

**Fourth Session - Thirty-Seventh Legislature**  
**of the**  
**Legislative Assembly of Manitoba**  
**DEBATES**  
**and**  
**PROCEEDINGS**  
**Official Report**  
**(Hansard)**

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**MANITOBA LEGISLATIVE ASSEMBLY**  
**First Session—Thirty-Eighth Legislature**

<b>Member</b>	<b>Constituency</b>	<b>Political Affiliation</b>
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ALLAN, Nancy	St. Vital	N.D.P.
ASHTON, Steve, Hon.	Thompson	N.D.P.
ASPER, Linda	Riel	N.D.P.
BARRETT, Becky, Hon.	Inkster	N.D.P.
CALDWELL, Drew, Hon.	Brandon East	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
CHOMIAK, Dave, Hon.	Kildonan	N.D.P.
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DACQUAY, Louise	Seine River	P.C.
DERKACH, Leonard	Russell	P.C.
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FAURSCHOU, David	Portage la Prairie	P.C.
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GERRARD, Jon, Hon.	River Heights	Lib.
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LATHLIN, Oscar, Hon.	The Pas	N.D.P.
LAURENDEAU, Marcel	St. Norbert	P.C.
LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
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MITCHELSON, Bonnie	River East	P.C.
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ROCAN, Denis	Carman	P.C.
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SMITH, Scott, Hon.	Brandon West	N.D.P.
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TWEED, Mervin	Turtle Mountain	P.C.
WOWCHUK, Rosann, Hon.	Swan River	N.D.P.

## LEGISLATIVE ASSEMBLY OF MANITOBA

Thursday, December 12, 2002

The House met at 10 a.m.

### PRAYERS

### ORDERS OF THE DAY

### PRIVATE MEMBERS' BUSINESS

### DEBATE ON SECOND READINGS PUBLIC BILLS

#### Bill 200—The Smoke-Free Places Act (Non-Smokers Health Protection Act Amended)

**Mr. Speaker:** As previously agreed, this morning we will deal with Private Members' Business, and the first up on the Order Paper is to resume debate on second reading of Bill 200, The Smoke-Free Places Act (Non-Smokers Health Protection Act Amended), standing in the name of the honourable Member for Dauphin-Roblin (Mr. Struthers).

Is it the will of the House for the bill to remain standing in the name of the honourable Member for Dauphin-Roblin?

**An Honourable Member:** No.

**Mr. Speaker:** No. Leave has been denied.

**Hon. Dave Chomiak (Minister of Health):** Mr. Speaker, thank you for the opportunity. I welcome the opportunity of speaking to the private member's bill brought forward by the Member for Carman (Mr. Rocan) with respect to this particular initiative.

Mr. Speaker, the issue of smoking in public places and the general prohibition on smoking has been a public policy concern in Canada for a number of years, indeed in North America. It is an issue that clearly all Health ministers and all legislators and all Canadians are interested in. There has been a variety of regimes and a variety of legislative regimes that have been put in place with respect to smoking across North America and across the country.

This Legislature was one of the first legislatures to put in place a public smoking prohibition and legislation in the nineties, two pieces of legislation, one which was introduced and then one which was subsequently amended dealing with smoking in public places that put restrictions on the ability to smoke in public places, most notably hospitals, schools, institutions and prohibitions with respect to restaurants and other forms of public facilities. That legislation also provided municipalities with the delegated power to make particular prohibitions in their particular municipal jurisdiction.

Mr. Speaker, clearly, second-hand smoke is a major concern of all Canadians. Clearly, the issue of smoking and the issue because of its health consequences is very high in terms of a preventative measure for all Manitobans and all Canadians.

Manitoba has or has had one of the highest youth smoking rates in the country, statistically speaking. As a consequence, as a government, we have been very aggressive in our efforts to ensure that young people either give up smoking or do not take up smoking in the first place. Quite clearly, evidence indicates that is the significant most important factor in dealing with smoking.

Mr. Speaker, second-hand smoke will not become a problem if we eliminate as much smoking as possible. That is why the efforts of the Government over the past year have been directed at those prohibitively high smoking rates for young people, our initiatives that deal with smoking cessation programs in high schools, our initiatives that deal with providing assistance in that regard. Our initiative that was passed by this Legislature recently dealing with the removal of smoking products in places where youth attend has been recognized by CancerCare Manitoba as the single most important thing done in smoking in this province or in this country ever.

I am surprised the Member for Fort Whyte (Mr. Loewen) voted against it, as a Health critic, that he voted against something that was claimed by CancerCare Manitoba to be the most important initiative.

Mr. Speaker, in addition, we have put in place a whole series of measures and initiatives dealing with youth smoking. The issue of smoking was recently debated at the AMM convention. At that point it showed the very divisive nature of regulations and laws in that effect. No Canadian province has passed a province-wide total ban on smoking. No Canadian province—[*interjection*] The Member for Turtle Mountain (Mr. Tweed) will get his chance to speak. I do not know if he attended AMM and had occasion to listen to what the debate was or if he has been back in that area of the province, but he will have an opportunity to speak in this debate or any other debates.

Mr. Speaker, the AMM resolution was defeated at the AMM. Therein lies part of the dilemma with regard to smoking bans. We have in this Legislature provided municipalities with the authority to put in place various smoking bans and some municipalities have taken that power.

