

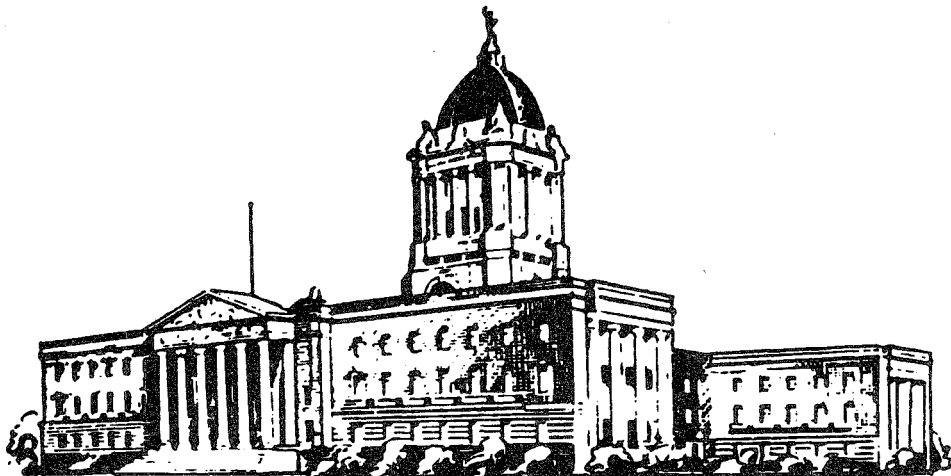


Fifth Session — Thirty-First Legislature
of the
Legislative Assembly of Manitoba

**DEBATES
and
PROCEEDINGS**

30 Elizabeth II

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authority of
The Honourable Harry E. Graham
Speaker*



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty - First Legislature

Members, Constituencies and Political Affiliation

Name	Constituency	Party
ADAM, A. R. (Pete)	Ste. Rose	NDP
ANDERSON, Bob	Springfield	PC
BANMAN, Hon. Robert (Bob)	La Verendrye	PC
BARROW, Tom	Flin Flon	NDP
BLAKE, David	Minnedosa	PC
BOSTROM, Harvey	Rupertsland	NDP
BOYCE, J. R. (Bud)	Winnipeg Centre	NDP
BROWN, Arnold	Rhineland	PC
CHERNIACK, Q.C., Saul	St. Johns	NDP
CORRIN, Brian	Wellington	NDP
COSENS, Hon. Keith A.	Gimli	PC
COWAN, Jay	Churchill	NDP
CRAIK, Hon. Donald W.	Riel	PC
DESJARDINS, Laurent L.	St. Boniface	NDP
DOERN, Russell	Elmwood	NDP
DOMINO, Len	St. Matthews	PC
DOWNEY, Hon. Jim	Arthur	PC
DRIEDGER, Albert	Emerson	PC
EINARSON, Henry J.	Rock Lake	PC
ENNS, Hon. Harry J.	Lakeside	PC
EVANS, Leonard S.	Brandon East	NDP
FERGUSON, James R.	Gladstone	PC
FILMON, Gary	River Heights	PC
FOX, Peter	Kildonan	NDP
GALBRAITH, Jim	Dauphin	PC
GOURLAY, Hon. Doug	Swan River	PC
GRAHAM, Hon. Harry E.	Birtle-Russell	PC
GREEN, Q.C., Sidney	Inkster	Ind
HANUSCHAK, Ben	Burrows	NDP
HYDE, Lloyd G.	Portage la Prairie	PC
JENKINS, William	Logan	NDP
JOHNSTON, Hon. J. Frank	Sturgeon Creek	PC
JORGENSEN, Hon. Warner H.	Morris	PC
KOVNATS, Abe	Radisson	PC
LYON, Hon. Sterling R.	Charleswood	PC
MacMASTER, Hon. Ken	Thompson	PC
MALINOWSKI, Donald	Point Douglas	NDP
McBRYDE, Ronald	The Pas	NDP
McGILL, Hon. Edward	Brandon West	PC
McGREGOR, Morris	Virten	PC
McKENZIE, J. Wally	Roblin	PC
MERCIER, Q.C., Hon. Gerald W. J.	Osborne	PC
MILLER, Saul A.	Seven Oaks	NDP
MINAKER, Hon. George	St. James	PC
ORCHARD, Hon. Donald	Pembina	PC
PARASIUK, Wilson	Transcona	NDP
PAWLEY, Q.C., Howard	Selkirk	NDP
PRICE, Hon. Norma	Assiniboia	PC
RANSOM, Hon. Brian	Souris-Killarney	PC
SCHROEDER, Vic	Rossmere	NDP
SHERMAN, Hon. L. R. (Bud)	Fort Garry	PC
STEEN, Warren	Crescentwood	PC
URUSKI, Billie	St. George	NDP
USKIW, Samuel	Lac du Bonnet	NDP
WALDING, D. James	St. Vital	NDP
WESTBURY, June	Fort Rouge	Lib
WILSON, Robert G.	Wolseley	Ind

LEGISLATIVE ASSEMBLY OF MANITOBA
Tuesday, 16 December, 1980

Time — 8:00 p.m.

MR. SPEAKER, Hon. Harry E. Graham (Birtle-Russell): The Honourable Government House Leader.

POINT OF ORDER

HON. GERALD W.J. MERCIER (Osborne): Mr. Speaker, if I may make a comment on the point of order that was under discussion at the time of adjournment at which time you agreed you wished to reconsider the matter, let me indicate, Mr. Speaker, that in view of the importance of this matter and the importance to the House, and importance obviously to the member involved and in view of the lack of precedent in the past with respect to dealing with such matters in the House, I want to indicate if you are agreeable, Mr. Speaker, we would certainly suggest to you that this is a matter on which debate should probably be allowed and should be proceeded with on the motion.

MOTION TO WITHDRAW

MR. SPEAKER: I realize the rather unique position of this and I think it is worthwhile that there should be a debate. The motion that is presently before us is one that was moved by the Honourable Attorney-General, seconded by the Minister of Government Services, that Mr. Wilson be ordered to withdraw from the Chamber.

The Honourable Member for St. Johns.

MR. SAUL CHERNIACK: Thank you, Mr. Speaker.

MR. SPEAKER: The Honourable Member for Inkster.

POINT OF ORDER

MR. SIDNEY GREEN: Mr. Speaker, I rise on a point of order. There is eight days precedence for the Throne Speech Debate. This particular subject is not a subject which in any way precludes the Throne Speech Debate. That being the case, if the motion is to be debatable, and we have eight days for the Throne Speech Debate, it would appear to me that this subject, given the fact that there could be 57 times 40 minutes could completely eliminate the Throne Speech Debate. The Throne Speech Debate, during the first eight days of the Legislature has precedence over all other matters. This is a debatable motion; it's not a matter of privilege. It's not a matter which supersedes and therefore, Mr. Speaker, I suggest it be put on the Order Paper to be debated at the end of the Throne Speech Debate.

MR. SPEAKER: The Honourable Government House Leader.

MR. MERCIER: Mr. Speaker, if I may speak to that point of order, I submit to you, Sir, that this is a matter of privilege of the House and that is the basis on which it was raised that a motion is the proper

way to conclude the matter of privilege and that it should be dealt with now. I may say in spite of that, Mr. Speaker, I would expect that this matter would be concluded this evening.

MR. SPEAKER: The Honourable Member for Kildonan.

MR. PETER FOX: Mr. Speaker. I too would like to indicate that if this House is prepared to deal with this expeditiously, I do believe that there is enough precedence to indicate that matters of privilege should be dealt with at the earliest and at the most expeditious way.

MOTION TO WITHDRAW

MR. SPEAKER: I recognize the Honourable Member for St. Johns.

MR. CHERNIACK: Thank you, Mr. Speaker. I pass.

MR. SPEAKER: The Honourable Government House Leader on a point of order.

MR. MERCIER: Mr. Speaker, if we're moving into debate, then as mover of the motion I would like the opportunity to introduce it and speak to it.

MR. SPEAKER: Order please. I believe that the motion has been moved. I think there was an opportunity. —(Interjection)— I would hope that there would be time for debate on this; whether the mover of the motion has the first right to speak to it.

The Honourable Member for Kildonan.

MR. FOX: In view of the fact that we had some confusion earlier, I would respectfully suggest that the Honourable Attorney-General have an opportunity if he so wishes to debate the issue that he raised.

