage la Prairie.

MR. MACKLING: it was a request that he file the document, and it was my understanding he was complying with the request to file the document that he then had and admitted that he had mutilated it; but I still think it was an undertaking to file that document.

MR. CHAIRMAN: Order, please. That particular issue, I'm sorry, is not before the committee. The Member for Portage la Prairie.

MR. G. JOHNSTON: Well, Mr. Chairman, by the Minister's own lips he has reconvicted himself as someone who has not the strength and the common sense to hold down his ministry, because it was a very few days ago that I offered to file this and there was a great uproar from that side and I was not allowed to file it, but if there's some way I can file it, I certainly will.

Mr. Chairman, although I didn't raise it, it has been raised in this House, and I believe right fully so, the well-known Ternette case

MR. MACKLING: Mr. Chairman, point of order.

MR. G. JOHNSTON: Mr. Chairman, we have this other red herring being dragged in . . .

MR. MACKLING: I'm rising on a point of order.

MR. CHAIRMAN: Order, please. The Attorney-General has a point of order?

MR. MACKLING: Mr. Chairman, the honourable gentleman is suggesting that someone on this side, presumably myself, objected to his filing the mutilated document and he's saying if they want it I'll file it. We want it.

MR. G. JOHNSTON: It was the Minister of Labour who objected, in case my honourable friend's memory is not that long.

MR. G. JOHNSTON: Mr. Chairman, members of the

MR. CHAIRMAN: Order, please. The particular document to which the Attorney-General makes reference was not raised by the Member from Portage la Prairie at this particular time. He read from a letter from the Attorney-General and the issue that the Attorney-General raised is, in my understanding, not before this committee at the present time. The Member for Portage.

MR. G. JOHNSTON: Mr. Chairman, if I may proceed. There was other members of the official opposition made reference to the Ternette case and my honourable friend's handling of such a case. Now we heard his so-called defence this afternoon, which in my opinion was not

(MR. G. JOHNSTON cont'd) a defence at all. It was a series of red herrings and excuses where he did regret certain actions but he didn't like them to be taken as an apology.

I would like to suggest to you, Sir, that it's been - in fact I don't think ever in the history of reading of Manitoba, have we had a case or a year when the Attorney-General's Department has been held up to public question by the legal people, by magistrates and judges, and by the people, the police commission of Winnipeg, of this province. I believe this is the first time in history that this has ever happened here. -- (Interjection) -- Okay. The First Minister says it's ridiculous.

I refer now to an article in the Winnipeg Tribune in 1970, September 17, 1970, where there is an article by Mr. Harry L. Mardon, and it makes some very strong criticisms -- Harry L. Mardon for the hard of hearing. It makes some very strong criticisms of the Attorney-General's actions and as far as I can recall, Mr. Chairman, there was not one word of denial from the Attorney-General or his office. In other words, they allowed it to pass, hoping it would die down, hoping that it would be not a talking point or an issue in the days to come. This in itself is serious. This in itself is serious. That if the Attorney-General was right and if he felt that he was doing the right thing, he should have issued a statement of clarification.

It's unbelievable, Mr. Chairman, that this article mentions the fact that there was another member of his party apparently went to Mr. Mackling and spoke about the case. I'm referring to the Ternette case, and I quote for my honourable friend in case his memory is not that good. And this is an editorial comment, it's not attributed to Mr. Mackling or anyone else, and I quote: "But enter Mr. Mackling. Apparently at the behest of Cy Gonick NDP Member of the Legislature for Crescentwood, Mr. Mackling and his executive assistant looked into the Ternette case." Now I wonder how many times an MLA would go to the Crown Attorney on a case that is presently not before the court but a charge has been laid. This is a legal matter, Mr. Chairman, this is not a political matter. This is not for a member of this legislature to go and intercede. This is a legal matter, it's for the courts to decide. If Mr. Ternette's lawyer decides that he should look for mitigating circumstances towards the Attorney-General's Department, well then that's his business. It's not a politician's business to do this. And the very fact that this article was allowed to pass shows that there must be truth in it; and if there's truth in it, I say that the course of justice in Manitoba is not on a very stable path. I say that.

If we can go by the two cases that I have talked about, the Brandon one and the Ternette one, it now appears that one can resist an officer in some manner, whether it's a kick, a little old lady trip or a John Ferguson trip, it doesn't matter, but someone can have that allowed to pass and if he's a youth, Mr. Chairman, if he's a youth, under the age of 25, not 18 but under the age of 25, as in the Ternette case, well then a certain exuberance is allowed, providing the police officer isn't seriously injured. This is allowed. We now have a situation in Manitoba, Mr. Chairman, where at a football game, the Bombers, or a baseball game, or a hockey game, or a concert, or any other performance where admission is charged, that providing the person is under 25 and doesn't seriously injure a police officer, he's allowed to obstruct, he's allowed to stir up trouble and try and get other people to break the law. That's the situation we have in Manitoba today. Now, and this is only a small thing, but I refer again to the phrase where "if justice is going to be done, it must also appear to be done."

We have the case, where in the Minister's own office one of his assistants was asked to come to give testimony in another province. What happened? Did the chief lawmaker of this province give his assistant time off and say, "well I think in the interest of justice that you should go there and defend yourself?" No, no that didn't happen. There was a strange silence from the Minister on this case. The gentleman himself made his own statement but many people, many people in the province feel, rightly or wrongly, they feel that someone was in a preferred position here. In my opinion, Mr. Chairman, the Attorney-General should have instructed that member of his staff, to go - to go. It was a request I admit, it wasn't a subpoena or anything like that; it was a request. But surely the Chief Law Officer of this province has a duty to make sure that his staff, the people who he puts his trust in, should appear to be carrying out the law and the requests of the law in all cases.

And then we have the case, and I won't rehash this one, but we have the unbelievable case where a Minister of the Crown offends the authority and dignity of the court and there's silence from the Attorney-General's office. Not one word. Not one word. Well, Mr. Chairman, the Minister spent some time talking about the unrest amongst youth, the dissent of today. Is this the way to appease and to answer those questions of dissent raised by the young

(MR. G. JOHNSTON cont'd) people of this country and this province. To sit silent as the Chief Law Officer of this province and do nothing and say nothing because it's a friend of his? No I say, Mr. Speaker, this is not the way the Attorney-General of this province should conduct himself -- (Interjection) -- I'll tell you how. The Attorney-General of any province or any jurisdiction must be fair-minded and he must be tough, he must resist pressures. -- (Interjection) -- I see my friend doesn't appreciate what I'm saying and I don't blame him. I don't blame him. But I was asked a question how should he act; I'm suggesting how he should act. I'm suggesting how he should act. So in answer to that question I say again, the Attorney-General should be above any slight suspicion that he is in any way being compromised in any case before the courts -- (Interjection) -- well . . .

MR. GREEN: Mr. Chairman, I wonder if the honourable member would permit a question?

MR. G. JOHNSTON: Later.

MR. CHAIRMAN: The Member for Portage.

MR. G. JOHNSTON: So we have the case of a spectacle in this province where the Attorney-General sits silent when a colleague is making statements against the dignity and the authority of the court and then he accompanies him to the court, and as he said himself, he went there on two counts: One as a friend, which I take nothing away from him for that, and the other in his position as the Attorney-General, which I don't really understand that statement, I don't understand that. But, Mr. Chairman, is this equal justice and law for all in the province? I suggest to you not.

So, Mr. Speaker, with the facts that I've presented tonight, I would like to make the following motion. Oh, before I do I would like to answer a question that was posed to me by the Attorney-General. He wanted to know in the worst way where I got my information from. Now in fairness to him and his staff I'll say it was not a civil servant, it was not a civil servant. That he doesn't need to feel that someone in his department is acting unethically. So I give him that commitment. But he also in his demands to know was quite enraged and was quite indignant that the very fact that I said I wouldn't give the person's name who revealed the information to me was because there might be some form of retaliation, he was so indignant. Well, Mr. Chairman, he doesn't have to reach out very far to touch a member of his Cabinet who did go after certain people in government. He didn't allow the due process of law to take place. He was after them. It's not known as the prosecutions at Dauphin, it's known as the persecutions at Dauphin, in my opinion. So this is why I will not reveal the name of this person. This is why I will not reveal the name of this person, Mr. Chairman.

So, Mr. Chairman, I move that the Minister's salary in Resolution 21 be reduced to \$1.00.

MR. CHAIRMAN: Before we proceed with the motion may I draw to the attention of the House that when I asked the Member for Portage to what kind of a letter he was alluding to, it was with a particular problem in mind. Chapter 3 of Beuchesne, Section 158 Sub-clause (3) says "an unsigned letter should not be read in the House. Such a letter should not be read into Hansard and all letters when read must be signed and they become part of the documents of the House." Beuchesne continues to point out that the point of order that a member should lay on the table a document which he quotes, should be taken when the reference is made to the document. It was with this particular citation in mind that I raised the point at that time, so the Chair could ascertain to which letter the Member for Portage la Prairie was referring. The Attorney-General.