At the AMM meeting, there was a vigorous debate, and essentially the AMM said to us as an entity that we have this power, we will continue to have this power and we will recognize the power for what it is, that municipalities across the province have the ability to put in place smoking measures. To that end, we support municipalities in that regard.

We do have a bit of an anomaly in this province with respect to smoking. We have, for example, in the city of Winnipeg a ban that prohibits smoking in public places where children attend. That is a ban within the municipality of the City of Winnipeg. We have another ban that has been put in place with variations in the city of Brandon which is a more comprehensive ban with respect to smoking in public places. The Winnipeg ban will soon be in operation for a little over a year. The Brandon ban has been in operation for a number of months.

We have in the provincial framework a patchwork approach right now with respect to

smoking, overall provincial jurisdiction that has enabling legislation to the municipalities and various municipalities choosing, for one reason or the other, to determine within their jurisdiction. That is within their power. That is what they have done.

Mr. Speaker, at the Health ministers' level, we have canvassed this extensively. It is very clear that all, regardless of political stripe, all governments, all health ministers, all regimes are doing what they can and what they are able to do within the context of their own environments to reduce not only smoking but to reduce the effects of second-hand smoke in the environment.

I heard, Mr. Speaker, a couple of things. Firstly, you will note that the federal government in its recent new advertising initiative has focussed extensively on smoking and second-hand smoke. I also listened very attentively at the hearings we had for our smoking initiatives. I listened very attentively to the presentations made by many organizations, the vast majority of whom supported our ban with respect to advertising, but I did note there was a strong undercurrent of support for a total ban on smoking in all public places with respect to second-hand smoke.

\*(10:10)

I also note that the Member for Carman (Mr. Rocan), whom I have had discussions with and whom I respect a good deal, not only in his role as MLA, but in his former role in the chair as Speaker of this House, had made a very impassioned plea at that time, a very articulate and a very impassioned plea for the bringing in place of a province-wide smoking prohibition not on the basis of any other motivation other than the fact that second-hand smoke has been demonstrably shown to affect the health of many individuals. In effect, Mr. Speaker, it creates a good deal of difficulty in the health of individuals.

The Member for Carman, both prior to that presentation and subsequent to that, has had numerous discussions with myself with respect to how do we deal with the issue of a public ban in smoking and a province-wide ban. We have

had numerous discussions in that regard. It is very clear that smoking in second-hand places is a health problem for innumerable Manitobans. It is very clear that, in this province, we have had at least two municipalities adopt smoking bans in public places but with different criteria attached to that.

Mr. Speaker, I think that the Member for Carman has done a service to the public of Manitoba in a very non-partisan way by bringing forward this debate to the Chamber of the Legislature, where we have the opportunity to debate it in a non-partisan sense, because I think, when it comes to issues of public health of this kind, we are all Manitobans, and we are all endeavouring to do the best we can for all of our constituents. That means protecting constituents from the effects of second-hand smoke. It is a difficulty that I think we have to come to grips with.

In the first instance, as I have indicated earlier in my remarks, no Canadian province has passed a province-wide total ban on smoking. I have made that argument. Secondly, Mr. Speaker, in Manitoba, we have enabled municipalities to have the power to put in place, as the Government that is delegated with authority at the local level, with the authority to make determinations like that. Several municipalities have put in place those bans.

We are not unaware of the ramifications that some of these bans have had on surrounding municipalities and the impact that it has had on surrounding municipalities, Mr. Speaker. There has been some profound concerns raised and some significant debate that occurred as a result of some of these concerns raised by surrounding municipalities. So we in this Chamber have both the responsibility and the difficulty of trying to come to grips with how we deal with these conflicting values, the value that we know second-hand smoke causes a difficulty, the fact we know that no jurisdiction has it, but we also know that some municipalities have enacted legislation within their authority to ban smoking in public places.

We are faced with this dilemma, and how do we move forward on a policy, from a healthy public policy standpoint, to deal with these

issues, Mr. Speaker? How do we best protect the public, and how do we move forward?

Mr. Speaker, I have discussed this with the Member for Carman (Mr. Rocan), and I appreciate his advice. I appreciate his concern, and I appreciate the public responsibility that he has taken by bringing in place a private member's bill. I know how difficult these issues are within various communities of people and within various groups and organizations that deal with this issue. He has taken it head-on and asked us to bring in place a provincial-wide ban on smoking in public places.

I think, Mr. Speaker, that at this point we are not in a position. We are maintaining our policy, but I think we can and should move this forward. What I am proposing with respect to this particular bill is that we examine, what we do is, we do evidence-based analysis on this. We examine the experience of the municipalities that put in place smoking bans, that is, the municipality of Winnipeg in particular and the municipality of Brandon, we look at the situation after a legitimate period of time in which they have had to have the bans operate, look at the effects economically, socially, health-wise of these bans, and make a determination as to what is the best next step for the Province to take in this regard, which could be to continue the policy of having municipalities have the discretion or to bring in place a province-wide initiative.

At this point, I think it is in our best interest as a Legislature, I am going to propose, Mr. Speaker, that we adjourn debate on this particular item but propose that we enact a committee of this Legislature, not a standing committee, but a committee of this Legislature with composition from the opposition party, with composition from the governing party that will examine the situation in Brandon, will examine the situation in Winnipeg, will examine the situation province-wide after Brandon and Winnipeg have had ample opportunity to examine the experiences and the ramifications of their two different initiatives.

