



Second Session — Thirty-Second Legislature  
of the  
**Legislative Assembly of Manitoba**  
**DEBATES**  
and  
**PROCEEDINGS**

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his staff on the Toronto Transit System and say, look, could we sell you guys some buses like this one, or even better than this. Wouldn't he have been better advised to ride the bus?

**HON. H. PAWLEY:** Let me tell the Honourable Member for Russell I'd prefer to walk and I do walk when I have the opportunity and the time to do it. I'd sooner walk than ride a pony, than to ride a bus, or to ride in a car and, given the appropriate opportunity, Mr. Speaker, let me assure the honourable member I'd prefer to walk it's better for one's health.

### Children's Aid Society

**MR. SPEAKER:** The Honourable Member for Fort Garry.

**MR. L. SHERMAN:** Mr. Speaker, would the First Minister say that when he was out walking on the streets with his colleagues, the other First Ministers, that it was a case of the bland leading the bland? Although that actually was not my question. Actually, Mr. Speaker, the thought just came to me, but I want to direct a question to the Honourable Minister of Consumer Services and ask him that now that he is rushing headlong towards the end of what has been a very difficult session for him, and a very difficult session for the child welfare system in this province, can he advise the House when he intends to dismantle the Children's Aid Society of Winnipeg and replace it with six smaller independent agencies?

**MR. SPEAKER:** The Honourable Minister of Community Services.

**HON. L. EVANS:** Well, Mr. Speaker, we have discussed this subject on other occasions, during the discussions bill, during our Estimates, and we have had various discussions, I guess, in the public media, but what we intend to do, Mr. Speaker, is to proceed methodically with the co-operation of people who are concerned and interested in improving qualities of services for children and their families in the City of Winnipeg. We are going to do this with the co-operation of the Children's Aid Society of Winnipeg and Eastern; we're going to do this with the co-operation of professional workers; we're going to do it with the co-operation of people who are interested and concerned, as we are, and as this government is in improving the quality of services and care for children in need in this province.

**MR. L. SHERMAN:** Mr. Speaker, I understand all that and I've heard it all before, so has everybody else on this side of the House. That was not my question, Sir, my question, which is related to the fact that the Minister is not interested in announcing it in this House, and will do so outside the House when the Legislature is not in Session, my question to him is what is the target date, when is he going to dismantle CAS Winnipeg and replace it with those other agencies?

**HON. L. EVANS:** Mr. Speaker, first of all, the Member for Fort Garry is wrong in his earlier question when he alludes to the fact that the passage of Bill 107

dismantles the CAS Winnipeg because that doesn't happen, that doesn't occur with that bill. That bill simply relates to the makeup of the Board of Directors of the Children's Aid Society of Winnipeg, whether the Board of Directors changes or not does not affect a reorganization or a dismantling of the Children's Aid Society of Winnipeg, not at all. So the Honourable Member for Fort Garry is wrong on that particular issue.

I indicate to him, as I've indicated public in the past, that we are working on a major revision to the Child Welfare Act of Manitoba which will be brought in next year; that we have a lot of homework to do, a lot of research to do and then that work is being done in co-operation with the broad community out there who is as concerned as we are, and I hope the Member for Fort Garry shares our concerns, as concerned as we are to have a better system than we've had to date. Far better so that we can minimize litigation in courts; so that we can reduce the costs per child spent by this very large Children's Aid Society we have in Winnipeg; so that we can have a system that is more community based, a system that is more culturally relevant and a system that is going to be more sensitive to the needs of children in this province. We care about the children, we care about these families in need, the members across the way can be flippant about it but we're going to do something about it.

**MR. SPEAKER:** Order please, order please. The time for Oral Questions has expired. Are members prepared to proceed?

### COMMITTEE CHANGES

**MR. SPEAKER:** The Honourable Member for Emerson.

**MR. A. DRIEDGER:** Mr. Speaker, I have a committee change under Privileges and Elections: Brown for Gourlay.

**MR. SPEAKER:** The Honourable Member for Riel.

**MRS. D. DODICK:** Mr. Speaker, I have a committee change under Privileges and Elections: The Member for The Pas for the the Member for St. James.

### ORDERS OF THE DAY

**MR. SPEAKER:** The Honourable Government House Leader.

**HON. R. PENNER:** Mr. Speaker, by agreement with the Opposition House Leader, the Standing Committee on Privileges and Elections will meet immediately in one of the committee rooms to consider some of its organizational work. The business of the House will continue and the Deputy House Leader will be calling business, the first item of which will be the Aboriginal Resolution.

### CONSTITUTIONAL AMENDMENT RE: ABORIGINAL RIGHTS

**MR. SPEAKER:** On the proposed motion of the Honourable First Minister, proposed Resolution

regarding Aboriginal Rights, standing in the name of the Honourable Member for Emerson.