MR. MERCIER: Mr. Speaker, I just wish to speak briefly to this matter. As has been indicated on a number of occasions outside the Legislature by a number of members, this matter is unprecedented and is one of the reasons why it is such a difficult matter to deal with. We can indicate to you that I have attempted to search precedents in this Legislature, in the House of Commons in England, and are really unable to come up with any exact precedent for the action that has been taken this evening. The main reason being, Mr. Speaker, that members finding themselves in this position have in the past always appeared to resign and avoided the difficulty of the Legislature or Parliament having to deal with such a matter. I do bring to the attention of members of the Legislature as I am sure everyone is aware that the Legislature has an inherent power to deal with motions to expel or suspend members for conduct unbecoming members, and there is precedent for that type of action having been taken in the past, Mr. Speaker.

I do indicate to you, Sir, and to all members of the Legislature that the motion which seeks to order the member to withdraw from the Chamber does not

appear to have any time limit to it and may be unclear from that point of view. I did base it, Mr. Speaker, on the best precedent that I could find which dealt with the exclusion of strangers from the Legislature as set out in *Beauchesne*.

I understand, Mr. Speaker, that there may very well be an amendment to deal with the proposed motion which may be more explicit as to its timing and subject to having an opportunity to give consideration to the wording that may be proposed, Mr. Speaker, that may very well be acceptable and agreeable to me, Mr. Speaker. Those are my only comments, Mr. Speaker.

MR. SPEAKER: The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Speaker, as earlier indicated by the Attorney-General, when I say earlier I mean a few minutes ago, this matter that is being proposed by him is of such major importance that it does warrant review by the Legislature, and I think it should be recognized as such. Other statements he made related to the right of the Legislature. To deal with the matter is a right I recognize and accept as I think I stated this afternoon. But an issue involving the right of a member, a duly elected member of the Legislature to sit in this House is a matter that demands debate and I am glad that the powers that be in this House saw fit to recognize the importance of it. And I have no reason, Mr. Speaker, to tread gently on the toes of the leadership of this House and of this government.

This issue was one that we all knew was coming; every one who had any view on what was happening in Manitoba and happening in the Legislature in relation to the Member for Wolseley, knew full well what was going to happen. The only foolish thing that may have happened is that some may have read or misread what may have been stated to the newspapers or reported as such as to whether or not . . . regarding what the member's intentions were. I know for myself I have no doubts as to what would happen and I think any person alert or aware would have been cautious enough to expect it to happen and to be prepared for it, and the government was sadly lacking in any preparation whatsoever knowing that the matter would arise.

Mr. Speaker, there could have been a referral by the Attorney-General of this province to the courts to determine the legal position if there were such. There could have been legislation proposed. There could have been legislation brought to this House, to this Chamber, and consent requested for it to be dealt with, leave requested. There could have been a referral as I suggested this afternoon to the Committee on Privileges and Elections or to the Rules Committee or to any other Standing Committee. Mr. Speaker, I draw your attention, what I believe is in the rules, I haven't checked it lately, that the Lieutenant-Governor-in-Council, I believe, has the right to refer certain matters in its discretion to any standing committee in between sessions. I think that anybody who is aware of what was going to happen should have had the good sense to refer such a matter to an appropriate committee of the Legislature to be dealt with prior to the Legislature being in session, so recommendations could be brought to the House. I have to fault the people who

are responsible for the order and the management of the affairs of this House. (Interjection)— Mr. Speaker, it is always interesting when the First Minister likes to speak from his seat. Mr. Speaker, I suggest you tell the First Minister to sit down. I think it would be well if you told him to sit down and not to keep talking because he knows very well the rules of this House, having been here a long time, and he knows the rules. He knows very well that what he is doing is breaking the rules. Mr. Speaker, it is true that when one treads on the toes of the First Minister or any of his people, he reacts and usually he reacts in such a way as benefits those whom he attacks.

Mr. Speaker, the —(Interjection)— you see how he conducts himself. Mr. Speaker, the Minister of Public Works made an indignant, an indignant, portrayal of his reaction to what had been said by members of this House outside of the House. And he said, why, I know — yes, the Minister of Public Works spoke about the Member for St. George and others. I think he even mentioned the Leader of the Opposition as to what their attitude is. Mr. Speaker, he's such a good actor, he has almost got me convinced that he didn't do it but I know he did it. Oh, yes. Mr. Speaker, I recall hearing what the Member for St. George said and he said — when I say hearing, I mean hearing about it, I did not hear him specifically. I believe what he said, it was up to the government to act and to see to it in his opinion that the Member for Wolseley be excluded from this Chamber. That's what I understood him to have said. Whether or not he said it is of little consequence. The Minister of Public Works can us tell about his indignation, but that doesn't in any way take away from the leadership of this House the need to plan ahead and to order their business of the House in a proper way.

I might say, Mr. Speaker, now that this problem has come to a head that it would be the good sense of the government to look ahead, to consult with Legislative Counsel to see to it whether or not it would be possible to provide in our rules or in the legislation, a means whereby this kind of matter could be dealt with, setting out criteria, dealing with the question of remuneration, dealing with those problems that are pressing in the minds of many people as they apply in this particular case. Mr. Speaker, the point I make and the point I made this afternoon when I was so insistent that we have the opportunity to debate this matter is that justice should be seen, should be seen loudly, should be seen publicly, and should be such that when we return to our electorate we are accountable to our electorate for the actions we have taken. Not unless we are able to explain our position are we able, Mr. Speaker, to carry out the responsibility entrusted to us in this Legislature. That's why we think it is important that we be able to debate an issue of this magnitude. The motion we are debating . . . Yes, go ahead Frank.

MR. CHERNIACK: Mr. Speaker, the Minister of Economic Affairs is most anxious to hear what I have to say, and one of the things that he must have heard was the criticism of his leadership for the bad way in which they have handled this issue. But now about the issue itself. The motion before you, Mr. Speaker, is most inadequate in the way it's presented, another indication of the lack of

preparation and the hurried way in which it was handled. And I will be glad to tell the First Minister how the motion should have read. As a matter of fact, Mr. Speaker, he will have an opportunity to vote on the sensible words that I propose to suggest to him. He may vote against them or for them. He will even have the right to speak about it, Mr. Speaker. I'm looking forward to hearing his position on this issue because I know that the position of his caucus was to throw out the member even before he was tried, and then of his party to throw out the member after he was tried but the government . . .

HON. J. FRANK JOHNSTON (Sturgeon Creek): That's an assumption.

MR. CHERNIACK: Oh, the Minister of Economic Affairs is right. I'm assuming that only because I read about it in the newspapers and read quotations from the Chairman of the caucus. True, it's an assumption, Mr. Speaker.

Mr. Speaker, I think the First Minister would wish us to make a statement from a speech which he made on his seat; does he? —(Interjection)— Yes, you'd rather say it from your seat, all those things you want to say. —(Interjection)— Mr. Speaker, the threats of the First Minister have been coming across this aisle for years and they are but threats.

Mr. Speaker, I was critical of the wording of the motion, and one reason I was critical of the wording of the motion is that it does not indicate the reason for the proposal nor the extent of the decision that is to be arrived at. It is left hanging loosely in the air, and I would like to put before this House the wording which I think will clarify the reason that many of us think is a justification for the decision that we have to make and also to clarify what the decision should be.

Mr. Speaker, it should be clear to anybody who has any view on what has happened that any person who is charged with an offense is considered not guilty in law until he is convicted, and he may be arrested and he may be put in jail but he is entitled to be let out on his recognizance or with bail after posting bail and that person is innocent until adjudged guilty, and that person should have all the rights of any other citizen of this province except that under the bail provision he may not leave the province that he may be required to comply with other requirements of the court. But a person, Mr. Speaker, who has been convicted is guilty of an offense. He has the right to appeal and he has all the due process by which he can challenge the decision but until it is reversed he is considered guilty and he is under punishment and indeed if there is a jail sentence involved, he is put in jail. But when he has the right to appeal, then he also has the right to apply for and, not the right to get but it may be granted to him, that he shall have bail so that he can better prepare his defence or that he should not be kept in jail.

But Mr. Speaker, the difference between a person convicted who is out on bail and a person convicted who is granted bail but cannot raise the bail is only whether one has the ability to put up the bail bond or whatever is required and a person does not have an ability. In both cases, they have commenced serving their sentences and they stand convicted. That is a very important decision because, Mr.