Approximately September or the early fall of next year, after Brandon has been in place for

a year and after Winnipeg has been in place for a year and a half and other municipalities have examined it, to take a look at those particular provisions, to take a look, to travel province-wide, meet with groups and organizations, including representatives of industry, representatives of the community, representatives of the various municipalities with a committee with representation from the opposition party, with representation from the governing party in a non-partisan sense—it has been done in other provinces—and examine the legislation and make recommendations back to us as to what we should enact in this regard.

I thank the Member for Carman (Mr. Rocan) for assisting me in this regard and concurring in this particular aspect.

**Mr. Speaker:** Order. The honourable member's time has expired. Prior to recognizing the honourable Member for Arthur-Virden (Mr. Maguire), I am going into a territory where I have not been before, so I am going to be seeking some advisement from the House, because when we recessed, when we left the session to reconvene, the motion read that notwithstanding any rule or practice of this House, Bill 204, The Smoke-Free Places Act (Non-Smokers Health Protection Act Amended), be reinstated during the Fourth Session of the Thirty-seventh Legislature and be deemed to have been introduced, read a first time and moved for second reading.

The question was put. It was agreed to, and it was left standing in the name of the honourable Member for Dauphin-Roblin (Mr. Struthers). As we all know, the practice of the House is, once a member has spoken, they do not get an opportunity to speak a second time unless it is the mover of the motion who would be closing debate. From the records I have, it shows that the honourable Member for Arthur-Virden has already spoken once to this bill. So I would need some direction from the House here. *[interjection]* Yes. That is my interpretation here. He has already spoken on it. Fair? Okay, but I would need a new speaker then.

**Mr. John Loewen (Fort Whyte):** Okay, well, thank you, Mr. Speaker. I appreciate the opportunity to speak to this bill. I appreciate the

efforts put forth by the Member for Carman (Mr. Rocan) in raising this issue in the House and bringing this bill to the House so that we would have an opportunity to debate it. I listened very carefully to the words from the Minister of Health regarding this bill.

I think it is unfortunate that the minister is not prepared, has not been prepared and this Government is not prepared to take a leadership role in this issue. I think this is the first time in the last two weeks I have heard the minister on his feet either in this House or outside this House where he has not mentioned the Romanow report. I find it somewhat surprising that he did not recognize that in Mr. Romanow's report he clearly identified two specific health problems that we needed to deal with as Canadians.

#### Point of Order

**Mr. Speaker:** The Official Opposition House Leader, on a point of order.

**Mr. Marcel Laurendeau (Official Opposition House Leader):** I hate to interrupt the member when he is in full flight, but, Mr. Speaker, the Minister of Health (Mr. Chomiak) has made certain commitments that will happen in the near future.

There is one further thing that we would request, and that is that the bill not lose its place on the Order Paper, that it remains the first bill to be debated when the session comes back in the spring. I think if you sought leave of the House, we would make sure that would happen.

**Mr. Speaker:** It has been proposed that the bill would keep its place on the Order Paper when we recess the House, and when we reconvene it would keep its place on the Order Paper, subject to renumbering? No. *[interjection]* The agreement is for the bill to keep its number and remain in the same spot when we reconvene. Agreed? *[Agreed]*

\* \* \*

\*(10:20)

**Mr. Loewen:** As I was saying, I think this was the first time that the minister has been on his feet since the release of the Romanow report

where he has not referred to it. I think that it is unfortunate that he has failed to acknowledge in his speaking on this bill that the two areas that Mr. Romanow identified as being crucial in terms of improving the health care system in Canada in terms of prevention were smoking and obesity.

I think the report speaks very, very clearly on this. It identifies the cost, not only in terms of lives lost, not only in terms of dollars lost as a result of direct illness but in terms of productivity loss as a result of smoking and the effects of second-hand smoke in our country.

Mr. Speaker, as he has clearly identified, you can magnify those numbers somewhat in Manitoba as a result of the fact that our youth have one of the highest smoking rates in all of Canada. For the minister to stand in his place and say that they have made a dent in that or are going to make a dent in that with the somewhat weak measures that they have brought in, I think, does not represent to the public of Manitoba the incredible harm that is caused and the incredible expense, not only to the health care system but in terms of loss of productivity within our province.

I would look for this minister and I would look for this Government to take a stronger role, to show more leadership on this issue. I believe, as he indicated, he knows what the right thing to do is, and for him, in the same speech, to try to lay it off on municipalities at the one end in terms of, well, the municipalities should make their own decisions and at the same time try to lay it off on the federal government, to say we should have some national policy, I believe that to be irresponsible.

This minister has a constitutional authority and has a constitutional responsibility to care and manage the health care system in the province of Manitoba. Mr. Speaker, from his words I take it that all he wants to do is absolve himself of any responsibility with regard to this issue. He knows that smoking and the effects of second-hand smoke come at a tremendous price in this province. He needs to take a leadership role. His Government needs to take a leadership role on this issue, and I think it is unfortunate that they are not.

One can ask: Why are they not? Mr. Speaker, I think in this case, as with many cases, the answer simply is money. This is a government that is addicted to revenue, and for them to look at taking significant measures which are going to somehow decrease the amount of revenue that they get from tobacco tax, I think, is something that they cannot stomach. One only needs to look at what they have accomplished with their increase in tobacco tax and the whole premise that it would be brought in, and the increases they have put in the tobacco tax would somehow magically reduce the smoking rates and increase the health of Manitobans, I think has proven to be a failure, but what it has done for them has been a tax grab.