**MR. A. DRIEDGER:** Mr. Speaker, we're prepared to see the resolution go.

**MR. SPEAKER:** Are you ready for the question? The Honourable Minister of Northern Affairs.

**HON. J. COWAN:** Thank you, Mr. Speaker. I rise to participate in this debate primarily due to a number of questions which were addressed to the House and to members on this side by the Member for Turtle Mountain during his contribution to the debate on the resolution. I will be brief in my comments in that much that has been said before me has been done so much more eloquently and in much more detail than I could do on this occasion. However, I do want to specifically answer the questions as much as is possible that were put forward by the Member for Turtle Mountain.

As you are aware, Mr. Speaker, the resolution was passed unanimously in the House of Commons on June 29, 1983. The Senate, on the same day, adjourned debate on the resolution, referring it to a Senate Standing Committee on Legal and Constitutional Affairs for the purposes of further study and report back. The Senate is holding hearings on the resolution on September 7th to the 9th of this year, and I am informed that it will most likely resume sitting on September 22, 1983. The Legislatures of New Brunswick, Nova Scotia, Prince Edward Island and Alberta have also adopted the resolution by way of similar motions in their respective Houses. It has been tabled in Ontario, British Columbia, Saskatchewan and, of course, in Manitoba.

Without going into the detail on the resolution, I do want to specifically address some of the specific questions that the Member for Turtle Mountain put to us.

The first question was one concerning the effect of Section 25(b) in regard to the Northern Flood Agreement and perhaps the Forebay Agreements in Manitoba. That section, of course, read previously that "... any rights or freedoms that now exist by way of land claims or agreements or may be so acquired..." in the previous amendment to the Constitution; the amendment as it reads now talks about "... existing treaty rights that may now exist by way of land claims settlements or may be so acquired..."

The Member for Turtle Mountain asked the question as to what effect that retroactive provision of the new wording would have in respect to the Northern Flood Agmt. We both had opportunity this morning, during the committee hearings on this matter, to seek advice and to hear comments mostly by way of opinions as to any suggested impact. I learned by way of those conversations and dialogues that others are of the opinion, firstly, that if indeed it were to constitutionalize the Northern Flood Agreement and the Forebay Agreements, the impact, in actuality, would not be significant. We heard from a learned lawyer to that effect. At the same time, we heard that same individual say that he could not give an opinion as to whether or not this particular provision would bring under the Constitution those two agreements. Not being a lawyer and not having studied the matter in fullness enough

to be able to suggest differently, I would have to accept - and I heard no other differences expressed in the committee - that in fact that would be the case.

I also have to indicate that it was not the intention of those individuals who are reviewing the drafting of the amendment at the time it was being put forward for approval by those at the Constitutional Conference that such would be the case. The First Minister, in his comments on debate on this item in this House, suggested that that provision was designed to apply more or less to settlements such as the James Bay Agreement and similar settlements.

I am not of the opinion, nor have I heard others express the opinion, that the Northern Flood Agreement is similar in enough respects to be placed in the same category as the James Bay Agreement. As a matter of fact, we requested one of the persons making representation to the committee today to comment upon that. The question that was put to him directly was in the context of the dialogue which was ongoing about the constitutional amendment. Was he of the opinion that the Northern Flood Agreement was similar to the James Bay Agreement? He indicated - and I believe I understood him properly - that there were certain similarities in that they were agreements, but that there were a larger number of dissimilarities when put in the context of the Northern Flood Agreement. That is certainly the opinion of this government.

We had not intended that the Northern Flood Agreement be constitutionalized by way of this amendment. I heard of no remarks by others who were involved in the discussions at the time that that was an intention, and it certainly is our opinion that, in fact, that is not the effect. In other words, to state very clearly for the record, we do not believe that the constitutional amendment as put forward would improve the Northern Flood Agreement and/or the Grand Rapids Forebay Agreements.

Now that is an opinion, and I very carefully have crafted my words today to indicate that it is our opinion. It is a very strong opinion and one which we firmly hold. It is opinion based on our reading of it; it is an opinion based on our understanding of the discussions that went on in the preparation of that actual wording.

There may be those who disagree with that opinion and certainly the question which the Member for Turtle Mountain put forward is one that bears further consideration, but at this time we have not been advised of anything that would dissuade us from our original opinion that, in fact, we were not including those two agreements or any other agreement of that nature existing across the country, by way of adoption of this resolution.

We very specifically felt that it dealt with agreements such as the James Bay Agreement where there was extinguishment of treaty obligations. In the Northern Flood Agreement, that was not the case. There was a settlement proposed as a result of land that had been used for extinguishment purposes being reacquired by the province and compensation being paid for that.