Speaker, I suggest to you that the Member for Wolseley is figuratively in jail now and that is the point that I wish to clarify in the amendment which I propose to present shortly.

I propose to make such an amendment, Mr. Speaker, which will remove all the words from the amendment except the most important word and that is the word, withdraw. And I propose that the amendment before us will read, if accepted:

THAT WHEREAS the Member for Wolseley has been found guilty in a court of law for a serious criminal offence and sentenced to a term of seven years in prison; and

WHEREAS he has appealed the conviction and the appeal is still pending;

BE IT RESOLVED that the said Member for Wolseley be required to withdraw from the Chamber and remain suspended unless a Court of Appeal finds him not guilty of the offence.

And that, Mr. Speaker, I believe clarifies the position. I am not going to get involved in a discussion as to whether or not the Criminal Code applies, I assume all legislation passed applies until it is declared to be invalid or changed or ultra vires, but the point to me is that we as a Legislature have been asked by the Attorney-General to deal with the requirement that the Member for Wolseley withdraw and we have reviewed it, we think it would be better to spell out the reason and the extent so that we can then deal specifically with it.

So what we are saying in effect is that he has been found guilty of a serious offence, and Mr. Speaker, I will only say that if guilty and he is considered guilty, it's a reprehensible offence and that the minimum punishment was a seven year sentence, and that, in spite of the fact he was convicted he has nevertheless appealed his sentence and the matter is before the courts. Therefore it seemed to me, Mr. Speaker, that the decision should be that his right to attend should be suspended until it is determined that a Court of Appeal has reviewed the case and has confirmed the conviction. If it is found that the Court of Appeal reverses the decision, then of course, Mr. Speaker, he would have a right to return to this Legislature.

Therefore, Mr. Speaker, I move, seconded by the Honourable Member for Elmwood, that the motion be amended by: (a) adding at the beginning thereof the following words:

"WHEREAS the Member for Wolseley has been found guilty in a court of law for a serious criminal offence and sentenced to a term of seven years in prison; and

WHEREAS he has appealed the conviction and the appeal is still pending;

BE IT RESOLVED that the said Member for Wolseley be required to"

(b) deleting therefrom the words, "that Mr. Wilson be ordered from the Chamber"; and (c) replacing these words with the following: . . . from the Chamber and remain suspended unless a Court of Appeal finds him not guilty of the offence.

MR. SPEAKER: I have looked at the amendment. It has certainly changed the wording of the original motion but I believe the intent is still the same. I would rule the amendment to be in order.

The Honourable Member for Inkster.

MR. GREEN: Mr. Speaker, the various members have put it that we are embarked on one of the most

serious debates that could come before the House, therefore there should be the opportunity to speak; indeed, Mr. Speaker, I really think that what I said earlier is probably not correct, that this debate now should continue for the rest of the time that the First Minister scheduled that we should be here. Because look, Mr. Speaker, how far we have travelled in the short space of time. We started off by somebody suggesting that the member is no longer entitled to sit and therefore is a stranger because of an existing law on which there has been no adjudication. And I said, Mr. Speaker, and I think that some of the members opposite are now going to see the validity of what I said. I said that that motion was out of order, that the only person who can determine the validity of a member's right to sit by virtue of that law is a court of law. And Mr. Speaker, there is no contradiction here with my view as to the supremacy of the Legislature. Because I say that if the judges do something which I don't happen to think is right, I could come back into this Legislature and by majority rule, say that the member can sit. As a matter of fact we have done that from time to time when we've said that a law has disqualified a member but we're going to set aside the law because we say that that member should sit with regard to various minor offences.

So Mr. Speaker, I hold with the supremacy of the Legislature but when the Legislature is purporting to act on the basis of a law which has never been adjudicated upon, I say, Mr. Speaker, that the only way that you could act on that law is if somebody brought in an order of a judge returnable on a Writ, which I have earlier referred to, and said to you just as is done, Mr. Speaker, with a controverted election, that somebody is sitting in the House on a return from an election, there is a controvert, the controvert is given to the Clerk of the House, and the seat is declared vacant. And that's why I, Mr. Speaker, said that we should not be embarking on this procedure. But we've embarked, Mr. Speaker, and look to where we have gone.

We have now taken this motion, not to be a disqualification as a result of existing law, but a disqualification as to conduct, that we are going to disqualify somebody because he's been guilty of a criminal offence. Mr. Speaker, we discussed the Elections Act. We discussed the Legislative Assembly Act. We debated these things time and time again. At that time, and I can remember the debate, Mr. Speaker, I can remember members of this House saying that we will not bar somebody because he's guilty of a criminal offence, that's up to the people. And indeed, Mr. Speaker, Mr. Jack Davis, in the Province of Alberta, was convicted of a criminal offence and immediately returned to office by the people —(Interjection)— in British Columbia, that is correct. In British Columbia.

Now listen to what we are now debating. We are suggesting, Mr. Speaker, that the conduct of being found guilty of a criminal offence disqualifies somebody from the Legislature until the Court of Appeal finds that he is not guilty. Mr. Speaker, we have a member, and it is not correct to say that that man is now serving a sentence, this time will not be taken off the seven years, the time out on bail; he is out on bail awaiting the termination of his conviction. And in his conviction and his sentence, the seven

years will start from the conviction. So we have a man on bail seeking to acquit himself. And I put that that it could be any member of this House. He is out on bail, he comes to resume his employment and this Legislature says, until you prove that you are innocent, you cannot do that.

Mr. Speaker, I thought it was bad enough, and I still think it's wrong, for the government, or for the Member for Lakeside, the Minister of Government Services, and that's what the motion was all about, the motion was merely an attempt to implement what the member and the Attorney-General thought was an existing law. I don't think that the government, the members of the government, and I hope some on this side, I really hope so, Mr. Speaker, although I think that there is a peculiar psychology working that way, I hope that the members on both sides of the House will not consider as a matter of course, a motion of misconduct when a man is guilty of a criminal offence, and appeals and is attempting to prove his innocence, that he cannot sit in the Chamber. If we thought that way, why isn't it there? We discussed the Legislative Assembly Act on numerous occasions. Why did we not put that rule in there, Mr. Speaker? Because we didn't believe it. We didn't agree that such a rule should exist.

This motion is now being made simply to deal with an individual case, and hard cases, Mr. Speaker, make bad law. I suggest that when a person is in this position, Mr. Speaker, and someone approximately 2,000 years ago said, judge not that ye be not judged, that person should be given every opportunity to follow whatever course is available to deal with the serious charge that has been brought against him. And I do not, for one, Mr. Speaker, think that this Legislature should make it a practice or should start a precedent of saying that when a person is found guilty of a criminal offence, he is suspended from the Legislature.

Let us recall that in 1920, three people found guilty of a conspiracy to overthrow the government, as specious as it was, and it can be done again, were in jail when they were elected to the Legislature. They were elected, while in prison, to the Legislature. Mr. Speaker, a ferocious and an administration which wishes to use its power to the ultimate — and nobody can discount that happening, it has happened before and it can happen again — can make hash out of the Legislative Assembly. Mr. Speaker, we are dealing with a person whom any citizen, including the Member for St. Johns, including any member on that side, including the Minister of Government Services can go and get that seat declared vacant if the law is what he said he was, and the basis upon which he has made his motion.

So, Mr. Speaker, if we are now moving from saying that the man is disqualified because of a parliamentary law, which in my view would not apply, to making his expulsion one of misconduct by virtue of having been found guilty, I would say, Mr. Speaker, we have moved from a doubtful situation to a worse situation in terms of the members of this House voting to expel one of their number.

MR. SPEAKER: The Honourable Member for Fort Rouge.

MRS. JUNE WESTBURY (Fort Rouge): Thank you, Mr. Speaker. I want to enter this debate and for a

moment speak on the matter of the criminal code as applying to members of this Legislature. I can understand the resentment of the members who have spoken to the fact that this criminal code section is said to apply to membership of this Legislature and I wonder that at some time the Legislature has not seen fit to impose its own control over derelict members.

There is a dislike on the part of all of us, I think, to have big brother telling us how we should rule ourselves, and I can understand that. However, Mr. Speaker, big brother depends on where you are looking from, because in 1971 the previous government of Manitoba in enacting The City of Winnipeg Act included Section 93, which reads, "where after the election of a person as member of council he, (a) is convicted of any indictable offence upon conviction of which a person is liable to imprisonment for five years or", and then has two more subsections, "he thereby forfeits his seat on the council." And I really don't understand what the big difference is, Mr. Speaker.