Their provincial tobacco tax revenue is expected to go up by over \$40 million in one year, \$40 million in their coffers. So the answer, I believe, as to why they will not look seriously at a ban on smoking in public places simply comes down to money. This minister's own knowledge—and detailed knowledge, I must give him credit for that—of the problems caused, not only by smoking but by second-hand smoke have been overridden by his Government's need to have more money to spend. I think that is a disservice to the people of Manitoba.

It is not only with regard to the tobacco tax. This is a government that has become addicted to lottery revenue. This minister and the other members of his Cabinet know full well that, if you were to ban smoking in public places, you would be banning smoking in areas where they have VLTs, where they generate VLT revenue. They know full well that if people are not allowed to smoke at those VLTs there is a good chance that VLT revenue will go down. So they will lose on two bases. I think that is the motivation behind this Government's unwillingness to attack this issue in a serious manner.

Now the minister mentioned that there had been no provinces in Canada that have had a total ban on smoking. That may be the case, but he knows full well that there have been provinces that have tried to attack the issue in a meaningful way. B.C. had a ban on smoking I believe in all its bars and restaurants for virtually

a year, Mr. Speaker. We have seen municipalities in Manitoba. Both Brandon and Winnipeg try to deal with this issue.

The minister referenced the recent AMM meeting that defeated a motion. Well, he knows or he ought to know that what really transpired there was that the municipalities were looking for the Province to show some leadership. What they want is the Province to come out with a policy that will deal with this issue in a fair and even-handed manner all across the province. They do not want to pit municipality against municipality. Brandon does not want to be the only one on its own and have communities like Elkhorn on the other side of the fence. So the communities and municipalities, the cities, the towns, the people in this province are looking for this Government to show some leadership on this issue.

I would urge this minister to act and to act quickly. I appreciate the fact that the minister has agreed to set up a committee at the urging of the Member for Carman (Mr. Rocan) and that we will have people travelling the province to listen to what people have to say, but I would remind this minister that he needs to take full responsibility for his lack of action on this. It has been three years. He has known about this issue. He has had ample opportunity to deal with this issue. This issue has been dealt with and fumbled with and stumbled with by the City of Winnipeg for well over a year. He could have provided a solution to that. Instead, what do we see? We see this minister standing back, and on the one hand, less than a year ago saying the Province is not going to get involved. We are going to stand on the sidelines, pit community against community and let them fight it out.

I would ask the minister to, at some point, explain to this House his logic behind that. Explain to Manitobans what his reasoning is because without that the only conclusion I think that Manitobans can reasonably draw is that it is all about money. It is all about this Government's need to maintain and in fact increase their revenue from tobacco taxes. It is all about this Government's desire to maintain and increase its revenue from tobacco taxes. It is all about this Government's desire to maintain and increase its revenue from gambling and from VLTs.

This has nothing to do with this Government and any possible view it might have on what society should look like, what type of community we should have in the future, what type of province we should have in the future, and I think the minister is doing a disservice, not only to his office but to the people of Manitoba in not recognizing this and in not taking this on in a much more aggressive manner.

The measures that he spoke of, the measures that he brought forth are minor in nature. They have not and will not prove to have reduced the incidence of smoking, the incidence of illness and lost productivity as a result of smoking and second-hand smoke. He will not be able to reduce the incidence of smoking in young people in this province simply by hiding cigarettes. The minister knows or he ought to know that that is not a solution. That is just propaganda. That is just him trying to use words to put himself on the right side of the issue instead of doing what he should be doing, and that is taking strong and quick action on this issue.

I would refer the minister back to the Romanow report. I think, if there is one thing that he could take from the Romanow report and put into action, he should read very carefully Mr. Romanow's words on the cost and the damage not only in terms of financial cost but in terms of human life that smoking and second-hand smoke cause in this country. He should take that matter very seriously, and he should act quickly on it.

I would ask the minister to return to his Cabinet table, to put aside the need for his Government to generate more revenue and to look at doing the right thing for the people of this province, to look at doing the healthy thing, to take his responsibility for health care in this province seriously and to look at this issue seriously and to bring in perhaps even this bill as it stands on a temporary basis. If he thinks he needs to do a further review, he can always adjust it later. He can always have consultations after the fact.

I would urge him to look seriously, and perhaps in the spring he would be willing to have this Legislature take a vote. It is up to him and his party. They, at any point, could allow this Legislature to have a free vote, an open vote,

on this issue. He could advise the Premier (Mr. Doer) to turn his members free. I would urge him to do that because this is a very, very serious matter that needs our attention. This Government needs to put aside their desire to generate more revenue off gambling and cigarettes and tobacco and deal with this issue in a positive manner for the health and for the safety not only of Manitobans today but for future generations. I would urge him to do that.

Thank you, Mr. Speaker.

\* (10:30)

**Mr. Ron Schuler (Springfield):** Mr. Speaker, I want to take a few moments to put my comments on the record on this particular bill that is being proposed.

I would like to recommend to this House that we seriously look at this bill and that we seriously look at this issue. I think we are starting to see in our society an acceptance of the gradual denormalization of the acceptance of smoking. I think it is something that has to be done. Other speakers have spoken about the cost to health care, the quality of life of individuals who smoke, and I appreciate that the whole issue is in transition. The question is: How far is society willing to go on the non-smoking campaign? How far should we be going with our denormalization?