MR. G. JOHNSTON: Point of order, Mr. Chairman. I believe I said I was reading from a copy. I should correct my words, the copy is from the court records and if it's your wish or anyone else's wish I will table it. It is not the letter, it's a copy.

MR. CHAIRMAN: The request to table was not made at the time that you read the document. The Attorney-General.

MR. MACKLING: Mr. Chairman, to deal with a matter that you have just referred to. At the time the Honourable Member for Portage la Prairie was casting aspersions on the manner of the conduct of this office, the Office of the Attorney-General, he indicated, and Hansard confirms, that he intended to read from a letter. I can read it from Hansard to refresh the honourable member's memory. "Mr. Speaker, I wish to speak on a matter of grievance. Mr. Speaker, I consider the matter that I'm about to introduce of such importance that I think not only the public of Manitoba should know what is going on with respect to the Attorney-General's Department, but also that the members of this House should know what is going on." Ah, now

(MR. MACKLING cont'd) I would like the honourable member to particularly refresh his memory. This is at Page 294 of Hansard, April 21st. "I would like to first of all read a letter that was sent to me by a person who I shall keep his name and address confidential." The Honourable Member for Portage la Prairie. "Because it could lead to certain results for him and which may not be pleasant." Then he goes on. The Honourable Russell Paulley later on rises and says: "Mr. Speaker, before my honourable friend continues I request that he table the letter that he has referred to in accordance with the rules of the House." Later on a debate on whether or not the tabling should occur and the letter was not tabled. Mr. Paulley on Page 295, the Acting House Leader then said, half way through, I won't read all of his statement: "Mr. Speaker, regardless of whether or not he may be a front bencher or a backbencher, for the tabling of a document, that that document shall be tabled in its entirety." And then at the second last paragraph, "Mr. Johnston, . . .

MR. MOUG: Mr. Chairman, the Honourable Member from Portage la Prairie makes better noises from his chair than when he's on his feet but it's still noise.

MR. CHAIRMAN: The Attorney-General.

MR. MACKLING: But this, Mr. Chairman, this, Mr. Chairman, and I trust that the Honourable Member for Charleswood will listen, sets a new level, sets a new level for this House, Mr. Chairman.

MR. CHAIRMAN: The House cannot deliberate in the hubbub that is going on at the present time. I would ask all members that wish to enter the debate to do so at the appropriate time. The Attorney-General please.

MR. MACKLING: Mr. Chairman, let me go on. Then what later followed set a new level for debate in this House, a disastrously low level to which I trust this House will never return, because the honourable gentleman, the Honourable Member from Portage la Prairie went on and said, "Mr. Speaker, I'd like to speak on the point of order to my honourable friend. To begin with, the letter that I am referring to, I took the letterhead off, and the signature off and destroyed them. I have not got them." And Beauchesne, our rules are clear, that where a lawmaker brings a document into the House and expects his colleagues in the House to have some respect for his weight of argument, then he must present the entire document, so that we know whether it's from a crackpot, whether it's someone of authority, whether it can be challenged, whether one authority can be set against another. These rules have been enshrined in the traditions of the Mother of Parliaments and carried on throughout the centuries of the parliamentary system. But this lawmaker comes into this House and defies the rules of the House.

MR. MOUG: Would the member permit a question?

MR. MACKLING: No, you can sit down and I'll answer your question later. And that's the kind of honourable argument, and that's the kind of posturing on the part of this lawmaker, Mr. Chairman, who now casts aspersions on the administration of justice in this province, an admitted lawbreaker before the bar of this House. And that is by his own admission, read it, Page 295 of Hansard, April 21st. Obviously the chickens are reacting, Mr. Chairman. Beauchesne's rules of order were cited. Mr. Speaker cited the rules. But still we have the honourable gentleman saying now, you know, he'll present the letter if he's requested to present the letter. The rules are there for not only fair play . . .

MR. GREEN: Mr. Chairman, on a point of order. Reference has been made on several occasions to what was done last year. I would like to remind the honourable members that when this occurred last year, we on this side said it was wrong. I undertook to the House to try to get the letter put in in full, I did everything that I could to do that and members accepted the fact that I did everything that I could, and it is not enshrined as a precedent of the House, so I don't -- (Interjection) -- Mr. Chairman, I would ask if what I have just said is not correct, and the Member for Charleswood is bleating that it's not, then I would like it challenged formally by someone getting up and challenge . . .

MR. CHAIRMAN: Order please. It is my understanding that the Member for Portage la Prairie referred to a letter that was written by the Attorney-General's office to a court. I wonder if the Member for Portage would table that to clarify the situation?

MR. G. JOHNSTON: Point of order if I may, Mr. Chairman. That when it was drawn to my attention that I should not be quoting out of a letter without a signature on it, and a letterhead, I said I would no longer refer to it. Now this doesn't take away from the member's grievance, I allow him to continue, but I just mention that fact, Mr. Chairman.

MR. MACKLING: Mr. Chairman, may I continue?

MR. CHAIRMAN: The Attorney-General.

MR. MACKLING: Mr. Chairman, the honourable gentleman brought this mutilated letter, mutilated at this own hand, deliberately before this House and he says, well of course, they can say well of course I'm not a lawyer and I don't have to know the niceties of this House. The Honourable Member has been a member of this House for some years and knows the rules. He's not ignorant of them. Not only that, as I pointed out in my argument, his Leader, who sits elsewhere from time to time, had referred obviously to the subject matter and had obviously consulted with the Honourable Member for Portage la Prairie and they had obviously decided well this is the way, this is the way to avoid any embarrassment to anyone. We'll just knock off the letterhead and the signature. This is the kind of advocacy we find before the bar of this House by the member who suggested there has been wrongdoing here; and you know, Mr. Chairman, there's a principle of law - I think if the honourable member wishes to call cattle he should go to the far pasture and look for them, Mr. Chairman, because it's becoming a bit insulting to have to listen to that braying when he hasn't even got good whole milk to supply.

Mr. Chairman, it's always been a fundamental precept of any court of law where there is equity involved, and there have been - the courts of law, common law and equity have been part and parcel of the same thing since something like about 1876, that a man coming into court must come into court with clean hands. He must come into this Chamber with clean purpose of mind and he certainly doesn't bring in false or fabricated documents. But that's exactly what's been perpetrated on this House. Then the honourable gentleman suggests that he has just cause for his slurs and smears against this Department and I think the public should adjudge who is the person that has come before the bar of this House with open and fair mind.

The honourable member says he finds it hard to believe, hard to believe that I should at all question the propriety of that very sanctified and rarefied association called the Western Bar Association. Well, it's another fundamental precept, Mr. Chairman, that when someone is charged with something, something that is dangerous to the well-being of society, the administration of justice, one of the fundamental precepts is you give that person notice of what he's charged; but that formidable association didn't so much as send me a telephone message that they wanted to discuss it with me, question it with me. Not at all. They had seen fit apparently to contact certain members of other parties or other groups to point out the suggested inadequacies of the administration of justice as they construed it, and their manner of tactics suggests how erroneous their thinking is as well. I will have an opportunity, I hope, in the near future to address myself to the members of the Western Bar Association collectively and indicate to them my views in respect to giving people fair notice. It's one of the fundamental precepts of the common law which the honourable member and the honourable members of that association should have some understanding with.

My honourable friend refers to the Mardon article. You know there are times, Mr. Chairman, when you allow insult and invective to pass in silence because it's not worthy of reply. I had occasion to have Mr. Mardon at my office and I indicated to him personally, not by letter, personally, my attitude towards what he had written, and there was a very, very frank exchange of viewpoint, particularly on my part. And I must say that Mr. Mardon was a gentleman, he listened to what I had to say and didn't suggest, as my honourable friend has, that there's some Machiavellian conspiracy against the administration of justice weighted in favour of certain political people within the Province of Manitoba. I took it that the attitude that has been displayed by Mr. Mardon particularly is indicative of his satisfaction that that sort of suggestion that the honourable member continues to insist should be made, is just not so. It's demeaning and debasing, not only of this House but of the honourable member, to persist in these suggestions. Can he suggest that if I raise my voice I'm like the lawyer who is said to have appeared before court with a very weak argument and he thunders loudly to try and convince the judge? If I raise my voice, Mr. Chairman, and I believe that I can raise my voice on occasion too, and I can speak in soft, dulcet tones for his tender ears too. But Mr. Chairman, . . .

MR. G. JOHNSTON: Mr. Chairman, on a point of order.