The Member for Inkster was one member of the Cabinet that put that rule into The City of Winnipeg Act and nobody doubts the sincerity of the Member for Inkster; that how can he justify his belief that we should not be judging, lest we be judged, and have a different rule for the councillors of the City of Winnipeg. Indeed, under this section, a city councillor about seven years ago lost his seat for stealing some records. I don't remember even the name of the councillor, he wasn't there for long enough to make very much of a mark on council, but I think we should all keep our perspective in this matter and realize that perhaps there are none of us here that can be too proud of what has happened in this whole incident, whole debate.

I also feel, Mr. Speaker, that we had plenty of notice from the Member for Wolseley that he intended to appear at this session. He was stating it to the media. I imagine he was stating it also to members of the House. And I am surprised actually that the government did not really have its act together; was not ready for his appearance this afternoon. I think this whole thing has been quite embarrassing.

I also feel that in view of the fact that the Member for Wolseley was recognized this afternoon and was given an opportunity to speak this afternoon, I think it might be highly likely that he is entitled to his yearly indemnity for this brief appearance in the House, which I presume will be his last. I would think that this might be another matter which just makes this entire Assembly look rather foolish.

As far as the motions are concerned, both the original motion and the amendment, Mr. Speaker, I find either one of them acceptable. I personally feel that the Member for Wolseley — I regret that he did not see fit to absent himself from the House until he is cleared by the Court of Appeal. However, since he did not so absent himself, we must vote on this matter and I want to say in explanation of my vote, that I feel that the member having been found guilty of an offence, should not have a seat in this House.

Thank you, Mr. Speaker.

MR. SPEAKER: The Honourable Minister of Government Services.

HON. HARRY J. ENNS (Lakeside): Mr. Speaker, very briefly on the motion before us and to indicate

to you that the members on this side of the House would find the amendments as proposed by the Honourable Member for St. Johns as unacceptable.

Mr. Speaker, the position put forward by my friend the Honourable Member for Inkster, although we are not in agreement on the subject matter, I think he at least indicates that in the motion that I believe is properly before us, Mr. Speaker, does not attempt to pass further judgment than that which has already been passed by the appropriate authority, namely, the court as to the conduct of a member and has indeed found that conduct unacceptable and which has resulted in a conviction. But we are simply saying in this instance, and without recognizing the fun that constitutional lawyers can have with the question of the law from time to time, but the position that has been taken by the government House Leader is that the provision in the Criminal Code, Section 682, spells it out very clearly, that a person convicted of a crime with a sentence consisting of more than five years, shall not sit in a Legislative Assembly, shall not sit in the Parliaments of Canada, shall not participate in the voting and the conducting of public affairs.

Mr. Speaker, I think to that extent I would encourage the Honourable Member for Inkster to support the motion as presented by the government House Leader in as much that it is considerably better in his light than the amendment that the Honourable Member for St. Johns added to it.

Mr. Speaker, let's also not forget that the route, the path that has been indicated to us as perhaps ought to be followed by persons wishing to remove the member from this House by individual application to the courts, there is also of course the situation available to the member involved to make application to appeal this judgment to the courts and could in fact thereby find himself reinstated, if there is a question in somebody's mind of an ultra vires nature of the federal act.

Mr. Speaker, I believe that we do ourselves or do this Chamber — we do what we have to do without impeding further in a delicate area, an unprecedented area, without impeding further than necessary, in attempting to use this Chamber in a way that it ought not to be used; in a way of attempting to put ourselves in the position of judges in the interpretation of law. We accept that a law stands, a Criminal Code section of our statutes stands that says that under the circumstances the Member for Wolseley finds himself in, he cannot sit in this Chamber.

MR. SPEAKER: The Honourable Member for Wolseley.

MR. ROBERT G. WILSON (Wolseley): Thank you, Mr. Speaker. In addressing the motion before the House and the amendment, I would have felt in the beginning of our statute stands that says, that under the circumstances the Member for Wolseley finds himself in, he cannot sit in this Chamber.

MR. SPEAKER: The Honourable Member for Wolseley.

MR. ROBERT G. WILSON: Thank you, Mr. Speaker. In addressing the motion before the House and the amendment, I would have felt in the beginning we were going to deal with . . .

MR. SPEAKER: Order please. The Honourable First Minister.

HON. STERLING R. LYON (Charleswood): On a point of order, Mr. Speaker. I do not think that any rules of this House or of any parliament in the British parliamentary system permit of a member in such a situation as the Member for Wolseley to address the House. He should, in common decency, withdraw from the House while this is being debated.

MR. SPEAKER: Order please. Order please.

MR. LYON: I ask, Sir, that you ask him to withdraw from the House while this debate and while this vote is being taken.

MR. SPEAKER: Order please. Even our own rules, Rule 13, provides an opportunity for those whose conduct is under question. Our rules provide for them to make a statement and I recognize the Honourable Member for Wolseley.

MR. LYON: Mr. Speaker, on a point of order, I suggest to you with the greatest of respect, Sir, that Rule 13 to which you have alluded on previous occasions in this debate, with the greatest of respect, Sir, has no relationship to this question before us today at all. And I would suggest, Sir, that you inform yourself upon that rule before you make further reference to it. I suggest further, Mr. Speaker, if I may, that all of the rules of Beauchesne and of Bourinot and all of the other parliamentary rules that we have, in such a situation would suggest that the proper course of action, first of all, Sir, not for you but for the member, is for the member to withdraw himself from this debate and then secondly for the House to make a determination upon the competency of that member to sit in the House.

We, Sir, on this side of the House have indicated by way of the motion of the Leader of the House as to what we think. We think the member is not permitted to sit in the House, nor to speak in the House, nor Sir, if I may say so, will he be allowed to draw recompense from this House by virtue of the interjections here today. Lest there be any question about that.

I merely say to you, Sir, that it is incumbent upon you to acknowledge the rules with respect to self-serving statements that are known throughout the common law and throughout the parliamentary process that the member should not be permitted to address the House on this occasion with respect to his competency.

MR. SPEAKER: The Honourable Member for St. Johns on a point of order.

MR. CHERNIACK: Mr. Speaker, I listened to the Honourable the First Minister and he said that nowhere does it say that a person, a member, is allowed to speak under circumstances such as this — I think that's what he said, Mr. Speaker — but earlier he said that there is no precedent for this kind of procedure. I agree with him about a question of good taste and about good judgment and I believe that the Member for Wolseley should not have come into the Chamber at all, although I understand why he did and I think we all do and why

his lawyer recommended that he should. But, Mr. Speaker, I don't know of any rule that would deny him the right to speak, other than that of good conscience on his part — but it's not for us to attribute that — I don't know of any rule, Mr. Speaker, that denies him the right and I really don't know of any rule in any court of law that denies a person the right to launch some kind of defence on his own behalf and therefore, Mr. Speaker, I don't really know how you can, in good conscience, deny the member the right to speak. How we react to what he says is something he has no influence over. I don't know whether Rule 13 specifically applies or not but it's the only rule of which I am aware, and I'm not aware of too many, that says that he does have a right under certain circumstances.

MR. SPEAKER: The Honourable First Minister on a point of order.

MR. LYON: Yes, Mr. Speaker, on the same point of order, I suggest that a rule of conscience is as binding on parliament as any other rule. Mr. Speaker, I realize that I may be speaking to people to whom a rule of conscience, some of whom, may be rather a foreign or an alien doctrine but it's not too many of us in this House.

I merely say to you, Sir, that it is not in keeping with the proper parliamentary process of this or any other House in the Commonwealth parliamentary system, that a person whose competency to sit in a House is at question, as it is indeed on this motion, should be permitted to speak at this time on that motion. And I say to you, Sir, that of course as other honourable members have acknowledged in the debate earlier today, the fact that we are faced with the debate at all is because, in my humble opinion, bad judgment was used by the Member for Wolseley in presenting himself to the House in the face of the advice that you gave to him, Sir, by a letter that was tabled and received by all members of this House.

There is a law in Canada passed by the Parliament of Canada, solemnly, which says that a member of the federal parliament or of a provincial Legislature who has been convicted of an offence, an indictable offence which carries the penalty in excess of five years, is ineligible to sit and to vote in parliament or in the Legislature of a province. Now, Mr. Speaker, I don't know how many times we have to repeat: that is the law of the land until it is tested in a court.