So we believe that the significant difference between those agreements, in fact, differentiate enough to allow us to have the opinion that the Northern Flood Agreement and the Grand Rapids Forebay Agreements were not a part of the discussions and will not be affected by the passage of the resolution.

It might be important to note that the particular amendments which we're talking about now were adopted fairly much at the insistence of the ICNI and the AFN delegations at the March conference to safeguard the rights of their constituent organizations, who either had never formally entered into treaties or agreements with the Federal Government but are in the process of doing so as is the case with the ICNI, or who have already done so and wanted to see some protection afforded to those agreements, which is the case with the AFN and the James Bay situation.

These agreements are expressly referred to as modern treaties, and I put the word "modern" treaties in quote. They were referred to in that way at the March conference and the James Bay Agreement was cited as an example. The Federal Government refers to these as comprehensive settlements by the Federal Department of Indian Affairs Claims Policies Group. They are intended to extinguish aboriginal right where it continues to exist in non-treaty areas. They are quite different from the Northern Flood Agreement and Grand Rapids Forebay Agreement, which are basically compensation agreements concluded in areas long extinguished of aboriginal title through the signing of specific treaties.

I hope that has answered the questions of the Member for Turtle Mountain. I have attempted to provide him with what I believe was the intent of the drafters of the particular amendment. I've done that because he, himself - and I agree - indicated that if that amendment were taken to court, it might be helpful to have on the record, very explicitly so, some reference as to the intentions behind the wording. I hope that I have been able to allay some of his concerns by providing my perception of what transpired as part of that drafting, and the opinion of the government as to the effect of the amendment as it now stands. I'd be pleased to elaborate upon it by way of questions after my contribution if he feels that might be required.

The other question which he had was in respect to the proposed Section 35(4) which provides, quote: "Notwithstanding any other provisions of this act, the aboriginal and treaty rights referred to subsection (1) are guaranteed equally to male and female persons."

This amendment was brought about by the insistence of the Provincial Government and other organizations contained within the umbrella Indian organizations. As the Member for Turtle Mountain clearly suggested, and he is right in his opinion, there was some concern about the impact of that agreement by delegations representing Indian organizations. They suggested that the matter of who was a member of a Band was a matter that would be reserved to that Band to decide. Of course, The Indian Act says differently and there is an ongoing debate that is not new and is not settled, around that particular issue. What we attempted to accomplish in the drafting of this particular section was to indicate that there were equality provisions in respect to the aboriginal rights referred to in subsection (1). It does not extend rights, but it just says, where those rights exist they shall exist equally and shall be guaranteed equally to male and female persons.

The clause specifically addresses the problem within The Indian Act legislation which denies Indian status and attendant rights of Indian women who marry non-Indian persons and also confers Indian status to non-Indians who marry status Indian males.

I do not want to speak on behalf of the Indian organizations at this time but I do want to indicate to members of House who were not present at the committee meetings, what they had to say when questioned directly on this item by the Member for Turtle Mountain.

The question - and I believe it is one that bears some consideration and certainly was appropriate to address at that time - was, would this mean that if a non-Indian male married a status Indian woman, would the non-Indian, non-status male obtain status by act of that marriage. Or does it mean, conversely, that if a status Indian male marries a non-status Indian woman, as is the case now, the non-status Indian woman attains status?

They indicated a couple of things: 1. They believe that the matter of Band membership is a matter that the Bands should decide internally and, 2. I think two representatives or two Chiefs of two Bands stated very clearly that, no, they did not believe that this would require a Band to give status to a male who was non-status who married a status Indian woman. I concur with their interpretation of the particular amendment, although there are some differences of opinion that exist in that regard as well. But again, it was to make certain that rights were guaranteed equally and not to extend or derogate from rights that existed already.

I don't believe that I can add more to that answer, other than to reference individuals to the particular debate which went on in the committee hearings.

I hope that we have been able to answer the two main questions which the Member for Turtle Mountain requested us to review. Of course, as I indicated earlier, if he wishes to ask further questions, I will attempt to answer them at this time, if possible, or to return with the answer at a later date, if that is not possible.

Having said that, Mr. Speaker, I wish to add my voice to the committee which commended this resolution to the House. It provides an opportunity for an ongoing process to deal with some very complex issues in what I believe to be the appropriate fashion, through political representatives of respective organizations who will be affected by any such changes and in an atmosphere of mutual trust and co-operation.

For that reason I commend it to you and look forward to the ongoing constitutional conferences which are mandated by this particular amendment.

**MR. SPEAKER:** The Honourable Member for Turtle Mountain.

**MR. B. RANSOM:** Mr. Speaker, the Minister indicated that he would entertain a question and I have at least two questions that I'd like to put to the Minister.

He indicated this morning that we had listened to submissions and opinions expressed by chiefs and by a lawyer who was in fact representing the Indian Bands. But did the government seek advice from any constitutional lawyers with respect to the possible meaning and ramifications that might flow from this amendment?

