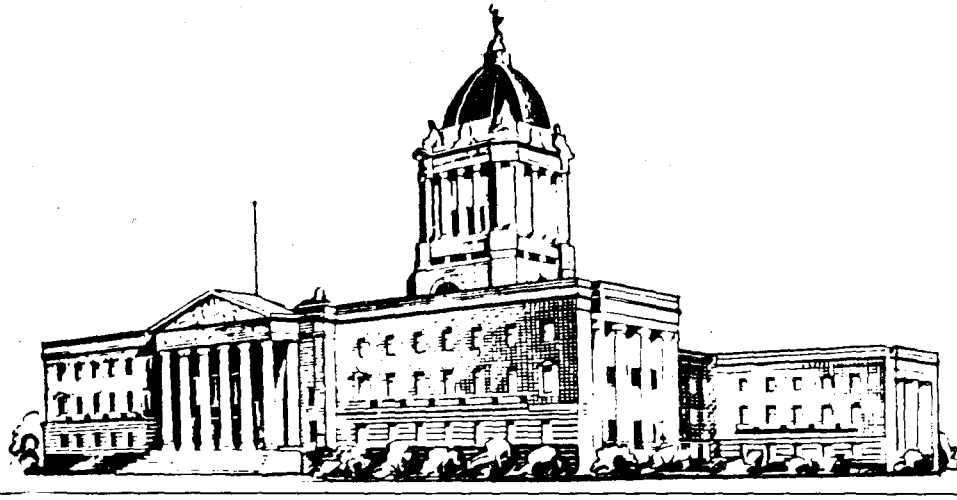
Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMENDMENTS

Chairman
Mr. William Jenkins
Constituency of Logan



2:50 p.m., Tuesday, June 17, 1975.

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LAW AMENDMENTS COMMITTEE
2:50 p.m., Tuesday, June 17, 1975

CHAIRMAN: Mr. William Jenkins

MR. CHAIRMAN: Order please. We have a quorum. Before we start I'll call out the bills that are before the Committee:

Bill No. 28 - an Act to Amend the Employment Standards Act

Bill No. 29 - The Payment of Wages Act.

Bill No. 46 - The Gas Storage and Allocation Act.

Bill No. 55 - an Act to Incorporate La Centrale Des Caisses Populaires du Manitoba Ltee.

Bill No. 57 - The Pension Benefits Act

Bill No. 59 - an Act respecting the Transfer to Federal Business Development Bank of all the Property, Rights and Obligations of Industrial Development Bank

Before we proceed I believe there are some people here that want to make representations. Would they please come forward to the microphone and give me their names and the organization they're representing please.

MR. COULTER: Art Coulter, Mr. Chairman. I wish to speak to Bills 28, 29 and 57.

MR. CHAIRMAN: Thank you. Any further representations?

MR. GUAY: Renald Guay representing La Centrale Des Caisses Populaires with respect to Bill 55. I have no special representation but I am here to answer questions if there are any.

MR. CHAIRMAN: There are no further representations? I call on Mr. Coulter. Bill No. 28.

BILL NO. 28 - AN ACT TO AMEND THE EMPLOYMENT STANDARDS ACT

MR. ART COULTER: Mr. Chairman and gentlemen. We are here in support of the major recommendation in this bill. The 40-hour week is one which we've been long awaiting and we appreciate that it has now arrived.

The other two measures in the bill I'd like to speak to and that is the provisions of The Equal Pay Act now becoming incorporated into the labour code. The changes in the words "identical" which is now being changed to the "same or substantially the same" type of work, we think that that's a little less precise and we appreciate that apparent extension of the wording.

The other area, discrimination cases will now go to the board rather than a referee and to a magistrate. This is in keeping with our thoughts with regard to many matters with regard to labour-management relations that the Labour Board or the Equivalent Wage Board are much more appropriate for dealing with these things than the courts, and therefore we support those major changes or minor changes, as you will. But that's all I have to say on that particular bill. Do you want any questions now on that?

MR. CHAIRMAN: Are there any questions? Mr. Paulley.