This is not a court of law, this is not the place to test that law. Your job, Sir, if I may say so, is to enforce the law of this country and to tell the honourable member that he is not entitled, with the support of the members of this House, to sit in this House until, Mr. Speaker, the proper judicial process has been carried through and the honourable member has exhausted those provisions that are available to him for appeal which are properly available to him or to anyone else. That, Sir, is the law of Canada. If anyone wishes to go behind the law of Canada, let them test it in the courts of law but not in this Legislature, and presume to debate here, something which is a subject matter for the courts alone.

So I suggest, Sir, that the question is very simple. The law of the land as we know it, prima facie, and the advice that you have received, the advice that the House Leader has received is very clear on this

point, that prima facie, the law of the country is that the member convicted of those offences is not entitled to sit, and, Sir, I really don't see what all of the argument is all about. That's what it is. There is a clearer way for that to be tested and that is to be tested in court, not in this Chamber, and I suggest we get on with the question.

MR. SPEAKER: Order please. I would like the opportunity to consult with legal counsel and the House is recessed for ten minutes.

RECESS

MR. SPEAKER: Order please. The motion before the House is the motion of the Attorney-General. The motion is the amendment moved by the Honourable Member for St. Johns, that the motion be amended by (a) adding at the beginning thereof the following words:

WHEREAS the Member for Wolseley has been found guilty in a court of law for a serious criminal offence and sentenced to a term of seven years in prison; and

WHEREAS he appealed the conviction and the appeal is still pending;

BE IT RESOLVED that said Member for Wolseley be required to (b) by deleting the words that, Mr. Wilson be ordered to, from the Chamber and replacing these words with the following: Withdraw from the Chamber and remain suspended unless a Court of Appeal finds him not guilty of the offence.

Are you ready for the question?

The Honourable Member for Kildonan.

MR. FOX: Yes, Mr. Speaker. I'd like to know what the ruling was in respect to the Member for Wolseley speaking because that was what you recessed the House on and at least I believe the House should have some guidance as to where we are in our proceedings.

MR. GREEN: Mr. Speaker, if the member is not here then it is a moot point.

MR. DESJARDINS: No, that's what they sent him out for.

MR. GREEN: It is a moot point.

MR. SPEAKER: The honourable member is not in his . . .

QUESTION put on the amendment, MOTION defeated.

MR. FOX: Yeas and Nays, Mr. Speaker.

MR. SPEAKER: Call in the members.

A STANDING VOTE was taken, the result being as follows:

YEAS

Messrs. Adam, Barrow, Bostrom, Boyce, Cherniack, Corrin, Cowan, Desjardins, Doern, Fox, Jenkins, McBryde, Parasiuk, Pawley, Schroeder, Uskiw, Walding, and Mrs. Westbury.

NAYS

Messrs. Anderson, Banman, Brown, Cosens, Domino, Downey, Driedger, Einarson, Enns, Ferguson, Filmon, Galbraith, Gourlay, Green, Hyde, Johnston, Jorgenson, Kovnats, Lyon, MacMaster, McGill, McGregor, McKenzie, Mercier, Orchard, Mrs. Price, Messrs. Ransom, Sherman, and Steen.

MR. CLERK: Yeas 18, Nays 29.

MR. SPEAKER: The Honourable Minister of Consumer and Corporate Affairs.

HON. WARNER H. JORGENSEN (Morris): Mr. Speaker, although we chose to defeat the amendment proposed by the Member for St. Johns because we felt it was somewhat vague, we do recognize the need for some clarification, perhaps something added to the present motion. So therefore, I move, seconded by the Minister of Health that these words be added to the present motion:

And remain outside the Chamber unless a competent authority set aside his conviction.

MR. SPEAKER: It's been moved by the Honourable Minister of Consumer and Corporate Affairs, seconded by the Honourable Minister of Health, that the motion be amended by adding thereto:

And remain outside the Chamber unless a competent authority set aside his conviction.

The Honourable Member for Inkster.

MR. GREEN: Mr. Speaker, we heard a very determined speech by the First Minister to the effect that the Speaker is not to try to adjudicate the law. He made that speech on the basis that the law was adjudicated and therefore you had nothing to say about it. The point that I made earlier, Mr. Speaker, is that no law had been adjudicated and I again want to point out to the members what this motion does.

The Member for Lakeside brought this motion in on the basis that a federal law disqualified the Member for Wolseley. This motion will keep the member disqualified even if that federal law is found to be ultra vires. Listen to what is going on. He is being disqualified by a federal law, Mr. Wilson could go across the street, ask for a declaration that the federal law is ultra vires, get a declaration that the federal law is ultra vires and this motion keeps him out, not because he has been disqualified by a federal law but because the members of this Legislature are disqualifying him on the basis of conviction for which he has not been acquitted and which has not been overturned by the Court of Appeal, regardless of what the federal law says. — (Interjection)— That's not what he said. He said a court of competent until his conviction — Mr. Speaker, would you read the amendment? Read the amendment that was made by the Member for . . .

MR. SPEAKER: Order, order please. Could I have the amendment back please?

MR. GREEN: It said, the conviction is overturned by a competent authority. That's what it said, the conviction overturned, not the federal law. I listened very carefully.

MR. SPEAKER: Order please. The original motion — and I hate to interrupt a man in debate — the

original motion was that Mr. Wilson be ordered to withdraw from the Chamber and the amendment, moved by the Honourable Minister of Consumer and Corporate Affairs, and remain outside the Chamber unless a competent authority set aside his conviction.

MR. GREEN: Yes, Mr. Speaker. So what I said was exactly right. The only authority that could set aside the conviction is a court of law or Parliament being supreme.

The Member for Lakeside and the Attorney-General purported to come into this Chamber to have this man disqualified on the basis, not of this Chamber deciding that he couldn't sit, but that a federal law so decided. Now an amendment is introduced. The amendment says, he stays out until his conviction is set aside. Mr. Wilson could go across to the courthouse, presumably, the Member for Wolsely, and if he gets proof that that federal law is ultra vires, the basis of his conviction, of his being thrown out, is removed but he's still out.

Mr. Speaker, read the amendment — until a competent authority sets aside the conviction. Mr. Speaker, now the Premier is having some problem. Mr. Speaker, 682 is the federal law. The First Minister said until that federal law is declared ultra vires, you can't adjudicate upon it. That's the speech he made 10 minutes ago; 15 minutes ago, excuse me. He said somebody could go and test that federal law. The Member for Wolsley could go test the federal law. The Member for Wolsley goes and tests the federal law and wins. The federal law is ultra vires, read your motion, he's still out of the House. Mr. Speaker, he's still out. —(Interjection)— That's right, because the Member for Lakeside now spills the beans. He says, because I don't want to. That's what this is all about, Mr. Speaker. It's not a question of the conviction. It's not a question of the federal law. It's a question of the personality of the Member for Wolsley. This is, Mr. Speaker, the fear that I expressed.

Mr. Speaker, the Member for Lakeside got up and said that he has no place in this Chamber because of a federal law.

MR. ENNS: Mr. Speaker, on a point of order.

MR. SPEAKER: The Honourable Minister of Government Services.

MR. ENNS: I said that a convicted felon has no place in this Chamber to rule and vote on public affairs.

MR. GREEN: Mr. Speaker, now we are getting a little bit more open. Then you should have passed the amendment that was moved by the Member for St. Johns. The First Minister, the Attorney-General, the Speaker, Mr. Speaker, the hypocrisy is now coming out. The Speaker — everybody in Winnipeg was saying that Mr. Wilson is evicted, not because of any members not wanting him, not because he committed a criminal offense, but because there is an existing law which expels him. That's what the First Minister said. That's what the Member for Lakeside said. That's what the Attorney-General said.

Now they make a motion to evict him on the basis of that federal law and the First Minister, and his

words are in Hansard, said that until he tests that law, until you are told that it's wrong, he can't sit here. Now they move an amendment. The amendment doesn't say that he can sit here if he tests the federal law and finds it wanting. The amendment says, that until his conviction is set aside he can't sit here, which means that the Member for Wolsley can go across the street, show you that that federal law has no validity and he can't come back in this Chamber because of a motion that he can't come back until his conviction is set aside, put forward purportedly on the basis that he is being thrown out because of the existence of a law which disqualifies him.