MR. MACKLING: No, I'll listen to him later, Mr. Chairman.

MR. G. JOHNSTON: On a point of order.

MR. MACKLING: I've been interrupted ad nauseum.

MR. CHAIRMAN: The Chair will listen to . . .

MR. G. JOHNSTON: Is it really a point of grievance for a member to air his

(MR. G. JOHNSTON cont'd) disagreement with other persons in the province? Is that a point of grievance? The member is speaking on a grievance, I believe. -- (Interjection) -- Well that was his first words. He said, "I rise on a grievance."

MR. MACKLING: I did not. Would the honourable member like me to send him a copy of Hansard and . . .

MR. CHAIRMAN: Order please. The Attorney-General was quoting the member's words and he was saying that the member had risen on a point of grievance. The Attorney-General.

MR. MACKLING: Well, Mr. Chairman -- Mr. Chairman, I don't know whether that honourable gentleman is in the chicken house or the monkey house, but wherever he is the chatter is about the same, and the quality of the chatter is about the same. In any event, Mr. Chairman, if my voice rises an octave now and again, surely I can be expected to indicate a reasonably natural reaction to what is unjust, improper and completely unwholesome criticism, and I have not a weak case - I have a very strong case. I have a very strong case for the continuity of a fair administration of justice in this province.

Now, the honourable member suggests that there's something improper about an MLA going to the Attorney-General or going to any other Cabinet Minister and saying there's something improper about how the administration of a department is going on. The Attorney-General is subject to the requests of the honourable members opposite as frequently as he is from members of his back bench, in this House and outside it, and has had occasion to have those requests, and I don't want to embarrass any members by indicating those requests, some of them really nothing to do with the criminal law, Minor matters, but still they're applications to the Attorney-General for reconsideration of policy decisions on the part of the Attorney-General's Department. Nothing improper about that. Absolutely proper. And whether it comes from this side of the House or that side of the House, within the House or without, my door is open to inquiries and concerns about the administration for justice. And I don't have to get it by poison pen letters from unknown persons read in this House.

The Honourable Member from Portage la Prairie again -- (Interjection) -- Yes, that would be difficult at times. Mr. Chairman, the honourable member again suggests that there is going to be special treatment for youth. Now this is nonsense. But the fact of the matter is that we do live in an age of dissent when young people are confronting old traditions, and maybe they don't conform as rigidly as we do to the formal precepts, the proper advocacy of their views. But that doesn't mean that we have to follow the hard letter of the law on every occasion, because in doing that we may do more disservice to the administration of justice and the goodwill and the quality of life in this country than in any other way.

The honourable member, Mr. Chairman, doesn't realize that day in and day out, hour in and hour out throughout the length and breadth of this country, qualitative judgments are made by men employed by Attorneys-General, day in and day out, hour in and hour out, making decisions as to whether or not a charge will be laid or won't be laid. "Huh," the honourable member may say, "Oh, but that's wrong. Only the courts can make judicial decisions." The courts make the decisions after the Attorney-General's Department has placed the matter before court, not before, and the Attorney-General's Department here and elsewhere, and the Department of Justice in Ottawa, is charged with the responsibility of trying to make sure, through high quality of Crown counsel, high quality of court services, that charges are fairly and properly laid and that only charges that ought to be laid are before the courts, and the proof that we make mistakes is the proof that day in and day out, year in and year out we stay, not one or two charges, hundreds of charges in respect to offenses, because of the fact that there was insufficient evidence, the charge therefore ought not to have been laid, reconsideration has been made, one charge was sufficient, any number of reasons for taking that objective decision that is made by the Attorney-General's Department and has nothing to do with an evasion of the responsibility of the courts, and I wish that the honourable gentleman would have the goodness of heart and the ability of mind to comprehend that statement of fact which I give to him.

Now, I don't know whether I need say anything further about the contrived problem that my honourable friend finds, Mr. Chairman, in my having an interest in what the court's position is going to be in respect to my honourable colleague. I'm charged with the responsibility under The Attorney-General's Act to counsel my colleagues, to counsel government, period. And that's a heavy responsibility. Also, yes, also to be concerned about the administration of justice in the province, in the courts, and all the rest. But the fact of the matter is this was a

(MR. MACKLING cont'd) unique case. Ah, but the people and these unknown people who were so anxious to embarrass this government and embarrass my honourable colleague couldn't wait for a moment's decision on the part of the Attorney-General, couldn't wait for this unique situation to be investigated— and it takes some investigation because I know of no precedent by my staff. No, they were so bloodthirsty and hungry for some vindication of some scorn on the part of my colleague that they rushed the matter before the courts. And so it speaks for itself.

The fact of the matter is it is a matter of concern that justice not only seem to be done but that justice be done, and the fact of the matter is that we have within Canada a system where the judges are appointed, the magistrates are appointed. On what basis are they appointed?

A MEMBER: Political.

MR. MACKLING: Well, there may be members who say, "ah, ah, ah; now, you know, that's not nice to talk about the appointment of judges." I'm not saying that there's anything wrong about the appointment of judges, but our system has been held up to ridicule. At the same time, the alternative about elective judges, as they have in United States of America, is subject to even more abuse. So you have to weigh, you know, what are the systems that best reflect the highest standards and the best qualities that we could develop in this country. And it's an open question and it's still a matter of very much concern to many thinking people, not only within the legal profession but all across this country, and the fact of the matter is that there are weak judges and strong judges; there are less able and far abler judges. Some go on to bring renown to this province, like our present Chief Justice of the Province of Manitoba, and we glory in their success, in their wisdom, in their erudite decisions and their sagacity and their understanding of human nature and the law. But there are times when the magistrates err too, and the Superior Court judges err too. Otherwise we wouldn't need the Supreme Court, because the Supreme Court has reversed our lower judges, not once but on many occasions, so the fact -- (Interjection) -- No, we don't hold them in contempt. Exactly. Just as the honourable member says, Mr. Chairman. You know, the fact is that he's so right in his mutterings. We don't hold them in contempt when they err so why should we all be all aflutter, you know, when there's a comment about a particular magistrate or a particular judge?

There seems to me, Mr. Chairman, too high a sensitivity on the part of some about the quality and the effectiveness of the administration of justice, but the kind of sensitivity, the kind of concern manifest by my honourable friend the Honourable Member from Portage la Prairie, must be weighed against the manner of presentation, the fact that he has broken the rules of this House, the fact that despite careful analysis, careful argument made to him, he still is unrepentant in his views. He doesn't apologize to this House for having broken the rules, for having brought a mutilated document into this Chamber. Not at all. I ask this House to judge what is fair and equitable.

MR. CHAIRMAN: The Leader of the Opposition.

MR. SPIVAK: Well, Mr. Speaker, I enter the debate because I think there are certain matters that have to be discussed, and it was interesting to listen to the Honourable Attorney-General give his explanation at the end, of the kinds of administration that were possible, the one where the judge is appointed and obviously discretion is exercised and it may be on one basis or another, or the kind of administration where the judge is elected, and these are the two kinds of administration that are being questioned and I accept that there are questions that have been raised. But there is a tradition and we've lived under a tradition for many years, and the tradition itself and our heritage in terms of our legal system is something that, although we may question it, has stood the test of time. There is a third administration of justice and that administration of justice is ministerial discretion. Ministerial discretion where the Minister, the wise and all-seeing Minister, can make that discretion. That form of justice we do not want.

Now, Mr. Speaker, there is a very basic problem in the presentation of the Attorney-General and that relates in the direct conflict of his position with respect to his obligation to his colleagues and his obligation as chief law officer of this province. And I suggest to you in this respect that the Attorney-General is in error. His obligation as chief law officer of this province is paramount; it is supreme; it is over and above any obligation he may have, legal, moral or political, to his colleagues. And this is important. And we're going to judge in a few moments the way in which the Honourable Attorney-General exercises this discretion in the sense that he believes that there is an obligation.

Now, Mr. Chairman, I know that reference was made to a document before, and I

(MR. SPIVAK cont'd) intend to make reference to it again and I intend to read it in the record, and this is the judgment of Mr. Justice Nitikman. Now I believe there was some quarrel as to whether this judgment could be read. This judgment is a completed judgment. The case may or may not be appealed, and I intend to read it because I think it reflects very well the conflict and the position of the Attorney-General. And I'm quoting from Page 28 of the judgment.

MR. CHAIRMAN: Order. Before the member proceeds, there was no prohibition to reading of the court record but what was ruled out of order by the Chair was a debate on the particular case before the court. The reading of the record is not out of order.

. Continued on next page

MR. SPIVAK: Well, I'm not going to argue that. I'm not sure that the Honourable Chairman is correct in this, but I'm not going to argue at this point because it's irrelevant in terms of what I am going to be talking about.