MR. PAULLEY: Just one, Mr. Chairman. If I may, Mr. Coulter, you mentioned, I believe, in reference to subsection 40(2) "When work deemed identical" and you were of the opinion that this was a change from the present Act. As I read it - I'd like counsel to correct me if I'm wrong - the word "identical" of course is there on the marginal note but the substance of the section, two sections, it doesn't seem to me to be changed from the present Act, the "same or substantially the same" is continued. Although the word "identical" is used at the top of the . . .

MR. COULTER: I was going to raise that question. In my Act the word "identical" is in the main body of the clause in two places, and I was going to question the reason why you have in the heading for that piece "when work deemed identical." Wouldn't it be more appropriate to have "when work deemed the same."

MR. PAULLEY: Well, if I may, Mr. Chairman, that's my impression of - it's retention of the same or identical. Now "same or substantially the same kind of work or quality." Maybe Mr. Balkaran can . . .

MR. BALKARAN: Mr. Chairman, that was merely an oversight in not changing the word "identical" in the heading to "same". When we were making that change to 40 sub (2) we changed "identical" to "same or substantially the same" and omitted to make the corresponding change in the heading.

MR. PAULLEY: Just in the heading. But the substance of the section is "same or substantially the same", Mr. Coulter. That was my impression. I presumed that there would be a change of the heading of the section, Mr. Coulter, to make it "when work deemed to be the same."

MR. CHAIRMAN: Any further questions? Mr. McKellar.

MR. McKELLAR: Mr. Chairman, I just wondered, Mr. Coulter, in all the union agreements, will this mean that all agreements will be referred to a 40-hour week now from now on? Like the union can't negotiate up north where they work longer hours, or will everything be time and a half after 40 hours from now on, is it?

MR. COULTER: Most agreements are either 40 or fewer hours now.

MR. McKELLAR: Are they?

MR. COULTER: There are some that have longer hours and the legislation provides for that to happen where the union and the employer so agree that it be conditions of their employment.

MR. McKELLAR: One other question, Mr. Chairman. I was just wondering on seasonal work where a man would like to work longer hours, can they get permission like on that type of an agreement?

MR. COULTER: It is now provided under The Construction Industry Wages Act to a considerable degree. Because it's seasonal work . . .

MR. CHAIRMAN: Any further questions? Hearing none, thank you. Would you proceed on the next bill please Mr. Coulter?

BILL NO. 29 - THE PAYMENT OF WAGES ACT

MR. COULTER: Well this is one we really appreciate coming forward. We have made many submissions to the government over the years and also to the Law Reform Commission. We have been advocating that wages should be the first charged, and now that's contained in the bill. We appreciate that very much.

The other major step in this bill is that directors of corporations may now become responsible for up to two months in wages and certain vacation pay as well. We think this is a real step forward and one we've been looking for for some time.

The other factor here I think is also in keeping with our opinions that we have expressed, and that is the division may advance wages owing to an individual, and that the division will pursue the collection of those wages that are owing which may take some considerable time. But in the meantime the worker will have his pay, and that's what I take from that particular feature of the bill.

There are a couple of areas here that I would like for you to give some consideration to, and that is with respect to 17 (3). We still see that where a judge or magistrate finds an employer guilty of an offence under Section 2 the judge or magistrate may in addition to any penalty imposed under this section order the employer to pay the division the amount of wages that was found to be unpaid by the employer. Surely if they find him guilty shouldn't that "may" be "that he shall require the payment of those wages." We think that that's just a little too loose. Mind you, the division may be the one that'll be out the money if the division has advanced the lost wages to the worker. But I fail to see the necessity of the word "may" there. I think it would be far more positive to have it "shall".

The other is with respect to Section 21(2). The word "may" is also used here. I suggest here that the magistrate should, where the employer is found guilty of discriminating against an employee and firing him, that the employee should be reinstated to his job instead of just "may". If he's guilty, surely that's the whole process of pursuing the matter is to have his job returned. This way you're giving the magistrate some leeway as to whether he casually thinks, well, this employee may not get along too well with the employer after that, and for that reason he may say, "Well, I will not order reinstatement." But surely that should be a prerogative of the individual. He should be reinstated and if the employee doesn't want to remain there after, then that's his business. But I take exception of the word "may" there, because I don't think it's proper or just in allowing the magistrate to give his job away in that case.

The other is that he may order reinstatement to his former employment with or without such compensation as it deems reasonable. Surely he should be reinstated with all lost wages that were encountered.