Mr. Speaker, let us at least understand and have it clear what we are doing. This man is being evicted by the members of the Legislature because they don't like what he has done — that's within the rules, that's within the competence — but let it not be said that he is being evicted on the grounds that he is in violation of a law which now exists. That's not the reason, because the amendment discloses the reason.

MR. SPEAKER: The Honourable Attorney-General.

MR. MERCIER: Thank you, Mr. Speaker. Mr. Speaker, when I spoke to this matter I did indeed cite the letter and the opinion from the law officer of the Assembly that you received with respect to the implications of Section 682 of the Criminal Code. But let me say at the same time, Mr. Speaker, I have also cited on a number of occasions the inherent power of a Legislature to expel or suspend members for conviction for a number of criminal offences. This has been done in the past on a number of occasions, Mr. Speaker, and are cited in many of the precedent books on parliamentary practices.

Mr. Speaker, I say to you, Sir, and the members of this Assembly, that if Mr. Wilson or anyone else tests the validity of the federal legislation — and I have said when I opened my remarks earlier on this afternoon that many have questioned the constitutional validity of that section and I agree that it could be contested, it would have to be done in the courts — I say, Mr. Speaker, even if it is contested and even if it's found to be lacking constitutional validity and that the court might say the federal government has no power to pass laws respecting the qualification of members in the Legislative Assembly of this province, I say, Mr. Speaker, the motion is still valid on the basis of the inherent power of this Legislature to suspend a member upon conviction for a serious offense.

And I say as a supplementary argument, Mr. Speaker, that the conviction in this case is a very serious conviction and I suggest to you, Sir, and to members of the Assembly that the motion is justified in addition on that ground as well as the legal opinion that has been received so far that may be open to some question if it is contested in court.

Let me make one further comment, Mr. Speaker. The Member for St. Johns in his remarks questioned the leadership of the government with respect to this matter. Mr. Speaker, let me say one thing, I haven't yet found a lawyer, and even a lawyer of the quality of the Member for Inkster, who was aware of this section of the Criminal Code until it was inadvertently discovered by a member of the news media. Mr.

Speaker, I don't criticize anyone for not being aware of that particular section.

Let me also say at this time, Mr. Speaker, that I have been actively involved with Legislative Counsel in reviewing our present Legislative Assembly Act and amendments that may be introduced. I suggest and I say, Mr. Speaker, that complimentary legislation dealing with this matter will be introduced and I hope before adjournment before Christmas is upon us, will be introduced dealing with this and a number of other matters under The Legislative Assembly Act.

Mr. Speaker, I wanted to make that comment. I think the amendment proposed by the Minister for Consumer and Corporate Affairs is more accurate than the Member for St. Johns' amendment previously defeated because the wording was incorrect, I believe, in referring to "unless a court of appeal finds him not guilty." The wording that is being used is supported by similar wording in the Criminal Code. I commend the amendment, Mr. Speaker, to all members.

MR. SPEAKER: The Honourable Leader of the Opposition.

MR. HOWARD PAWLEY (Selkirk): Mr. Speaker, first the Attorney-General has clarified the position of the government by indicating that their reliance has not been on the basis of a provision of the Criminal Code. It certainly was the indication that we had received earlier today that it was on the basis of your letter in reference to the provision of the Criminal Code that indeed action was being commenced by way of the resolution that was earlier presented to the House.

Mr. Speaker, I believe that this difficulty would not have occurred if the resolution had not been so poorly conceived, had indeed been so indefinite, and indeed had been left in the shape that it was previously, would have been like a revolving door: in one minute, out the next minute, back in the next minute. There was no limitation insofar as the coming in, the departure, of a member in question. We would have simply been placed in a position of moving a similar form of motion each time the member entered. I concur with the amendment that the Minister of Consumer Affairs has introduced, except, Mr. Speaker, what I do find strange is that in the amendment which was defeated but only a few moments ago, introduced by the Member for St. Johns, it accomplished the very same objective. It indicated withdrawal from the Chamber and remain suspended until a Court of Appeal finds him not guilty of the offense.

Mr. Speaker, I think that the members across the way defeated the amendment simply because it was being introduced by the Member for St. Johns, rather than dealing with the substance of the motion itself. What was being presented on this side, is quite similar, indeed I would suggest, Mr. Speaker, identical to the amendment that has been introduced by the Minister of Consumer and Corporate Affairs.

Mr. Speaker, I want to make one other point prior to the voting on this motion. I feel, Mr. Speaker, that in a matter of such major importance as this, a matter which can involve any one member at any particular time, a motion indeed which suspends that member from this Chamber, that there should be no

question, Mr. Speaker, that every member in this House ought to have the opportunity to rise in his or her place, speak to that motion, including the member that is the subject matter of the resolution.

I find it, Mr. Speaker, abhorrent that indeed we could be called upon to take a vote, to take a vote without ensuring that the member that is subject, also have that right to speak. It certainly would have been our intention, Mr. Speaker, as witness the support which we gave to the amendment proposed by the Member for St. Johns to indeed obtain the very same objective that members across the way are achieving through their amendment. But surely there is some room for due process within this Chamber; surely, Mr. Speaker, there is some avenue by which there can be the debate, discussion, the points of view properly dealt with within this Chamber without attempts to cut off the discussion; without attempts to muzzle any one single member in this House, Mr. Speaker, and I would trust, and I hope this does not again occur in the province of Manitoba, that if it does, that indeed we will not accept this as a precedent for the due process that would be followed in any future similar situation.

MR. SPEAKER: The Honourable First Minister.

MR. LYON: Mr. Speaker, it is not my intention to prolong the debate because I think that all that can usefully be said on the topic and on the amendment has probably been said, but let me underline and make clear two or three points in substantiation of what the House Leader has said tonight so that there would be no misapprehensions on the part of anyone in this House or perhaps even more importantly, amongst the public of Manitoba.

Number one, we do not feel and that is why we moved the original motion, that a person who has been convicted of an indictable offense and sentenced to a sentence in excess of five years, is or should be competent to sit in the Legislature of Manitoba. That should be crystal clear from what we have said.

Number two, the law with respect to that matter exists at the present time only in the Criminal Code of Canada by virtue of Section 682, a section that I think is clearly readable by all members of the House and by all members of the public, but perhaps for better understanding perhaps I should read it into the record so that everyone will know what the law is as passed by the Parliament of Canada.

It is Section 682, subsection (1) Where a person is convicted of an indictable offense for which he is sentenced to imprisonment for a term exceeding five years and holds at the time he is convicted an office under the Crown or other public employment, the office or employment forthwith becomes vacant.

Subsection (2) A person to whom subsection (1) applies is, until he undergoes the punishment imposed upon him or the punishment is substituted therefore by competent authority or receives a free pardon from Her Majesty, incapable of holding any office under the Crown or other public employment or of being elected or sitting or voting as a member of the Parliament of Canada or of a Legislature or of exercising any right of suffrage.

(3) No person who is convicted of an offense under Section 110, 113, or 376, has after that conviction capacity to contract with Her Majesty or to receive

any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty.

(3.1) A person to whom subsection (3) applies may at any time before a pardon is granted to him under Section 4 of The Criminal Records Act, apply to the Governor-in-Council for the restoration of one or more of the capacities lost by him by virtue of that subsection.

(3.2) Where an application is made under subsection (3.1) the Governor-in-Council may order that the capacities lost by the applicant, by virtue of subsection (3), be restored to him in whole or in part and subject to such conditions as he considers desirable in the public interest.

Subsection (4) Where a conviction is set aside by competent authority, any disability imposed by this section is removed.

Now, Sir, at the risk of repeating myself, I say what I said this afternoon; that the opinion that you passed to the Member for Wolseley and to all members of this House prior to the convening of this House and before this House could take any action on this matter, was to the effect that, pursuant to Section 682 of the Criminal Code according to the law officers of the Crown, there was *prima facie* a disability on the part of the Member for Wolseley by virtue of the conviction which is a matter of public record and of which this Chamber takes notice without the necessity of any preamble to the amendment proposed by the Member for St. Johns. There was a fundamental disability by virtue of that section of the law to the members sitting here, you pass that opinion to the member and to all members of the House. It was not a question that was in any doubt in the minds of anyone after the section became a matter of public record.