On page 28 of the judgment in the document I have in front of me: "Further substantiation of the concern that necessarily followed the thread of the respondent to defrock and debar the magistrate if he hears the case, is evidenced by the fact that the Honourable the Attorney-General of this province saw fit to have counsel appear for him and make to the court, prior to the commencement of the contempt proceedings, a statement in which he expressed confidence in the ability and integrity of Magistrate Manwaring, and assured that" and I quote: "Magistrate Manwaring need not be concerned about the security of his position. No member of the Executive Council, including the Honourable Mr. Borowski, has ever requested the Attorney-General or the Lieutenant-Governor-in-Council to remove Magistrate Manwaring from office. The Attorney-General instructs me to advise this court that no provincially appointed judge or magistrate will be removed from office without sufficient cause being shown. No such cause exists and no such action is contemplated with regard to Magistrate Manwaring."

And quoting from Mr. Justice Nitikman: "The very fact that such an assurance was required to be given publicly, supports the obvious conclusion that the threatened act was calculated to obstruct and interfere with the due course of justice or a lawful process of the courts."

Now, Mr. Chairman, the Attorney-General says he owes an obligation to his colleagues. The Attorney-General owes an obligation to all the colleagues in this House. And I can recall, Mr. Chairman, last year when the Honourable Minister of Transportation made a charge that was repeated, inside this House and outside, against the former Premier of this province, against the former Minister of Highways and against the former Minister of Mines and Natural Resources. Now, Mr. Chairman, I believe that there is an obligation on the part of the Attorney-General but that obligation wasn't exercised then.

Now let me give you another example of the manner in which the Attorney-General exercises his discretion with respect to his colleagues. I'm quoting now from the Tribune from an article October 17th, 1970. The headline in the Tribune says, "Execute Abductors Borowski Tells the Prime Minister. Transport Minister Joe Borowski has called for the execution of the abductors of British Trade Commissioner James Cross and Quebec Labour Minister Pierre LaPorte. In a telegram sent Friday morning to Prime Minister Trudeau, Mr. Borowski says, "Thank you for initiating the War Measures Act and rounding up those inhumane criminals. When you catch the abductors execute the bastards." Now, Mr. Chairman, the Attorney-General owes an obligation to his colleagues; he owes an obligation as chief law officer of this province. I don't recall any statement; I don't recall any action; I don't recall any declaration.

Now let me talk about the Attorney-General's attitude to another one of his colleagues, the Member from Crescentwood, and I quote from the Tribune October 21st, 1970. "Jail Cy Gonick Says Borowski. Transport Minister Joe Borowski said today civil liberties proponent Cy Gonick should be jailed for agitating against the government. He also said Mr. Gonick should resign from the Manitoba Government if he is not loyal to the provincial New Democratic Party which supports the Federal Government's action in dealing with the Front du Liberation du Quebec. Mr. Gonick, the NDP MLA for Crescentwood, has been embroiled in the controversy since Saturday when he marched with 300 in opposition to the War Measures Act and said that act infringes on civil liberties. Mr. Borowski says people of Canada are united behind the government. The opponents of the government, he said, are Communists, drop-outs and bums. Mr. Borowski said that the controversial act does not really take civil liberties away from you or me or anyone else. The Act, he said, is used to round up people like the Mafia and bookies, terrorists and butchers. "You can't give in to terrorists or butchers," he said. "I'm prepared to give up my civil liberties for awhile."

Now I want to ask, Mr. Chairman, whether the Attorney-General at that time stood up or declared anything that would protect the civil liberties of the Member from Crescentwood, his colleague, who in fact was exercising his democratic right in a lawful assembly. Yes, Yes, in a lawful assembly. -- (Interjection) -- Mr. Chairman, the Honourable First Minister will have an opportunity to debate in this matter.

Mr. Chairman, I'm suggesting to you that the Attorney-General did not rise on that occasion and did not declare that in fact the absence of one of his colleagues was contrary, because

(MR. SPIVAK cont'd.) in fact the colleague, Mr. Gonick, was in fact acting lawfully and was expressing his opinion albeit how much the Honourable Minister of Transportation may disagree with him.

And Mr. Speaker, this now comes to the heart of the matter. There is a conflict between the Attorney-General's responsibility as chief law officer of this province and the exercise of his discretion in support of one colleague or another, and that conflict cannot exist, and the Attorney-General is in error in his position with respect to his obligation to his colleague or his obligation to attend at court or to have someone attend to represent him in connection with the charges that were made. This I suggest, this I suggest, Mr. Chairman, goes to the heart of the matter and to the weakness of the Attorney-General's position with respect to his obligation. He owes to the people of this province, to the Legislature, and to the Bar of which he is a member, an obligation to assume the rightful responsibility as chief law officer, exercising his discretion properly and in a fair manner and not motivated by the political considerations of the moment.

MR. CHAIRMAN: The Attorney-General.

MR. MACKLING: Well, Mr. Chairman, briefly it's pretty obvious that the Honourable Member from River Heights will never succeed to the great heights that he wishes, because obviously he comes into an argument ill-prepared, makes a lot of sound and fury which amounts to nonsense. The fact of the matter, he is suggesting that there was some question that someone's civil liberties and civil rights was in jeopardy in this province. You know, I compliment the police first, Mr. Chairman, in making the observations I do now. It wasn't necessary to have instructed the police not to invoke the provisions of the War Measures Act when they were first pronounced in Ottawa. They had already assumed the responsible position that no measures would be taken, no measures would be taken unless upon the direct authority of the Attorney-General, and so they didn't fly apart and they didn't crusade around the province making raids. And so there was no suggestion that there was any threatened unrest in the province of Manitoba. No one's rights were in jeopardy, and it was within the right of every free-speaking Manitoba citizen to make all the representations he wanted to the Prime Minister in Ottawa or the Justice Minister in Ottawa, for or against a harsher or more lenient treatment of the abductors of Mr. LaPorte, and I wouldn't take away the civil liberties of the Honourable Member for River Heights or the Honourable Member from Charleswood in particular, for making all the protestations for leniency to those abductors or for harsh treatment of those abductors. That's their right. And if they suggest that I'll have to take that right away from my colleagues anywhere, then they exercise a far less degree of common sense than I suspected prior to this evening was exercised, particularly by the Honourable Leader of the Opposition, and I think that in making the remarks he did, he has struck a new low in debate in this Legislature. -- (Interjections) -- Indeed he has. Indeed he has. And it may be embarrassing to members behind him to find that revealed before their eyes, and they can laugh their insecurity away, but the fact of the matter is that perhaps they may have some misgivings about the decision they made earlier in the choice of their leader because he has betrayed an obvious misunderstanding of what civil liberties and rights were in question in Manitoba, and there were none.

Now, the honourable member went through some confused, distorted path, Mr. Chairman, trying to find conflict between members of my colleagues and my colleagues in the caucus, and I find none, and I don't know how, in his wandering way, any could be asserted. It's so illogical. He tries to find some quarrel within our caucus but he can find none. He can find a healthy diversity of opinion. We have always recognized that, Mr. Chairman. -- (Interjection) -- Yes, and the newspapers are far from being above error. Occasionally they do make errors, and witness the comment that I made earlier on today. However, I don't think, Mr. Chairman, in light of the inadequacy of the remarks of the Honourable Leader of the Opposition, that I need spend much time in connection therewith.

MR. CHAIRMAN: The Leader of the Opposition.

MR. SPIVAK: Mr. Chairman, I would like to quote further from the article. I think it's relevant. "In response, Mr. Gonick says he has received several phone calls threatening his life along with condemnation from Mr. Borowski and the resignation of Mr. Patterson, the riding executive." I wonder if the Attorney-General can indicate whether he, in exercise as chief law officer of the province, contacted Mr. Gonick to see that his rights were in fact fully protected.

MR. MACKLING: Mr. Chairman, I can assure the very concerned and anguished Leader of the Opposition in respect of this matter, that my honourable colleagues have always been available to me both night and day, and I had no request for police protection and I had no request for intervention, and I don't think really that the honourable member asks his question with the sincerity of purpose that I would expect of him. He knows that there was no problem. The problem -- sure; because people react, because people take positions, there is going to be public reaction, but individual members of this party, this government, are not afraid of reaction on the part of people to the positions they take because they don't expect to please everyone all of the time and do nothing in the process as the previous administration sought to do.

MR. SPIVAK: Mr. Chairman, I only have a few more remarks and then I'll sit down. The fact that the Attorney-General has indicated that he is prepared to exercise compassion, the fact that he indicates that he's prepared to, in a certain sense, break new ground, is laudable. The problem we have with some of the examples that have been brought forward, but more particularly with this declaration of his dual obligation - which I suggest to you is more the heart of the matter because that is a dual obligation in which a discretion has already been exercised which indicates his concern and interest - the fact that there is this conflict and the fact that there has been the exercise of his discretion in those things in which he thinks that compassion is required, which have had some political overtones, have in fact, I suggest, Mr. Chairman, put his position in jeopardy among his peers in the legal profession.