I think one of the things that we have to look at is where we have come from. I would like to point out to the House that clearly before my time, but people have indicated to me that you used to be able to go into a grocery store, stand over the meat counter looking at meat packages that just have that little bit of cellophane over the top of them and smoke. People would stand over the meat counter smoking, looking at what was in the meat freezer or stand in front of fresh bread that was not even wrapped, smoking cigarettes and deciding which loaf of bread they were going to buy. Basically, in a grocery store you were allowed to smoke.

I think, if we would ever see somebody suggest that we would go back to that, it is something that our society would not accept.

Shopping malls, you used to be able to walk in shopping malls and smoke. I still remember

that as a child. You always tried not to walk behind somebody who smoked because you would certainly walk into that.

There used to be a time, Mr. Speaker, when you could smoke anywhere on an airplane. So, if you were a non-smoker and you happened to be sitting next to a smoker, your flight of two hours, three hours, whether it was 40 minutes or four hours, could actually be a very unpleasant situation. I can still remember, when I started flying on airplanes as a young child, that there already was a non-smoking and a smoking section. If you unfortunately got the last seat of the non-smoking section, it did not really matter, because everybody behind you was smoking. I remember that often, if you did not get a non-smoking seat, they would say, well, I am sorry, will you accept a seat in the smoking section?

You used to have those ashtrays that used to be on the handle, and they would still have cigarettes in it if they had not got around to cleaning it, and here you were a non-smoker. I do not think there is anybody today who would suggest that we would go back to allowing smoking on airplanes.

Basically, what we are saying is that movement, you know, is denormalization. I would like to point out there was a time when people were allowed to smoke during movies. I recollect—it has been a while since I was a child—but that people would smoke more up front, and you could see the smoke going up. Then came the rule where you were not allowed to smoke during the movie. Would anybody accept today that we would allow smoking in movie theatres? I do not see that happening.

Mr. Speaker, I have, on numerous occasions, had the opportunity, and do so at least once a year, to go to trade shows across North America, traditionally in Toronto. I have been in New York. Of course, they are always non-smoking. I have had the opportunity to go to Europe and go to trade shows there, where actually they still allow smoking at trade shows. There are a lot of people, a lot of buyers. It is very intense, very stressful. I have been in Europe, where they have allowed cigar, pipe, cigarette, cigarillo, and you are walking, it is very tight quarters, it tends to be very warm because you have a lot of lights

heating up these big halls, and it is absolutely disgusting. You are walking and you are inhaling more smoke than these people are exhaling.

*Mr. Conrad Santos, Deputy Speaker, in the Chair*

I have been to a lot of restaurants in Europe. You want to go in the evening and have a really nice meal. A lot of them, it might have changed in the five years since I have been there, but you could smoke anywhere in the restaurants. It was just awful. I cannot believe that people would, and I have seen it, eat and smoke at the same time. I have never seen that before. Clearly other members still do that in this House, and we will not name where they come from. I do not think we want to go back to that.

I think we should go on the route of the denormalization of smoking. The question to this House is: Are we prepared to go so far as to disallow smoking in all public places? I would suggest to this House that we do a bipartisan committee, we go through the province, and let us see how far our society is prepared to go.

Perhaps I am a little bit more on pushing the denormalization of smoking. I will state personally here and not a caucus or party position that I would like to see smoking disallowed in public places. In fact, I would like it not to be allowed on public property. I find it a concern that young people still find smoking to be cool, to be a really in thing, a neat thing, and you drive by an awful lot of high schools, and there they are all huddled and crammed around the entrance of our schools. I have a real problem with that. Even on the school board when I was on the River East School Board, I had a real problem with that. I think we should just not allow it in public places, particularly around schools. It should not be allowed on school grounds.

Mr. Speaker, I think it is time for this Chamber to take a leadership role. Let us go out there. Let us find how far Manitobans are, and then let us contemplate and decide if we as a group of MLAs are ready to take the next step in denormalization. My comment to this Chamber is it is going to happen anyway. It is where we

will end up going anyway. My question is: Do we have the courage, do we want to go ahead with the issue? That is for us to decide as individuals where we want to go with this issue.

\* (10:40)

I happen to think that society is ready for it. Certainly, I would be interested in seeing what the committee comes back with, but I think it is time. I have mentioned and cited cases where, would we go back to allowing smoking in grocery stores. Would we allow smoking back in airplanes? I think society has accepted that that is not where we are going to go anymore. I think we are now ready for that next step. Canada has been on the forefront of this issue. I think that we should continue to lead, to go in this, the denormalization of smoking. Let us take the next step. Let us do the committee and travel the province and then let us decide as individuals and as caucuses and as a Legislature if we want to go where this particular legislation is trying to lead us. With those comments, I would pass on to the next speaker. Thank you very much.

**Mr. David Faurichou (Portage la Prairie):**

Mr. Deputy Speaker, it is once again a privilege to have the opportunity to rise in the House today and add to the debate on Bill 200, which I very much appreciate has been brought forward into the Chamber by the honourable Member for Carman (Mr. Rocan). I know that the honourable Member for Carman brings forward the legislation from interest that he has personally as well as interests that have been conveyed to him by constituents.