As the Attorney-General has said tonight, there is a further fundamental power of this Legislature at any time to make and to subscribe two rules with respect to the competency of members of this Legislature to sit and to pass laws in this Legislature on behalf of their fellow citizens of Manitoba regardless of whether they have faced a conviction and a sentence in the courts or because their conduct has been unbecoming or for whatever reason in the wisdom of this Legislature, and I hesitate to say, reason that would be I am sure, very very carefully adjudicated by this Legislature if it were not based upon statute, to say to that member that he or she is expelled for conduct in general, unbecoming to that of a member of the Legislative Assembly of a province.

So what we are saying tonight, Mr. Speaker, is this, that there is, *prima facie*, a law of the Parliament of Canada which, *prima facie* has been abrogated by virtue of the conviction registered against the Member for Wolseley in a recent court action and that *prima facie*, he is not entitled to sit in this Legislature because that law exists.

And we are saying further, although it is not part of the motion itself, but it is implicit in the motion, that this Legislature has the right to make a determination at any time upon the competency of people who shall sit in the Legislature. What is being said further by the Attorney-General tonight and what I alluded to slightly earlier was this; that it is the intention of the government to bring before this

Legislature, complementary legislation which would take the form of an amendment to The Legislative Assembly Act which, after due discussion by members of the Legislature, would have the effect, I would hope, of enacting in the province of Manitoba, legislation which would be complementary to that that has been legislated by the Parliament of Canada and taking into account any other amendments that members of the House may wish to add to it because we feel that that properly expresses the will and the conscience of the people of Manitoba.

May I say, Sir, that we are not here tonight to adjudicate fine legal points upon which the Member for Inkster, the Member for St. Johns and others might well engage as to the vires, as the lawyers would say, of whether the Parliament of Canada can do this or whether the Parliament of Manitoba can do that. We are confident as to what the powers of the Legislature of Manitoba are and we merely say that given the set of circumstances, unfortunate as they are, and I repeat that again, unfortunate for this Legislature, unfortunate for the individual member in question, unfortunate as they are, we do not intend to permit that the will and the conscience of the people of Manitoba should be frustrated by some legal quibble. We intend to take the action that is being taken here tonight and I suggest to you, Sir, that the only point at issue now is to vote on that. If anyone has any question as to how they stand on that particular point, as to whether a member, convicted of an indictable offence which carries a sentence in excess of five years, should be allowed to sit in this Chamber, then let him express his concern by way of his vote.

But I merely say to you, Sir, that the law that we have had enunciated to us through the law officers of the Crown is there, notwithstanding the fact that some in this room, including myself, may have some question as to the constitutionality of it. If there is any question about that, let that be put to one side, because I tell you that it is the intention of the government to bring into this Legislature complementary law which cannot be subject to any question of vires, so far as we are aware at this time, and to determine thereby the competency of members to sit.

I issue the final caveat, Sir, and I've said it in press conferences and in other comments prior to this evening, it is impossible for any Legislature to anticipate all of the circumstances that might arise with respect to the individual actions, peccadilloes or whatever of human beings who occupy, from time to time, seats in this august Chamber, and no matter how much we labour, I rather doubt that we will come up with a law that is so all encompassing that it will answer all of the questions that might arise by virtue of different actions that are taken by members from time to time or the impact of the law upon them. What I am merely say, Sir, is something that all of us know so profoundly and so fundamentally, that we are not all wise in this Legislature and from time to time when we make pretensions that we are, then we only make fools of ourselves. I say to you, Sir, that we will attempt to meet the situation as it arises and is that not really the beauty of the parliamentary system? Is that not the beauty of the parliamentary system?

Because here we are faced by accounts from all sides of the House with a situation that is

unprecedented. If, I say by way of hypothesis, the Honourable Member for Wolseley, the conviction had been registered as indeed it was and brought to your attention, Sir, and then bail had been refused, we would not be having this argument here tonight because the honourable member would not have been allowed to take his seat. No question about that at all. If, hypothetically, the situation arose as it did, the member was convicted and the member through his own conscience, decided that he would not take his seat, which I must say, Sir, from the standpoint of only one member in this House, would have been the preferred course, that the member not take his seat while this matter was still within the judicial process, then we would not be debating this matter here tonight.

And if, on the other hand, Sir, if you take a look at the section that was passed by the Parliament of Canada, it says that, in the final subsection that I read just a few moments ago, "Where a conviction is set aside by competent authority any disability imposed by this section is removed", and some question was raised this afternoon when account was made of the fact that the law officer of the Crown had advised the House Leader and yourself, Sir, to this effect. That by virtue of Section 682, the member was not entitled to take his seat or to vote in the Legislature, by virtue of this section that I have just read into the record. But equally, Sir, in that legal advice we were told, as I mentioned again this afternoon, that that did not disqualify the member in question from remaining the Member for Wolseley because the section says, "Where a conviction is set aside by competent authority, any disability imposed by this section is removed", and let's hesitate for a moment to consider that, because the judicial process must be given its time to mature, and appeals are accepted as part of our process of freedom in this country.

The member in question has a case that is now sub judice, that is before the superior courts of this country, of this province first of all by way of appeal, and he is entitled to be given the full measure of impartial judgment on that case before that court. And that is why the Parliament of Canada, whether it was within its jurisdiction or not but I think in its wisdom said, that the disqualification could be set aside by a competent authority, meaning a Court of Appeal or the Supreme Court. And I mention only in passing that one of the prime deficiencies of the amendment proposed by the Member for St. Johns was that he contemplated that there was only one appeal. Well, the Member for St. Johns, I am sure, will easily recognize the possibility of more than one appeal and the possibility of other issues coming for a decision as a result of appeals and of new trials and of all of the other things that can properly result from a judicial process in what we have in this country which is, thank God, a free country under a parliamentary system with a judicial system that works.

So I suggest, Mr. Speaker, with the greatest of respect to you, Sir, and to all of the members of the Legislature who have engaged in this debate tonight that it is important, but it is not a substantively important debate because I think the law is clear, and if not the law, then I'm sure the conscience of all of the members of this Legislature. The conscience is

clear as to what action should properly be taken with respect to the public interest in Manitoba and the conscience of this Legislature, I suggest, is amply manifested in the resolution proposed by the House Leader, amended by the Minister of Consumer and Corporate Affairs, to the effect that the member be discharged from his responsibilities in this House, of sitting or voting in this House until, in the words that have been selected from that statute until we can improve upon them, a conviction is set aside by competent authority. And that, Sir, is very simply all we are being asked to vote upon, a procedural matter, a procedural matter at this stage upon which I think the answer is extremely clear.

So I hope, Sir, that I have not added to some of the hot discussion that we have had on this matter. I hope I have tried to illuminate as much as I can the position of the government in this matter. We have moved the motion, we have amended the motion to improve it, I think, in terms of having an effect that relates to the statute in question.

I repeat what I said earlier, Sir, that lest it be thought — and I'm certainly not speaking necessarily to anyone in this House — but lest it be thought that the government or the members of this House, and it's not just the government, would stand by idly and allow the kind of an incident that occurred today, to qualify any member who falls under this particular section, for an indemnity from this Legislature by virtue of his mere physical presence in the Legislature or momentarily his brief recognition by you, Sir, on a point of privilege or whatever, I would suggest concurrently that it will be the responsibility and I say the duty of this government to bring forward, for the consideration of the Legislature, a further amendment to The Legislative Assembly Act to make it clear, that when a person is under the kind of disability that is set forth in Section 682, the complementary version of which we intend to bring into this House, that he will not be eligible to receive or to accept any indemnity or emolument from the people of Manitoba for service in this Legislature.

I want to make it perfectly clear that it would be our intention, when that amendment is brought forward, to make it retroactive to cover the situation that occurred in this House today, because I think, without getting into that question at all, Sir, that we all realize that to some extent, to some perhaps deeper extent than perhaps all of us realize, we have all been actors on a stage for a play that is being portrayed and for an audience in another arena and what happened today is an embarrassment to the Legislature. The action we take tonight will cure that embarrassment. I suggest that what happened today is a greater embarrassment to the member in question for precipitating that action and for those who advised him to do so.

I merely say, Sir, that there should be no doubt in the mind of anyone in Manitoba with respect to the attitude of this government, or I'm sure I speak for this Legislature, as to whether or not we would expect anyone to benefit from the kind of action and the kind of incident that took place in this House this afternoon and this evening.

MR. SPEAKER: The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Speaker, the First Minister spoke about legal quibbles. I want to comment only

on that point. He spoke about legal quibbles as being involved in this discussion.