Now, among the colleagues in this House with a majority who will support him, the Attorney-General will be sustained, but among his colleagues outside - and he is a member of the Bar - the continual posturing that is made of the dual obligation that he owes, goes only further to discredit, I believe, a position which could be correct if exercised, but not exercised in a manner which reflects a political bias, and that is the heart of the matter because, Mr. Chairman, the Attorney-General may have seen fit, with respect to the Minister of Transportation, to have appeared in court, when the next contempt charge comes up the Attorney-General will not be represented and the next contempt charge to anybody else the Attorney-General isn't going to be represented. This exercise of discretion came in a direct reflection of a political bias on his part and that's reflected in some of the other situations in which he has entered. The fact that compassion is to be used, the fact that in effect there are more desirable approaches to the solution of situations, does not necessarily mean that the exercise is to be reflected with respect to political matters, because the Attorney-General himself has said it's all a question of justice being done and must seem to be done, and the reality is that in terms of the exercise, in the exercise of his discretion, justice has to be done and has to seem to be done.

MR. MACKLING: Wrong quote.

MR. SPIVAK: Well, wrong quote, but in terms of among his peers, and this is what I'm referring to now, Mr. Chairman. Among his peers. This is where it becomes important, because he must have and must continue to have the respect of his peers in the Bar, and I suggest to you, by his course of action at the present time he has in fact lost this respect.

MR. MACKLING: I hesitate to take the time of the House to have to reply to that sort of argument but I won't allow to go unchallenged that sort of statement, Mr. Chairman, and even though it might take away from the hours I'll proceed to deal with those statements.

Again the honourable member went through a hazy argument about the conflict, about the dual obligation, and I thought I made it quite clear. Now maybe the honourable member wasn't present in the House, but you see it was a unique situation and my Crown Attorney didn't know what was going to be requested in court. I had not gone to court and said to the judges, "What do you want of me?" It was unprecedented. So I went to court for that reason first, and I had a right to be there, concerned with a unique situation before the court, a very interesting situation, a very important situation. Now the suggestion that I happened to walk across the way with my honourable colleague and be seen, well apparently that's a terrible thing to do, that I should be seen with him and speaking to him and still be friendly with him before the court. Now, I indicated that there was a conflict, because at what stage, what was required of me as the Attorney-General, because these private proceedings had already been taken. Now, what else was there to be done? I didn't know. My Crown Attorneys looking into some crystal ball weren't able to come up with the immediate answers, so I appeared in court. Now apparently that has given cause to some people to be unrestful of the fact that I could be considerate and appear in court.

(MR. MACKLING cont'd.)

Now, the Honourable Leader of the Opposition, the Member from River Heights, seems to be concerned about my position within the profession. Well, I don't know. I think that, you know, when you look back at the Attorney-General's Department of some years ago and the Attorney-General's Department this year, this past year, I don't think that we can compare unfavourably. I don't think that anything I have done has jeopardized my position with the Bar Association or the Law Society. Let's look at our record. Now what did we do - what did we do about legal aid? We came into office -- I beg your pardon. What's the chirping over there? I hear the chirping but it still doesn't make any sense.

MR. JORGENSEN: Nothing makes sense to you.

MR. MACKLING: Mr. Chairman, those chickens haven't learned to articulate in English yet.

MR. JORGENSEN: He's got an obsession with chicken houses. I wonder what it is. They're coming home to roost, are they?

MR. MACKLING: It's chicken dirt that I see over there manifest most often. But Mr. Chairman; Mr. Chairman, I was about to compare. We came into office and what was the contribution to legal aid in this province? What was it? It was \$75,000. We increased it by \$35,000 shortly after we came into office, within several months, and then we increased it to \$300,000. Now this isn't toying with the problem. We introduced a fact-finding committee and very extensive research has been done, and more will be done. For the first time in this province we have a Law Reform Commission, and you know, my goodness! Look, you know, the representatives on that Law Reform Commission don't all turn out to be NDP - or are they? What are their. . . ? Have you investigated? Have you inquired? I'm sure that's a matter of some very grave concern for some members of the Opposition.

Mr. Chairman, I think that I'm satisfied within myself and I want to assure the troubled mind of the Honourable Leader of the Opposition that my colleagues in the legal profession don't all support the New Democratic Party. I think that a relatively small number give extensively to the New Democratic Party. I think that the legal profession has been largely representative of the Tory philosophy, and, of course, there are still a good number of Liberals, some of whom have become a bit smaller "l" liberals over the course of time with the erosion of the calibre of some members who have represented them in this House, and I think with the passage of this session that there may be many more who will be happy to have a new look at the New Democratic Party and consider whether or not it isn't more just and fair and equitable and representative of a progressive, pragmatic, reformed party that once the Liberal party was.

Now I suggest that the Honourable Leader of the Opposition can rest quietly in his sleep tonight and not worry about my concern for my acceptance as a member of the New Democratic Party and a New Democratic Party Attorney-General in what is, in the legal fraternity, a rather "old party" orientation, so I hope that his dreams are pleasant and restful, Mr. Chairman, but I wonder whether they will be when he reflects upon the calibre of his debate and his participation tonight and the observations that must be made of his colleagues in reflection on that.

MR. CHAIRMAN: Are you ready for the question? The Member for Birtle-Russell.

MR. HARRY E. GRAHAM (Birtle-Russell): Mr. Chairman, it's rather interesting to note that the Attorney-General puts his affiliation with the NDP first and the Attorney-General's office second.

MR. CHAIRMAN: The Minister of Transportation.

MR. BOROWSKI: Mr. Chairman, I hadn't intended to get into the debate and I do so reluctantly, particularly when it comes on the Estimates of a colleague, but after listening to what's been said on the other side I feel that it would be almost like pleading guilty to sit here and say nothing, knowing the record of the previous government, knowing the things that they have done for their friends, whether they are cabinet ministers or MLAs or other friends in the business community. At times they interfered with justice, had charges stayed, and made sure that charges weren't laid. The fact that charges were laid against me, I think is an indication of the type of justice you have in this province.

I went to court like anybody else, like any other lawbreaker. I wasn't trying to hide; I didn't go to the Attorney-General and say, "Look, will you please use your influence? Don't get me up there in court." I didn't hire a fancy lawyer to say, "Let's drag it out year after

(MR. BOROWSKI cont'd.) year, as many people do that have money, to have the thing go all the way to the Supreme Court; in the meantime the witnesses forget what happened, then the charges are usually dropped or the case is won.

Last year, the Prime Minister of Canada was seen on television punching a person in Vancouver. Now, in my opinion, that punk deserved to be punched but the fact is that it was illegal and the cameras picked it up. This man wanted to lay charges against the Prime Minister but he never got to first base because the judge there refused to sign the order or whatever he has to sign. And there's no question that the Prime Minister was guilty of hitting this person. So the judge didn't want to sign the order and the Prime Minister got away scot-free. And I'm shocked to hear the Leader, or the acting Leader of the Liberal Party in the House, talk about justice when his own Prime Minister, in view of thousands or hundreds of thousands of people on television, broke the law. I never heard him say "interference of justice." Never heard him say a word about it. But he's very concerned because the Attorney-General did certain things that in his opinion are pretty terrible. Well, if what he did is pretty terrible then you should ask for the resignation of your own Prime Minister who you support.

I did go to court and when the time comes to make the decision I said I'm not going to appeal it. I'm not going to appeal it. I will take my penalty like anybody else. I'm not going to try and get out of it just because I happen to be a Minister. That's something I can't say for you, or your party in Saskatchewan, or the corrupt Liberal Party in Quebec. I can't say that. We take our medicine. We don't use influence. I had an opportunity (and I'm not going to go into the details) I had an opportunity to weasel out of this case and I says "Like hell." I want the people of Manitoba to know what happened in Dauphin. I want to know what that Conservative-appointed magistrate did. That's the only way I'll get justice so the people will know that the magistrate abused his office. He's a well-known Conservative and there are many other ones, and that's fine. That's fine. But when he starts looking at a case on the basis of "my loyalty's to the Conservative Party first and justice second," I feel I have, as an MLA and as a Minister, an obligation to criticize him. The guy on the street hasn't got a chance. I have. And I have an opportunity and a forum to criticize him, and I knew the consequences of my actions and I criticized him, and if anybody is going to tell me that in this country, in this democracy, that there are a group of people that cannot be criticized no matter how stupid their actions, no matter how bad their actions, I don't accept it. Our Prime Minister was called a pig and spat on. The Pope and monarchy are laughed at and ridiculed and called names. Nobody is suggesting that somehow we're undermining the monarchy or going to destroy religion and the organized church, but one person criticizes a magistrate and suddenly he's undermining the whole judicial system, is going to destroy it. Well I say to you, if it's that fragile that one person's criticism can bring it down, then it's not worth a damn in preserving and the sooner we get rid of it the better.