I want to add at this time my recognition, in my tenure, the unprecedented act which saw this legislation carried forward from one session to another by an all-party agreement which, as a member of the Legislative Assembly, I appreciate seeing take place. This legislation was not able to be dealt with in the Third Session of the Thirty-seventh Legislature, and now we have the opportunity to debate it once again in the Fourth Session.

The Smoke-Free Places Act that has been proposed here by the Member for Carman is a very important piece of legislation because it recognizes that the act of smoking in public

places should be prohibited. In doing so, it recognizes the consideration for those of the public that do not smoke. We are all aware that one cannot contain smoke from one area to another without a great deal of ventilation. In most places, that ventilation does not exist. The general public, that is for the most part a non-smoking public, will not have to endure the smoke from others that do.

I recognize the debate that has gone on before and a little bit of history that was provided by the Member for River East (Mrs. Mitchelson). All of us recall in the Chamber a day where smoking was fashionable [interjection] I would like to correct. It was the honourable Member for Springfield (Mr. Schuler) rather than River East—I am sorry—who made that comment earlier. So, recognizing that smoking was very commonplace throughout society here decades ago—in fact, I recall very vividly not participating in smoking myself through high school years or into university, but I recognize that in high school and, in fact, in junior high smoking was very common, and then again in university, one could go into most lecture halls and just sit down, light up a cigarette and go about one's studies in the study halls and the libraries. In fact, in the library, in the Dafoe Library at the University of Manitoba, smoking was allowed and many people did.

*Mr. Speaker in the Chair*

If one were to visit the University of Manitoba today, I do not believe that there is even one area that still allows smoking. Perhaps it is still allowed in the UMSU pub. Maybe it is not called that today, but whether or not it is still allowed in there because I have not visited the UMSU pub in the last couple of decades.

Mr. Speaker, we are living in a very different world than the one of which I speak when I was a student at the University of Manitoba. Much research has gone on to demonstrate without a doubt the ill effects of smoking. We now have many, many programs that are teaching our young people the ills of the habit of smoking and are changing attitudes throughout our society, that smoking is bad for you, is recognized as being bad for your health and is frowned upon in most sectors at the present time.

I believe this particular legislation is in keeping with society's wants. I know, though, that there is quite a large segment of the population that still smokes, but we do have to recognize the wishes and desires of those who do not want to be exposed to smoke, and that is why we are looking specifically in this legislation at public space.

Now, I do appreciate the Minister of Health's (Mr. Chomiak) earlier remarks and commitment to seeing that further debate takes place on this legislation and that the general public has the opportunity to participate in that debate through the public consultation process.

I also want to make certain that it is very clear that the public understands what is effectively defined as a public space, and I hope that the minister clarifies in his own mind as to whether private clubs are included as public spaces or are not. Most notably, the Legion's halls around the province and around the nation are ones that are considered private because you have to be a member in order to gain admittance, and, if not a member, you have to have the sponsorship of a member to enter the facilities and to effectively participate.

It is very important that we very clearly understand what is a public space and what is a private space, so that persons are not going to be disappointed and can make a very clear and definitive decision on whether to support this legislation or not, because I believe that there should be individual rights here in the country in which we live, that those who choose to participate in the act of smoking have areas in which they can smoke, but that area should be designated as space where they can smoke by a private facility designation. So I do want to clarify at this time that we as legislators must respect facilities that are built and operated by individuals that only admit those that are part of a group or organization that has some affiliation with the building by way of ownership or lease or rental.

Mr. Speaker, I do know that we do not want to get into any debate on that at this time, but I do want us to keep that very clear in our minds that those that choose to operate their facilities in a fashion to which they believe is the wishes and desires of the members of that organization, then

they are free to do so, because let us be very much recognizing of those that have served our nation in times of war and that are members of the Canadian Legion and did take up the smoking habit during that time frame and still continue to do so. At this day it should not be expected that they refrain from smoking in their place, because in fact it is their place. The veterans of Canada did invest in those facilities and continue to maintain those facilities through their membership dues and different fundraising activities. So the legions throughout the province, I believe, are one area that must be clearly understood as not being part of this legislation. I hope that the minister shares that particular view.

\* (10:50)

I do want to take this opportunity to thank the minister for his remarks earlier today. I want to also thank the minister on behalf of the Member for Carman (Mr. Rocan), who is the sponsor of this bill and wants to recognize that without the minister's support in this regard this particular piece of legislation would have effectively been dropped from our order paper at the conclusion of the last session, but it was with the support of the minister and the co-operation of all members of the House that this legislation was carried forward from the third to the fourth sitting of the Manitoba Legislative Assembly, of the Thirty-seventh Legislature.

Mr. Speaker, I hope that the public has ample opportunity to participate in the debate on this issue. I do believe, though, that we are recognizing what society wants through adoption of this legislation, because the vast majority of society now does not smoke and does indeed frown upon the act of smoking.

I do want to ask the members of the Government side of the House to continue their consideration of amendments that I suggested in debate earlier this year that not only should one be considerate that the purchase of cigarettes by those under the age of 18 be illegal, but also to consider that possession of tobacco products by those under the age of 18 be also considered illegal, because I know in consideration from the Justice Department that any peace officer that loses absolute 100 percent continued observation

of a transaction between a minor and someone that is of the age of majority that can legally purchase tobacco products, if the transaction between those individuals is just interrupted for even a millisecond, when it comes to court, the police officer cannot say by 100 percent that that transaction did indeed take place because he or she lost sight of the transaction for even a small moment. So it is very, very important that the current legislation be backstopped with, in fact, the possession component within the legislation as well.