(MR. COULTER cont'd) . . . . . And this again gives the magistrate the leeway as to giving him back his job, maybe, with or without pay. And surely if the employer has been guilty, then he should have to pay restitution as far as wages are concerned.

I think we would like to suggest that those two sections be strengthened in that regard. I think they're proper and in keeping with the intent of the legislation, and the thing that bothers me is that we've found too often that where it is not specific that the employee does and has not been given proper treatment.

So I suggest those two changes to you. That's all I have on that bill, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Coulter. There may be some questions. Mr. Paulley.

MR. PAULLEY: Mr. Chairman, just for clarification purposes I should have informed the committee and the delegates interested in this bill, that I have a few amendments to make in connection with the bill. The original bill, as Mr. Coulter pointed out, contained provision for a two-months wage period. We're changing that to a dollar figure of $2,000 rather than the two months, at least we're going to suggest a change that it be in the terms of $2,000 instead of two months, due to variations in wages. We thought that that would be more logical. And also it's my understanding that that is a provision that will be made. I suggested it; it's in Bill C60 at Ottawa. Another change that I think that the committee would be interested in, that we will be suggesting, will deal with the question of the order of a magistrate in addition to the fine that may be levied against a delinquent employer, the judge will order the payment of wages on being found guilty. I don't think that's in the draft that you may have, Mr. Coulter.

MR. COULTER: No.

MR. PAULLEY: And also there's provision in the present draft Act making reference to the Minister requiring a posting of a bond in one or two other places, that it's my intention to suggest to the committee that "Minister" be changed to "Lieutenant-Governor-in-Council" rather than the Minister having the direct power of requiring a bond, it should be the Lieutenant-Governor-in-Council.

MR. COULTER: That's in the present Act now.

MR. PAULLEY: Which?

MR. COULTER: The Minister requests . . .

MR. PAULLEY: Yes. Well the suggestion is, Mr. Coulter, the Lieutenant-Governor-in-Council, rather than the Minister.

MR. COULTER: Yes. Thank you.

MR. CHAIRMAN: Mr. McKenzie.

MR. McKENZIE: . . . under the investigation that'll be conducted by the division upon receiving a complaint, how will they gain access to the records of the employer? Do they do it by court order, or what procedure would they have to follow?

MR. COULTER: Well, I haven't studies it in that great detail, but I'm sure that they have the powers.

MR. CHAIRMAN: Use the mike please, Mr. McKenzie, when you speak. It's very hard for the . . .

MR. COULTER: I would imagine, Mr. Chairman, that the division has the authority to investigate now, whether that is extended to them with this Act but I'm sure that the division refers to the Employment Standards Division of the department, and they have, at the present time, all the powers I would think that they need to examine records.

MR. McKENZIE: Well, without a court order, Mr. Coulter?

MR. COULTER: You'll have to ask the legal people here, not me.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I wonder if Mr. McKenzie would take a look on Page 5, 9(1), the powers of the board, and it's stated: "For the purposes of this Act the board or any member thereof has the powers of a commissioner under Part 5 of the Manitoba Evidence Act." I think that covers the point that you're raising, Mr. McKenzie.

MR. McKENZIE: Right.

MR. CHAIRMAN: Any further questions on Bill 29? Mr. McKellar.

MR. McKELLAR: Mr. Chairman, just one question. I was just wondering what rights the employer has if he is charged under this Act; has he got the right to appeal the ruling of the board?

MR. CHAIRMAN: Perhaps that question should be referred to the Minister when we get to clause by clause discussion of the bill.

MR. McKELLAR: Maybe a legal counsel could answer that question.

MR. COULTER: I think he has.

MR. McKELLAR: Has the employer the right to appeal a ruling of the board if he's charged under this Act?

MR. BALKARAN: If he's charged . . .

MR. McKELLAR: Has he the right to appeal it?

MR. PAULLEY: Oh, yes.

MR. McKELLAR: Here we are.

MR. COULTER: It's in Section 16(1).

MR. McKELLAR: 16(1), eh? Oh, yes, there it is.

MR. COULTER: And then 15 days, yes. That's the same as in the present Act.

MR. CHAIRMAN: Mr. Sherman. Do you have a question, Mr. Sherman?