We have a system in the United States that's even worse than ours. We know the Supreme Court ruling of the bus thing of having negroes riding with the whites. The Supreme Court of the United States in 1954 ruled that they must allow them, and the judges that we are not supposed to criticize are saying, "I don't give a damn what the Supreme Court justice in the U. S. said. I'm not going to force the bus drivers to pick up negroes on the bus." And this type of thing has happened in this country -- (Interjection) -- different types. We don't have the negro problem, we have the Indian problem; we have the Metis problem; and under the Conservative administration we have seen abuses time and time again. Employment and discrimination. Hotel discrimination. Restaurant discrimination. I have never seen in 11 years that they have been in office, Mr. Chairman, take action. That didn't bother them.

I'd like to read a couple of news items here to show the Assembly -- (Interjection) -- Yes, I'll table it -- to show this Assembly the type of justice people of Manitoba have received under the previous government. January 12th, 1968, this is The Tribune: "Four fined for using night lights." And it goes on to give the details, and I'm not going to mention the names. "The conservation officers in their evidence to the court said the car lights were used to scan the field. No game was found in their possession." Do you know the penalty for turning your lights on into the stubble into the darkness? They confiscated the car and guns and cancelled their licence privileges and fined them \$100.00 on top of that. That was real Conservative justice. Nobody said a word about that. And you talk about -- (Interjection) -- I'll give you a better one. "Driver fine \$10.00 after fatal crash." Here was a driver that killed a person. He went before a judge or magistrate that was appointed by them, one of their own. He fined this person \$10.00. He killed a person - he paid \$10.00. I didn't hear anybody appealing it as

(MR. BOROWSKI cont'd.) the Attorney-General has appealed two cases in the last three months that have happened here where there's fatalities in both cases, because the magistrate was too easy on that person, because that person happened to have some influence, some pull. A \$10.00 fine for one life. That's Conservative justice. And I can read you reams of it in ten years.

Now talk about criticism. Let me read you an article from your Free Press, what they have to say about the justice in this province. May 22nd, 1968, and the heading is "What Yardstick?" and I quote: "If you drink and drive and are caught, the best thing is to appear before a magistrate who has a particularly tender heart for drunken drivers. Last week two court reports were carried side by side on the news pages of this paper. One reports the trial of a man who drove his car at a policeman. The man was drunk. He was sentenced to two months in prison. The second story reported the trial of a man who tried to steal a wallet from a drinking companion. He too had been drinking. He was sentenced to two years in prison. Obviously something is wrong here, radically wrong. An assault with an empty beer bottle nets two years, an assault with an automobile costs only two months. In Britain in a similar case a man who drove at a policeman was charged with attempted murder and sentenced to life imprisonment. This case went up to the House of Lords, but both conviction and sentence were upheld. Admittedly in this case the man was not drunk, but drunkenness behind the wheel should not be considered a mitigating circumstance. We're entering the season of heavy traffic on the roads. Unless deterrent sentences are meted out to those who drink and drive, drive while their licence is suspended, and in general a menace to the law-abiding motorist, we shall be in for another period of slaughter on the roads. The responsibility for preventing those deaths and injuries lies largely with the magistrates. It is a heavy responsibility and they should discharge it."

This is the justice that was handed out and commented by the paper, of all people. The Establishment paper had this to say about our courts. I didn't hear anybody say that's a terrible thing, how dare they criticize the judge. — (Interjection) — The Attorney-General has already explained it and in my opinion he explained it adequately.

MR. FRANK JOHNSTON (Sturgeon Creek): . . . How do you feel about that? — (Interjections).

MR. CHAIRMAN: The Minister of Transportation. Order please.

MR. BOROWSKI: Mr. Chairman, since taking over the portfolio as Minister of Transportation, do you know that the government has about 117, 120 agents appointed around the province to sell driver's licences and licences, and these are largely political appointments, and in many cases — and it's happening under administration — some of these agents pocket money, and looking at their ten-year record I wanted to see how many of them were convicted. Now you wouldn't believe it. Out of the dozens and dozens that were found guilty — (Interjection) — I won't name them — that were found guilty by the Department of being short of funds on an audit by the Provincial Auditor, they weren't charged. Some of them weren't even fired. But four of them — and the way this came to my attention, Mr. Chairman, is four of them came to my attention and that the recommendation from my Department was, well, dismiss these two, and these here we'll just give them a reprimand and let them carry on. How could you say that? There's people for stealing 10 cents and 15 cents worth of stuff from the store that get two months. How could you recommend that a person who is entrusted with handling public funds that you should say to me that these people here should be reprimanded and these here just let go. Why don't you take it to the judge? Well, he says that's been the system for ten years, and he says we're just recommending the same thing.

Well, these people — all of these people were charged. One of them is serving a two-year sentence, the one that was — (Interjection) — It doesn't make any difference; he's probably one of your appointments and thinks like you. One of these people is serving a two-year sentence now — he was sentenced by a court in Winnipeg — and the other one had a two-year suspended sentence and the two other ones were given fines. We have had more cases — this year I think we've had about three cases, all of which that I insisted because I happen to have some respect for law, and I wouldn't want to live in a country where everybody didn't have to respect it, whether he's rich or poor or a Minister or an MLA. I have a great deal of respect. — (Interjection) — Why don't you sober up or leave the House? I would like our record, the short time we have been in office, compared to the record of the Conservative Party, the Liberal record in Ottawa, and it's difficult for me to say this because I happen to agree with most of the things that Trudeau and his Cabinet does, but I would like their record

(MR. BOROWSKI cont'd.) to be compared to ours and to see what kind of deals were made. And I would like the Opposition -- they have better access to records than I have. That's how they can bring this stuff into the House.

I don't know about these things. I know about the case in Swan River, and I insisted that it be reviewed because the reports started coming into my office because it had to do with speeding, which they think, which some people think that anything that happens on a highway is somehow not the Attorney-General's but the Minister of Highways, and I said, "Look. The guy is a Conservative, the magistrate's Conservative, the prosecutor's Conservative and the guy who was caught speeding in a radar trap is a Conservative," and he says, "Are you going to stand by and allow this thing to get by?" And I said, "Well, let's have the details." I went to the Attorney-General. I understand it was appealed. I don't know what finally happened. -- (Interjection) -- It was dismissed? Well that shows you the type of justice. That's the same magistrate that handled my case. That gives you an idea of the type of justice we have in this province when a bunch of Conservative flunkies get together and spit on the law, and this has been going on for years - and it bothers me. It bothers me. You can say what you like, it bothers me when I see people in positions of influence get away with that type of thing. It has not happened under this government and I defy anybody on that side to show where anybody, our friends or supporters or MLAs or Ministers have gotten away with anything, even a ticket. There are Ministers here that have got tickets and paid for them.

MEMBERS: Hear, hear.

MR. BOROWSKI: That's right. They were treated like anybody else, and I've had all kinds of requests, as you did when you were in office: could you do this? Could you do this? I said, "Look, as far as I'm concerned that judge didn't give you enough." I've had many people come and say, "Can I have my driver's licence?" I said, "No, you can't have your driver's licence. First of all I have nothing to do with it. We have a Licence Suspension Appeal Board." "Well, that guy over there under the Conservatives, he went down and he got it."

We look up his record and, you know, we have lost friends as a result of it. I have written letters, and they're a matter of record, where I said, "If I was the judge you'd be spending a year in jail instead of having a suspended sentence." And the fact that we have a 97 percent increase in licence suspension, I think will show that this government believes in treating everybody fair. I'd like you to find one person in this province that'll say that he got his driver's licence back because he happened to know somebody here or because he had a friend in government. Anybody. I defy you to get me one person that can make that kind of a charge, and as long as I am Minister - and it may not be long the way things are going - but as long as I'm Minister there's not going to be that kind of nonsense.

I am angry and I am shocked that the Opposition should stoop down to the level that they have in bringing up the things that they have brought in, because there's been no perversion of justice. Justice has been done. Something that you have never seen in this province where Ministers are concerned, except back in 1915 when Sir Rodmond Roblin and his Ministers were arrested for being involved in the scandals of the building. That is the only time that Ministers were involved where they had to go to court, and if there was justice at that time they'd have been in there for ten years, but they got nothing. But that is the only time where Ministers of the Crown were ever involved that I know of, and if you know of any cases I'm sure we'd be glad to hear. But I took my medicine and I have the time given to me by the magistrate or the judge to make my decision, and I'm not going to plead for special consideration. I'm going to take my medicine like anybody else, and I just want to make that clear and I'd like you boys to understand that there is no injustice or perversion of justice as has been suggested by the Opposition.