**MR. SPEAKER:** The Honourable Minister of Northern Affairs.

**HON. J. COWAN:** I'm aware, generally, that we have sought advice in that regard. I would have to refer you

specifically to the Attorney-General to provide details as to the occasions on which we sought that advice and the direct advice that was forthcoming. I had asked staff of my own department who had been involved with this matter to review it and to seek advice, as well. The comments which I have provided to you today are in part their response and, of course, in part an analysis of my personal reflections on the process as a participant.

But, yes, we have sought such advice to perhaps try to anticipate the second question, or another question. The advice is such that one can, at the end of all that review and analysis, say there still is a question that remains unanswered. However, the opinion and the consensus, as much as is possible to develop around this issue, seems to indicate that, in fact, the Northern Flood Agreement and the Grand Rapids Forebay Agreement would not be constitutionalized by this particular amendment, but there is a difference of opinion among experts, as oftentimes there are on matters such as this.

**MR. SPEAKER:** The Honourable Member for Turtle Mountain.

**MR. B. RANSOM:** Perhaps, Mr. Speaker, then the Minister would undertake to provide us with some copies of the opinion if the opinion is a written opinion.

One further question, I want to have this phrased in such a way that it isn't ruled out of order by seeking a legal opinion, I'm interested in whether or not the Minister can give an indication, if he knows of situations where an Indian woman marrying a non-Indian man has been deprived of aboriginal rights through application of The Indian Act.

**HON. J. COWAN:** Again, that's a question that I would have to take as notice and, in response to the other suggestion, I indicated the Attorney-General had undertaken some of that activity, my staff had undertaken some of that activity. If there are written opinions I'll certainly be prepared to forward them to the member opposite.

**MR. B. RANSOM:** Can the Minister tell me whether or not an Indian woman then who has married a non-Indian man loses any rights, at the moment? Does that woman lose any rights that she otherwise would have by way of being a band member or having treaty status?

**HON. J. COWAN:** My general perception is that she does; perhaps, the Member for Rupertsland, who is far better versed in this particular subject, might want to elaborate upon the specifics if you have questions as to how that would apply specifically. If I understand your question correctly, yes, they would lose certain rights which accrue to them by way of status.

**MR. SPEAKER:** The question before the House is the proposed resolution by the Honourable First Minister referring to Aboriginal Rights. Do you wish the resolution read?

**QUESTION put, MOTION carried.**

**MR. SPEAKER:** The Acting Government House Leader.

**HON. A. MACKLING:** Yes, Mr. Speaker, we go to Report Stage on Bill 87 and Bill 60.

## REPORT STAGE

### BILL 87 - THE WORKPLACE SAFETY AND HEALTH ACT

**MR. SPEAKER:** Shall the Report of the Committee on Bill 87 be concurred in?

**MOTION presented.**

**MR. SPEAKER:** The Honourable Minister of Northern Affairs.

**HON. J. COWAN:** Mr. Speaker, I move, seconded by the Minister of Natural Resources

THAT subsection 40(1) of Bill 87, An Act to amend The Workplace Safety and Health Act be amended by striking out the words "or any addition to" in the 2nd line of Clause (c) thereof.

**MOTION presented and carried.**

**MR. SPEAKER:** Shall the Report of the Committee on Bill 87, as amended, be concurred in?

The Honourable Minister of Northern Affairs.

**HON. J. COWAN:** Yes, excuse me, Mr. Speaker, there is another amendment.

THAT Bill 87, An Act to amend The Workplace Safety and Health Act be amended by striking out the proposed subsection 40(1.1) of the Workplace Safety and Health Act set out in Section 6 thereof and substituting therefor the following subsections:

Exception of limitation to clause (1)(a).

40(1.1) Notwithstanding clause (1)(a), the Lieutenant-Governor-in-Council may designate an individual business office or retail store or classes of business offices or retail stores or similar workplaces where safety and health committee is not required to be established until the number of workers exceeds 50.

Determination of number of workers.

40(1.2) For the purposes of clauses (1)(a) and 41(1)(a) and the subsection (1.1) the number of workers employed at a workplace shall be determined by averaging over the previous 12 months the number of full and part-time workers present each working day.

I move that, seconded by the Minister of Highways and Transportation.

**MOTION presented and carried.**

**MR. SPEAKER:** Shall the Report of the Committee on Bill 87, as amended, be concurred in?

The Honourable Minister of Natural Resources.

**HON. A. MACKLING:** Yes, Mr. Speaker, with leave, call third reading of Bill No. 87.

**MR. SPEAKER:** We have the vote on the concurrence before it is at third reading.

**HON. A. MACKLING:** Very well.

**MR. SPEAKER:** The question before the House is shall the Report of the Committee on Bill 87, as amended, be concurred in?