I see that, Mr. Speaker, you are asking me to conclude my remarks. My time has almost elapsed, and I do appreciate the opportunity to participate today. Failing another opportunity to rise in the House, I do want to say to all members present all the very best of the season and enjoy your holidays. Thank you.

**Ms. Nancy Allan (St. Vital):** Mr. Speaker, I move, seconded by the MLA for St. James, that debate be adjourned.

*Motion agreed to.*

## SECOND READINGS—PUBLIC BILLS

### Bill 201—The Criminal Organizations Deterrence Act (Local Government Acts Amended)

**Mr. Gerald Hawranik (Lac du Bonnet):** Mr. Speaker, I move, seconded by the Member for Portage la Prairie (Mr. Faurichou), that Bill 201, The Criminal Organizations Deterrence Act, be now read a second time and be referred to a committee of this House.

*Motion presented.*

**Mr. Hawranik:** Mr. Speaker, this bill gives municipalities the power to pass by-laws that prohibit or regulate businesses carried on by members or associates of a criminal organization if the business is used to advance the interests of the criminal organization. The bill also allows municipalities to pass zoning by-laws to deal with places used as residences or meeting places for members of a criminal organization.

The bill, as proposed, is really a community-based solution to criminal organizations. It is a

community-based initiative, and I believe that this bill strengthens communities and strengthens communities' resolve to rid their own communities and their own neighbourhoods of criminal organizations. It allows the members of the community to enforce the provisions, not just police officers or a police chief but members of the community in much the same way as Mayor Giuliani did in New York City.

It uses by-law enforcement as a tool. In fact, any by-law may be enforced and the contravention of it may be enforced by the order of the Court of Queen's Bench upon an action brought by a municipality or a planning district or the minister and general citizens. It is a community-based solution. The community takes ownership and control over its own community, and they have the authority to enforce the provisions as much as local law enforcement authorities.

Who ultimately enforces it? Outside the city of Winnipeg the Royal Canadian Mounted Police have authority to enforce by-laws, and I think that they would show an interest in enforcing this kind of by-law, particularly if they are attempting to get rid of criminal organizations in the province. In the city of Winnipeg, the City of Winnipeg police have authority to enforce it as well.

\*(11:00)

There are some who may think that there are no teeth to by-law enforcement in terms of penalties, but I can tell you that the general provisions of the City of Winnipeg Charter and The Planning Act and The Municipal Act do have teeth. Anyone who fails to comply with a by-law under these acts can be liable to a fine of up to \$1,000 per day as an individual for every day that they are in contravention of the by-law. If you are a corporation, you are liable for up to \$5,000 a day for a contravention of the by-law. In the case of an individual, you can be liable for imprisonment for up to six months. So it does have authority.

In addition, because it is enforced through an order of the Court of Queen's Bench, the Court of Queen's Bench can issue an injunction against the person or the criminal organization.

The order of the Court of Queen's Bench judge can be enforced also by way of a restraining order or an order to force a criminal organization to move out of business premises or even out of a residence. They can actually have an eviction order against them.

An injunction, as I said, can be used to remove the business owners, the business managers or any corporation or criminal organization from the premises. An order can also be made to seize assets of the organization. Failure to comply with the order can result in additional fines, as I mentioned, up to \$1,000 per day of contravention if you are an individual or \$5,000 per day if you are a corporation and even a jail term for up to six months. There are teeth to the enforcement of any by-law. There certainly are substantial fines and other penalties available to encourage compliance with the new by-law.

The bill also permits municipalities to take a proactive approach to crime, not just a reactive one. Businesses require occupancy permits. If at the time of applying for such a permit to a municipal office, if the municipal officer knows that the applicant is in fact a member of a criminal organization or an associate of one, then they can refuse the occupancy permit at that time. The problem can be solved before it starts, before enforcement authorities are forced to act or the general public needs to take action. It is proactive legislation, not reactive legislation.

For The Criminal Organizations Deterrence Act attacks criminal organizations as defined in section 2 of the Criminal Code. It uses the same definition as that proposed by the Minister of Justice (Mr. Mackintosh), in fact, under Bill 2, The Civil Remedies Against Organized Crime and Liquor Control Amendment Act. This is a civil bill, not a criminal one, and therefore proof that the organization is criminal is proved to a balance of probabilities in much the same way as that proposed in Bill 2 and not to the standard of proof beyond a reasonable doubt as required in criminal law.

The proposed bill amends three current provincial acts. The Municipal Act is one of them; secondly, The Planning Act; and the third is the City of Winnipeg Charter. The Municipal

Act applies to all municipal jurisdictions outside the city of Winnipeg. Every rural municipality, every city, every town and every village is ruled by this Act. The City of Winnipeg Charter applies to the city of Winnipeg only. The Planning Act applies to the entire province. The entire province, with the amendments to the three acts as I propose in this bill, is covered.

The proposed bill defines action under three headings. An action is taken or can be taken against members of criminal organizations and against associates of criminal organizations. The three actions I would like to briefly describe for you here today.

First of all, it can attack businesses that are run by criminal organizations. It allows municipalities to pass by-laws to prohibit or regulate carrying on a business by a person who is a member of a criminal organization or is an associate of a criminal organization as long as the business is used to promote the criminal organization itself or otherwise advances the interests of the criminal organization.