MR. CHAIRMAN: The Leader of the Opposition.

MR. SPIVAK: Mr. Speaker, the Minister of Transportation uses the expression it bothers him, it bothers him. It bothers me. It bothers me that the Minister of Transportation -- (Interjection) -- No, it bothers me the Minister of Transportation has in fact mixed up the issue, either because he doesn't understand it or because he is very clever and believes it should be mixed up. Now ignorance can be bliss, ignorance can be used as a defense, and ignorance can be straight ignorance, and I must tell you something. I'm telling you, Mr. Chairman. The Minister of Transportation talked about his own case. His case isn't the issue. The issue is whether the Attorney-General should or should not have appeared for him. After

(MR. SPIVAK cont'd.) listening to the Minister, I think everyone would agree the Minister could have defended himself. That's right. He could have defended himself and he should have defended himself. The issue at hand is whether the Attorney-General had an obligation, as chief law officer -- (Interjection) -- The Attorney-General's office was represented when the statement was read. That's the statement I read.

MR. GREEN: . . . the honourable member doesn't want to make a mistake. The Attorney-General's office made a statement to the court, put on the record a statement of the court with regard to its position vis-a-vis the magistrate, but they did not represent, as I take it, the Minister of Transportation.

MR. SPIVAK: . . . appear with him.

MR. GREEN: He walked across the road with him. I think it's admitted. It is admitted that the Attorney-General and the Minister of Transportation are still friends and see each other.

MR. SPIVAK: Mr. Chairman, surely the issue is the statements of the Minister. Surely the issue is his dual obligation which he brought into play, his obligation to his colleague and his obligation as chief law officer of the province, and I suggest to you that that's the issue and not, you know, the antics of the Minister of Transportation. The antics, the explanations, the charges, the counter charges, the statements irrelevant or otherwise, the imagination, you know, the wild dreams of the Minister of Transportation, have no bearing on this, frankly. Now, it's very interesting and makes good press and it's interesting to see charge after charge made about the Conservative administration of justice. It would seem to me, Mr. Chairman, that if an administration is in power, then the magistrates or the judges are therefore subject to that administration, and then if the administration changes then it's that administration, on the basis of the logic of the Minister of Transportation. And now we get involved in the whole issue of whether he is ignorant of the issue or whether he is being deliberate, and I don't think and I'm not prepared at this point to argue it. I'm prepared to argue it. I think it will be worthy of discussion. He's prepared to take his medicine. Well, maybe the medicine is deserved; let him take it. But that's his decision to make. The issue is whether there's a dual obligation on the part of the Attorney-General, and I'm suggesting, Mr. Chairman, in this respect the Attorney-General is wrong and is in error. There is no dual obligation. He has one obligation. He is the chief law officer for this province and that is his responsibility and there should be nothing in conflict.

MR. MACKLING: Mr. Chairman, just so that the Honourable Leader of the Opposition's remarks don't go unchallenged, let me try to convey to him, through you, once again that when I said there was a dual obligation, there is a dual obligation on the part of the Attorney-General not simply to the courts and the people of Manitoba in respect to the administration of justice, but he has an obligation to counsel his colleagues in their capacities as Ministers of the Crown, not in their personal capacities, and I wasn't in the Court of Queen's Bench as an advocate of Joseph Borowski charged with contempt of court, and the Honourable Leader of the Opposition can make all the confused harangue he wants about it. If that's his technique of argument, to try and suggest that that was my purpose in court, then he does this House a great disservice again, Mr. Chairman. I made it quite clear that I have a dual obligation. An action had been brought against a colleague as Minister of Transport for an action taken by a government department in respect to a civil servant in his department, and that action was brought against him should have been brought against the Crown in the right of the Province of Manitoba under the Vacations with Pay Act, and my colleague the Honourable Minister of Transport should not have been named in his personal capacity at all. So that here I am, charged with the responsibility to counsel him in respect to that asinine court proceeding, and at the same time concerned to counsel to ensure the proper administration of justice in the courts. That's the dual role that I'm referring to and the Honourable Leader of the Opposition should understand that situation. His difficulty in understanding it is unclear to me, Mr. Chairman.

MR. CHAIRMAN: The Member for Rhineland.

MR. FROESE: Mr. Chairman, I just have a couple of questions. I was rather interested in the remarks made by the Honourable Minister of Highways and -- (Interjection) -- yes, but the Minister of Highways made a statement, made a number of statements -- (Interjection) -- Yes, but this has to do with the Attorney-General's Department. When he says that the magistrate abused his position. This is the charge made by the Minister of Highways and I think this should be clarified. If that is the case we should know the facts of it. Another interesting point came up and that was that our auditors apparently are not giving us full account that there are

(MR. FROESE cont'd.) shortages, and these have never been reported to this House. This is another very revealing fact and I certainly, when public accounts will be called, this is one of the questions that will be put up to them. Never yet in the history of our public accounts meetings have reports been made that there were shortages, and here the Minister says there were shortages; that monies did not come; they were not paid. I will certainly look into this when the proper time comes in that connection.

MR. CHAIRMAN: The Member for Portage.

MR. G. JOHNSTON: Well, Mr. Chairman, I certainly won't attempt to debate with the Minister of Highways on some of the charges he has made. If he has these charges, in fact, well then he should do something about them, so that's all I will say about that. But I would like to ask the Attorney-General a number of questions.

Is it true, as the article that I quoted from written by Mr. Mardon, that Mr. Gonick, the MLA, asked the Attorney-General to look into the Ternette case, and then and only then did he look into the matter? I would like an answer to that. And is it not a fact that the Winnipeg Police Commission very recently upheld the actions of the Winnipeg police force? By the way, when the Minister was bringing in his red herrings, he tried to suggest that one other case that he related to us this afternoon where officers not in uniform, through confusion and excitement, a man was injured in being taken into custody, but is it not a fact in the Ternette case that they were uniformed police officers? Mr. Ternette knew they were policemen. There was no question that he did not know that they were policemen, according to the news reports I've read.

I would like to pose another question to the Attorney-General. If, in the case of the contempt action initiated by another person, had that action not been initiated would he, as the chief law officer of this province, have initiated the action? I would like to ask him that question.

I thought by the tenor of the Attorney-General's remarks tonight that he is critical of a Dauphin magistrate, that he thinks perhaps that he was in error. Well, it's strange that it's said now in the heat of debate, and he's told us before that as part of his duties he considers it his job to oversee magistrates and judges as well as Crown Prosecutors, so I would ask him to clarify that remark. I would also like to say, before I sit down that in my opinion the Attorney-General needs a lawyer but I don't think the Minister of Transport is the person to defend him. I think he should call on his colleague, a very able lawyer, the Minister of Mines and Resources, and it's very strange in this debate tonight, Mr. Chairman, that neither the First Minister nor other of his colleagues have risen to defend the Attorney-General. -- (Interjection) — I know; that causes some reaction over there, but I can't conceive of another occasion when the Minister of Mines remains in his seat. If he feels there is an injustice or there's something wrong, he's right up and he's pointing it out very forcefully and very clearly. So I suggest, Mr. Chairman, that my motion is quite in order.

MR. CHAIRMAN: On a question of order, answering the questions posed by the Member from Portage, I can really not see as an acceptable method of debate the posing of hypothetical questions, so I would ask the Attorney-General, in reply, that he avoid answering the part of the question that I would rule out of order; what would have been his action if certain events had not taken place. The First Minister.

MR. SCHREYER: Mr. Chairman, I could have raised . . .

MR. G. JOHNSTON: Point of order, Mr. Chairman. You've made a ruling to me that I find very unusual. The Minister earlier, whether by news report or debate in this House said that an action was being contemplated but before anything could be done a person outside of this Chamber initiated the charge against the Minister of Transport.

MR. CHAIRMAN: As the member points out, I have made a ruling. I could substantiate why I made the ruling but I would just choose at this time to say that I have ruled so. This portion of the question is out of order. The First Minister.