MR. SHERMAN: Well, no, a point of order really, Mr. Chairman. Thank you. I was going to wait until the Minister was taking us through clause by clause. On the same point raised by Mr. McKellar, that 16(1) isn't precisely, with all respect, isn't precisely the same kind of provision as as in the present Act. 16(1) refers to appealing a decision or an order to a judge of the county court district. In the present Act an employer who pays to an employee wages to which he felt the employee was not entitled, was given the power to apply to the Division for the recovery of those wages. So it's not precisely the same kind of provision. But I think that it's probably out of order to be asking Mr. Coulter to answer this question, Mr. Chairman.

MR. CHAIRMAN: Those questions should be directed to the Minister when the bill is considered clause by clause. Are there any further question on Bill 29? Hearing none, would you proceed with Bill No. 57. Mr. Coulter.

BILL NO. 57 - THE PENSION BENEFITS ACT

MR. COULTER: 57. This is an introduction of a bill and some legislation that we've been long seeking, and I think it is now 10 years since the legislation was brought in in Ontario, and, if I'm not mistaken, the year following that there was a bill brought into this House and it was referred and never came back to the House again. But we're pleased that finally we have this draft bill, which I understand that you're only proceeding with the first part of it this session, and that's understandable. The second part is fairly complicated and it will mean some pretty radical changes in procedures and requirements and will take a considerable amount of study to make sure that they fit circumstances today.

The only point that I would like to make with respect to this particular bill, and I presume it's not really appropriate for this committee but we do recognize that the Pension Commission will have representation on it and while I'm here I would just say that the Federation of Labour are vitally interested to have adequate representation on that commission as we feel that pensions are vitally important to our people, and therefore we do look forward to representation on it and adequate representation too. That's all I have, Mr. Chairman.

MR. PAULLEY: I'm sure that will be given consideration, Mr. Coulter.

MR. CHAIRMAN: Are there any questions that the members of the committee may have to ask? Mr. McKellar.

MR. McKELLAR: I'd like to ask Mr. Coulter, Mr. Chairman, the question regarding . . . Do all the labour unions have pension plans, private pension plans, where the employer shares in them? What percentage of them would have private pension plans?

MR. COULTER: Well I understand there's about 40 percent of the workers in Canada covered by private insurance plans, of the pension plans. So it would be a greater percentage of those that are unionized would have pension plans.

MR. McKELLAR: I see.

MR. COULTER: This is one area that traditionally unions have not had too much say in. Pension plans were brought in initially by employers as a paternalistic measure to satisfy their employees, or to retain employees, and many employers to this day refuse to discuss pensions in collective bargaining at all. Some do, but there are many that still don't. They still think it's the prerogative of management, and is still a paternalistic factor that they wish to keep out of collective bargaining.

MR. McKELLAR: Another question, Mr. Chairman. I'm just wondering is this becoming more . . . like are the unions now bargaining for that particular private pension plan,

(MR. McKELLAR cont'd) . . . . . like, are there some private pension plans in some of your unions?

MR. COULTER: Oh yes. There's no question about it that this is one thing that pretty nearly all unions are striving to get, and to extend once they do get them and improve them.

MR. McKELLAR: I see.

MR. CHAIRMAN: Order please. Order please. Any further questions of Mr. Coulter? Hearing none, thank you.

MR. COULTER: Thank you very much, Mr. Chairman.

BILL NO. 28 - AN ACT TO AMEND THE EMPLOYMENT STANDARDS ACT

MR. CHAIRMAN: Proceed with the bills. Bill No. 28, an Act to amend the Employment Standards Act. I understand that there are some amendments. Are there any amendments?

MR. PAULLEY: There are no amendments to Bill 28.

MR. CHAIRMAN: Page 1 - passed; --(Interjection)-- Bill No. 28, an Act to amend the Employment Standards Act. Page 1 - passed; Page 2 - I believe there is a correction.

MR. BALKARAN: Mr. Chairman, the point raised a moment ago on 40 sub(2) the heading - strike out the word "identical" and substitute the word "same". And then in the fifth line after the word "same" there is an omission, the word "in" should be inserted, "same in kind".

MR. CHAIRMAN: 40 sub(2) the heading should be changed to "when work deems same". And in the fifth line thereof "perform are the same or substantially the same" and after the second "same" insert the word "in". Is that correct?