The Civil Remedies against Organized Crime and Liquor Control Amendment Act simply takes action against members of criminal organizations, not associates. I understand that the Hells Angels retail outlet, which the Government is targeting, is owned or managed by a person who is in fact not a member of the Hells Angels, and therefore the Government's bill would not be able to shut it down. Our bill is wider and would affect not just members of criminal organizations but would also of course target associates. As a result, I believe that our bill would in fact be effective in shutting down this store.

Secondly, the bill attacks those who are members of criminal organizations or associates of criminal organizations by prohibiting or regulating two or more members or associates of criminal organizations from using a building as a residence.

Thirdly, it would attack members or associates of criminal organizations by prohibiting or regulating the use of land or buildings as a meeting place for that criminal organization.

An exception to those last two actions for use as a residence for more than one member or for the use of land or buildings as a meeting

place, an exception that I have placed in the bill, includes penitentiaries or custodial facilities where inmates are kept in custody or any land or building used by a program operated by or with the approval of the federal or provincial government or municipality which promotes the rehabilitation or reintegration of inmates back into the community. So that is the exception that I carved out of that legislation.

This is the only exception to the provisions which prohibit or regulate the use of land or buildings as a residence for two or more members or associates of a criminal organization or the use of land or buildings by criminal organizations as meeting places. These provisions are designed to ensure that those members or associates of criminal organizations who are using a business as a front for illegal and unlawful activity and those who are using buildings or residences for meeting places are prohibited from doing so. It prohibits these people from getting together and organizing illegal and unlawful activities. It provides a community-based approach where members of every community can participate to keep their communities and their neighbourhoods safe and free from criminal activity by criminal organizations.

I believe that criminal organizations have no role to play in society and they serve no purpose to society. Society cannot and should not tolerate these kinds of organizations and the activities that they are involved in.

Now, there will be some, I believe, who will say, in fact, probably the Minister of Justice (Mr. Mackintosh) will say that it is not constitutionally possible to enact this legislation because it encroaches into the realm of criminal law, which is the responsibility of the federal government, but of course we have heard over the last few days from many others who have in fact made the same comments with respect to the Government's Civil Remedies Against Organized Crime and Liquor Control Amendment Act. Those same comments were made about that act and I am sure there will be some who will be saying the same about this piece of legislation.

The proposed Criminal Organizations Deterrence Act in fact uses the same definition of criminal organizations as that of the Criminal

Code and as well the Government's proposed Civil Remedies Against Organized Crime and Liquor Control Amendment Act. It uses the very same definition as the Government's Bill 2, but that is where the similarity stops. Simply because we use the same definition of criminal organizations as appears in the Criminal Code does not make it criminal law.

Generally, the penalties that are available to a judge in a bill determine whether or not it is criminal law. Under our proposed bill the penalties which are to be assessed and the action which the Court of Queen's Bench can take concerning a breach of this act are exactly the same penalties that can be assessed when someone breaches a by-law of any municipality or city. To call this legislation part of criminal law would be calling our municipal by-laws and our municipal regulations a part of the Criminal Code, which does not make sense. So I do not buy that argument and it is not a valid argument.

I read a *Free Press* editorial a few days ago with respect to commentary on our alternate speech from the throne, that the editor or at least one of the writers believes that our approach may not be constitutional since municipal by-laws cannot regulate who operates businesses. They can only regulate the kind of trade that takes place on land. This is a general rule of law, and there are many exceptions to it. The editorial was made without knowing the specifics of what we propose and the details of what we propose. Our bill will not regulate who operates the business. The operative part of the bill is whether, in fact, the business is being used to promote the criminal organization itself or otherwise advances the interests of the criminal organization.

\* (11:10)

This is no different from zoning by-laws now in place in municipalities. We now regulate uses. We regulate residential zoning by-laws, permit single family dwellings in some places. Commercial by-laws, in fact, regulate what kind of commercial activity takes place. Retail by-

laws regulate what kind of retail outlets take place.

The Criminal Organizations Deterrence Act specifies that members or associates are prohibited, in fact, or regulated with respect to promoting criminal organizations or advancing the interests of criminal organizations. I believe that this provision is no different than current zoning by-laws now in place and in use throughout the province. Those are not unconstitutional and these will not be either.

This bill, I believe, is complementary to Bill 2, not contradictory. It adds an additional tool to fight organized crime, and I believe that members opposite for that very reason should support this bill. We have supported Bill 2 because we believe that it has a place in fighting organized crime. This will be an additional tool that can be used by police forces throughout the province and by communities to look after their community and their neighbourhood.

It is for this reason that I ask everyone, every MLA to vote for this bill. Let us show criminal organizations that we mean business and that we can be tough on crime and criminal organizations. For that reason I ask for their support. Thank you.

**Mr. Stan Struthers (Dauphin-Roblin):** I move, seconded by the Member for Flin Flon (Mr. Jennissen), that debate on this bill be adjourned.

*Motion agreed to.*

**Hon. Gord Mackintosh (Government House Leader):** Twelve o'clock?

**Mr. Speaker:** Is it the will of the House to call it twelve o'clock? [*Agreed*]

Seeing that the hour is twelve o'clock, this House will recess and reconvene at 1:30 p.m.

**LEGISLATIVE ASSEMBLY OF MANITOBA**

**Thursday, December 12, 2002**

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