MR. SCHREYER: Yes, Mr. Speaker. I'm not speaking to the point of order but rather to just speak very, very briefly with respect to one of the things said by the Honourable the Member from Portage la Prairie in the course of just the last few minutes. There's one thing about the Member for Portage la Prairie; he is not averse to saying by insinuation and innuendo what could just as well and much more properly be said directly. When he suggests by innuendo that there is something very unusual about the fact that the Attorney-General's estimates are being proceeded with only the Attorney-General defending them, the Honourable Member for Portage would insinuate that there is something derelict, we are somehow derelict in our duty

(MR. SCHREYER cont'd.) as First Minister or as colleague Minister of Mines and Resources in not rising. Now Mr. Chairman, this is so ridiculous it boggles the mind, because the well understood practice and procedure, and one which I approve of entirely, a long standing one, is that when the estimates of a department are up for consideration, that a Minister proceeds to defend them, and the Attorney-General is quite capable of defending his own estimates. He doesn't require any specific or pointed defence of him or of his estimates by some other Minister. Now it may be that during the course of his estimates there may be a particular subject matter or case come up that a colleague Minister has had some direct involvement or experience which would make it understandable and in order for him to speak, but to suggest that somehow the debate of the past hour and of the past few days relative to the Attorney-General's estimates requires intervention by the First Minister or another Minister, is something that is so patently absurd and ridiculous that I'm really at a loss to know why the Honourable Member for Portage would even suggest such a thing.

Since I'm on my feet, let me take advantage of the opportunity to say that, in my opinion, the question raised by the Honourable Member for Portage - I believe it's an Address for Papers or an Order for Return in which he asks the number of occasions on which the Attorney-General of the province has taken a personal -- has intervened, as the question reads, I believe, intervened personally, or something, in determining charges to be laid in the many cases that come under the purview of the Department of the Attorney-General, Mr. Chairman, I want to tell the Honourable Member for Portage that here again the question is so absurd as to boggle the mind, because the very fact is that the Attorney-General has responsibility for the administration of justice, and it happens every day - every day - that decisions have to be taken in the department, the ultimate responsibility of the Attorney-General as to whether to apply for a stay of proceedings or whether to indicate that charges will be dropped or reduced or lessened in their severity, etc. Every day! And for the Honourable Member for Portage to file a question which insinuates that it's something, somehow untoward for the Attorney-General to make a decision of any kind in cases that have to be brought to the courts, in the normal course of the administration of justice, is ridiculous.

MR. G. JOHNSTON: Will the Minister permit a question? Do the charges made by the Highways Minister tonight boggle the mind?

MR. MACKLING: Mr. Chairman, I rise to briefly answer the questions, so called, of the Honourable Member for Portage la Prairie. Apparently he suggests by indirection that there's something improper for a member of this House to raise a question about the propriety of any Act, of any portion of government or the administration of justice. Well that's the suggestion that's embodied in his question. It's one of those pregnant questions, or those oh, shh, shh. He suggests that in respect to the Winnipeg Police Commission maybe Mr. Ternette wasn't aware of the fact; that surely he was aware that they were, after all, they were in uniform. My understanding is that they weren't in uniform; they were in plain clothes.

But the facts of that case are very involved. There was some contradiction in evidence. The fact is that people had come into the office, into my office. I hadn't seen them personally; others of my staff had and had interviewed them, and there seemed to be, in the view of those who had interviewed these so-called independent witnesses - and I have no reason to believe that they were lying - that there was some untoward physical action on the part of the police. Well, it's a matter of record as to what that was, but I don't know. About the physical involvement, there were two policemen with this young man. The young man suffered a variety of injuries, very slight injuries but they were to various parts of his body, which aren't necessarily consistent with what's suggested happened. I don't know whether the police suffered any injury - I don't know whether there was any evidence to that. There is no comment about that. But the honourable member suggests, in kind of a loaded question again, that I suggested that there was some impropriety on the part of the magistrate in Dauphin in the laying of the charge.

Now, I didn't suggest that the magistrate had laid the charge or that the proceedings that were issued, asinine as they were in my view, were a deliberate act of the magistrate. The fact of the matter is that counsel on behalf of Norman Anger appeared, said "this is the charge" and apparently the magistrate issued the process, but those who were involved in that case had been in that particular action under the Vacations with Pay Act, had been involved in the other proceedings before the court in Dauphin and were well aware of the fact that the proceedings in connection with vacation with pay did not involve a personal obligation on the

(MR. MACKLING cont'd.) part of one Joseph Paul Borowski, but involved an obligation of the Crown in the right of the Province of Manitoba to pay vacation pay to that man if he deserved it. Under the circumstances I don't think the vacation pay was payable and the process and the whole action before the court, in my opinion, can be questioned, but the fact of the matter is that I cast no reflection on the discretion of the magistrate. I say that the proceedings were asinine because the action obviously was for recovery of vacation wages due from the Crown, not from Joseph Borowski personally.

MR. CHAIRMAN: The Member for Brandon West.

MR. MCGILL: Mr. Chairman, before placing just two questions, I wonder if you could direct me. I was under the impression that the debate we are now having is on the motion of the Honourable Member from Portage la Prairie and not on the estimates? Is that right? Well, it would perhaps be an appropriate time, Mr. Chairman, to refer to two questions that I put to the Honourable the First Minister on Monday and he took as notice in the absence of the Attorney-General, and I think they are appropriate to the present argument. The first question was whether or not the Attorney-General is proceeding with the original charges in the Ternette case in view of the findings of the Winnipeg Police Commission, and I think that the First Minister perhaps has this question under advisement. The other question which relates was the question as to the legal expense which was incurred in the proceedings against in the defence of the Minister of Transportation in his contempt charges. He is quoted in the Winnipeg Tribune on March 26th as indicating that he would not pay a fine or appeal the court decision because his legal fees are being paid by the taxpayers of Manitoba. I think it would be of interest to the taxpayers of Manitoba to know whether or not these fees are in fact being paid by them.

There were some related cases this afternoon by the Attorney-General in which he told about incidents in which he had intervened and which he considered were appropriate places for his intervention. One of his statements impressed me and I agree entirely, and it was that - and I think I am quoting him correctly here - "it is imperative that law officers not over-react." I would agree with that entirely, but I think it's almost more important and imperative that the Attorney-General not over-react when he receives requests for intervention from people who feel that he might be able to save them from court action or from the due process of law. It would seem to me that the real point, Mr. Chairman, is that the sympathies of the Attorney-General are very close to the surface and that when he does receive a request such as this for intervention he is inclined to over-react perhaps. Mr. Chairman, I suggest that really we are concerned about this and we feel that this is part of the problem, this is maybe the basis of the problem in which the Attorney-General now finds himself.

MR. CHAIRMAN: The Attorney-General.

MR. MACKLING: Mr. Chairman, I am happy to answer the questions that were made by the Honourable Member for Brandon West in my absence. The Premier gave me notice of them and I'm certainly happy to answer them.

I don't know whether he was present this afternoon between approximately 5:00 and 5:30 when I gave some further remarks in connection with the Ternette case, and if he was he would assume from the observations that I made, but if he didn't I want to make it very clear that I think that the decision that I made then I would make again tomorrow if the same situation occurred. One has to consider all of the ramifications I did then on the basis of the knowledge that I had then. The variation of the knowledge that I have now, as against then, is in my opinion not that sufficient to warrant now the bringing of proceedings, and it is not my intention.

In respect to the legal expense incurred by the hearings in connection with my honourable colleague, I have indicated that, so far as I'm concerned, the proceedings under The Vacation With Pay Act were proceedings against the Crown in the right of the Province of Manitoba, and all expenses that are associated with that hearing are responsibility of the Crown, even though they name my honourable colleague personally - I believe in error. Insofar as the expenses involved with the contempt charges, I think it would be contemptuous of me, if I can use that expression, to even suggest or imply that my honourable colleague would want anything else but to be fully in charge and responsible for his own legal counsel.

Now, the advice given to me by the honourable member that I shouldn't over-react, I don't think that in the light of the many representations that have been made to me -- and some time perhaps, without going into names, I could give those members of the Opposition who wanted colourful stories some stories about representations that have been made to me for

(MR. MACKLING cont'd.) further consideration for the hapless circumstances of some solicitors' clients, and the advice of Crown counsel has been followed by me without exception.

MR. CHAIRMAN: The question before the Committee: Moved by the Member for Portage la Prairie that the Minister's salary in Resolution 21 be reduced to \$1.00.

MR. CHAIRMAN put the question and after a voice vote declared the motion lost.

MR. G. JOHNSTON: Ayes and nays, Mr. Chairman.

MR. CHAIRMAN: Do you have support? Call in the members.

A COUNTED VOTE was taken, the result being as follows: Yeas 21, Nays 24.

MR. CHAIRMAN: I declare the motion lost. Committee rise. Call in the Speaker.

IN SESSION

MR. SPEAKER: Order please. The Honourable Member for Winnipeg Centre.

MR. BOYCE: Mr. Speaker, I beg to move, seconded by the Member for Flin Flon, that the report of the Committee be received.

MR. SPEAKER presented the motion and after a voice vote declared the motion carried.

MR. SPEAKER: It now being 10:00 o'clock, the House is adjourned until 10:00 a. m. tomorrow morning (Friday).