The only three legal quibbles I can recall for the day is (1), a quibble about wording as between a Court of Appeal and competent authority; (2) a quibble which is not just a quibble, but the effort of the government side to frustrate the right of members of the Legislature to speak on this main motion; and finally, Mr. Speaker, an effort to prevent the person accused or the person charged, or the person to be dealt with, with the right to speak and the lecture which you, Mr. Speaker, were given by the Honourable the First Minister, who with finger pointed, instructed you as to what he considered your action should be. I am sorry, Mr. Speaker, that we have not had an opportunity, because for some peculiar reason that caused the Member for Wolseley to leave the Chamber, we did not have an opportunity to hear your ruling on whether or not he would have had the right to speak. I regret that, Mr. Speaker, because in spite of the fact that I want him out of this Legislature, I for one would not deny him the right and the opportunity to express his point of view.

I must say I do agree with the proposed amendment which the First Minister describes regarding emolument, although it is the First Minister who was quoted in some newspaper as saying, that the member still has the seat of Wolseley and can still serve his constituents outside of the House. That being the case, apparently he will do so without pay. That doesn't bother me but there is some kind of inconsistency about that. —(Interjection)— Because I think the First Minister should know the impact and effect of what he's talking about, especially when he talks in this House where he is subject to being corrected and shown where he is wrong, and helped if that were possible.

That, Mr. Speaker, I felt was advisable to point out because I think today has been an important day in relation to the rights of people and the result, as I say, appears to be substantially in favour of indicating that the Member for Wolseley, because of his conviction, has been denied the right to continue to sit in this House until there will be a different kind of adjudication.

MR. SPEAKER: The Honourable Member for Winnipeg Centre.

MR. BOYCE: Mr. Speaker, over the years for some reason or another I have taken it upon myself on occasion to defend the rules of the House because I personally am of the opinion the only thing that separates us from the apes is our respect for the law, respect for rules and I, Mr. Speaker, couldn't care less if they packed that press gallery up there with cameras and they take pictures of me asleep or awake or anything else.

To the Attorney-General, there is no question that this House has the absolute authority to discipline themselves and that is a horrendous power, Mr. Speaker. I have been one, albeit the New Democratic Party position is more towards entrenching rights than perhaps I would like, I thought that Parliament protected our rights until I saw this exercise here today, because there is no question that I personally don't want Mr. Wilson in this House, but I don't think the Member for Lakeside or I should be the ones to

judge just because we don't like him here, that we should be able to throw him out.

Now in my 12 years —(Interjection)— Mr. Speaker, sit down and vote, sit down and vote, and you — right on. I intend to speak at 10:00 o'clock tonight and I will start when my occasion arises tomorrow on this particular point.

Now, Mr. Speaker, all of a sudden we are getting new rules over here. We have shown the ineptitude of the government in other areas, I shall deal with in other cases, but nevertheless when the First Minister and the Attorney-General and the Member for Lakeside wants to railroad this through — sit down and vote, sit down and vote, until there are writs issued. I represent Winnipeg Centre which doesn't disappear until the writs are issued and I will insist upon my right to speak.

All you had to do was come in and say for any reason at all, let's throw him out and I would have supported it, but no, that isn't what you do. That man over there stood up and said throw him out because he's a stranger, he is not. We tried time after time after time to show you how to do it within the rules of this House, because what is important and perhaps you don't realize it. I, like Mark Anthony, haven't got the wit nor the word to persuade you but I am telling you right what you know. It's up to you as individual members in this House to protect the rights of the people. — (Interjection)—

MR. BOYCE: What did he say? He said the House Leader who's responsibility it is, as it was the House Leader to throw out Joe Borowski; as it was the House Leader who threw out Allard for what; for not wearing a tie. This has been coming upon this House for months and you have known it, Sirs and Madam, you have, but the ineptitude that you want to railroad something it's going to deprive somebody of a right because of what you have said yourselves — (Interjection)— read it, read it, read it.

The reason that you are kicking him out is because of that section that the First Minister shook his finger at the Speaker and instructed the Speaker to uphold the law. This is the law. You are the people that have adopted the constitution approach that Parliament is supreme and it should protect the rights of the individuals. Then damn it, Sir, protect them. I want Mr. Wilson out of this House. I ran against him in 1973 and I think what he has done is despicable, but nevertheless, where are you people going to defend the rights of an individual if you don't like him; if you don't like his colour; if you don't like his creed; you don't like anything else. You are going to sit there — sit down and vote, sit down vote. Dreyfus was unimportant. Many people through history were unimportant, but if you want the people of the province of Manitoba to support your position, the Parliament, and this is a Parliament, don't hide behind the federal law which shouldn't apply to this Legislature. Apply the rules of this House as suggested by the amendment, that we are deliberately taking action. We are accepting the responsibility. We are telling this man that in our opinion he should not sit in this House and vote.

You put me in a position, Sir, of having to vote or the First Minister will — not him personally I don't believe — but some people will try and attribute to me motives that I support Mr. Wilson sitting in this

House. I do not. But you want me to support you throwing him out of the House because of the federal law which I don't think has jurisdiction and which you yourselves say if the courts rule it is ultra vires, it doesn't apply, he is still excluded. Do you people honestly consider what you are suggesting to this House? You were given a reasonable compromise, with which I had difficulty, but nevertheless I could support it because I would be able to stand and justify my position vis a vis that amendment; because it would be a deliberate action of this House, these members, for these reasons, that we're excluding this member; not that we are using some cute little trick to slip him out the back door.

Mr. Speaker, I had said that I was going to continue tomorrow — perhaps badly I have made my point — but it is a matter of principle and I have no quarrel with the photographer who stuck his nose around and slipped in a picture, but the rules of the House are such that we have to defend it. Lincoln said — and it maybe seems trite, I don't know, maybe I am of a passing generation — but Lincoln said, the price of freedom is eternal vigilance, and is this not an occasion? Yet it is very easy for the Member for Lakeside — get him out. I'm not going to start pointing out to members to sit down and vote. It's very easy to do that. Let's get rid of them. The expeditious manner; the populist thing to do.

Doubtless there is political support for this but, Mr. Speaker, if we are in an area, in a milieu, in which politicians are only going to respond to populism rather than principle, I think we are in more danger from the politicians in this country than I realized. We are in more danger from this kind of thinking than we are from Communism, Nazism, Facism, any other kind of ism, because we — you and I collectively in this House — refuse to accept the responsibility on sound principle and act, we try and use this surreptitious method of getting him out.

MR. SPEAKER: Order. Order please. The Honourable Government House Leader.

MR. MERCIER: Mr. Speaker, we on this side are prepared to extend the hours for the sitting today to conclude this matter. I believe the Opposition House Leader is agreeable.

MR. SPEAKER: Is there agreement to extend the time? (Agreed)

The Honourable Member for Winnipeg Centre.

MR. BOYCE: The rules are there Sterling, use them.

MR. SPEAKER: The motion before the House is the amendment, moved by the Honourable Minister of Consumer and Corporate Affairs.

QUESTION put on the amendment and carried.

MR. GREEN: Mr. Speaker, I think that if we are expelling a member on the basis of conduct, we should have yeas and nays. The amendment is the basis of conduct. All right, I'll wait till it goes.

MR. SPEAKER: We now have the main motion as amended.

QUESTION put on the Motion as amended, MOTION carried.

MR. GREEN: Yeas and Nays, Mr. Speaker.

MR. SPEAKER: Has the Honourable Member support? (Agreed)

Call in the Members.

Order, order please.

The question before the House is the amended motion.

A STANDING VOTE was taken, the result being as follows:

YEAS

Messrs. Adam, Anderson, Banman, Barrow, Blake, Bostrom, Boyce, Brown, Cherniack, Corrin, Cosens, Cowan, Desjardins, Doern, Domino, Downey, Driedger, Einarson, Enns, Ferguson, Filmon, Fox, Galbraith, Gourlay, Hyde, Jenkins, Johnston, Jorgenson, Kovnats, Lyon, MacMaster, McBryde, McGill, McGregor, McKenzie, Mercier, Minaker, Orchard, Parasiuk, Pawley, Mrs. Price, Messrs. Ransom, Schroeder, Sherman, Steen, Uskiw and Mrs. Westbury.

NAYS

Mr. Green.

MR. CLERK: Yeas 47, Nays 1.

MR. SPEAKER: I declare the Motion as amended, carried. The hour being 10:00 o'clock, the House is accordingly adjourned and stands adjourned until 2:00 o'clock tomorrow afternoon (Wednesday).