MR. BALKARAN: Yes.

MR. CHAIRMAN: Will someone move that?

MR. WALDING: So moved.

MR. CHAIRMAN: Moved by Mr. Walding. All in favour of 42 as amended - passed.

A MEMBER: Gee, I don't know who's going to sort that one out.

MR. CHAIRMAN: Page 2 as amended - passed; Page 3 - passed; Preamble - passed. Title - passed. Bill be reported - passed.

BILL NO. 29 - THE PAYMENT OF WAGES ACT

MR. CHAIRMAN: Bill No. 29, The Payment of Wages Act. And I believe there are some amendments which we'll wait until they're distributed.

Are there any amendments on the first two pages? Can we proceed? Page 1 . . .

MR. McKELLAR: Mr. Chairman, there's one, section on the pay period, it says 16 consecutive days. Does that I've got to pay the man on my farm every two weeks instead of every month, as it was in the past?

MR. CHAIRMAN: What section is that Mr. McKellar?

MR. McKELLAR: 1(g). I only pay him on a monthly basis right now. Do I have to start paying him on a . . .

MR. PAULLEY: The agricultural workers are not covered by the Employment Standards Act as of now.

MR. McKELLAR: They're not covered. Oh, I see.

MR. PAULLEY: I don't hold out that it will . . .

MR. McKELLAR: I just want to clear myself in case I break the law.

MR. CHAIRMAN: Page 1 - passed; Page 2 - passed; Page 3 - there's an amendment.

MR. WALDING: Mr. Chairman, I move that subsection 7(1) of Bill 29 be amended by adding thereto immediately after the word "employee" in the second line thereof, the words and figures, "not exceeding $2,000."

MR. SHERMAN: Mr. Chairman, on a point of order. --(Interjection)-- Oh, I'm sorry. Section 5, Mr. Chairman, before we come to the amended Section 7.

Section 5 is the section dealing with the liability of officers and directors of the corporation, and the Minister will recall that at the time of examination of the bill on Second Reading in the House, I raised the question as to whether or not there wasn't an inconsistency here with the Companies Act which recognizes that certain people are officers or directors of the company in a nominal capacity just to meet the legal requirements, and that they have no real beneficial interest, and that if it weren't so, if this weren't a possible and practical means of establishing a company, it would be difficult in many instances for some small

(MR. SHERMAN cont'd) . . . . . companies to become established. In fact in many cases some of the directors are very often employees themselves.

The Companies Act recognizes this practice and does contain within it some exclusions in these areas of responsibility. And I suggested at the time that this bill in this respect is relatively harsh where nominal directors of companies rather than beneficial directors of companies are concerned, and that not only that but it in fact represents something of an inconsistency with other legislation, such as that mentioned.

I want to put that question and that proposition to the Minister on the record again at this stage of the study of the bill, Mr. Chairman, and ask him for his comments on that point.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I well recall the remarks of my honourable friend from Fort Garry in the House. Our legal advisers looked up the Companies Act and were not able to find where this would be in conflict with the Companies Act. So I, of course, presume that they are correct, that there won't be the conflict, or there isn't the conflict on the point raised by my honourable friend.

MR. SHERMAN: Well, Mr. Chairman, may I ask the Minister whether it's not correct that the Companies Act does recognize, as I say, the distinction between nominal officerships of this kind and those that go far beyond the nominal category.

MR. PAULLEY: Well, I can't argue that point. I go on the advice that I received, and in addition to that it's my understanding that in the bill that has passed second reading at Ottawa, a light clause is contained within that bill as to the liability of directors. And also that, Mr. Chairman, is one of the reasons that the suggestion is made in this Act for the bill to come into effect on proclamation.

As I indicated to the House, I believe that the reason for it coming in on proclamation was so that we would have an opportunity of being able to study the final Act and take note of representations made there. But insofar as the present is concerned, it would not be our intention to change Section 5.

MR. CHAIRMAN: Section 5 - passed; Section 6 - passed; Section 7 - there's an amendment there.

MR. WALDING: Mr. Chairman, I move the amendment as read.

MR. CHAIRMAN: 7(1) as amended - passed. Page 3 as amended - passed. Page 4.

MR. WALDING: Mr. Chairman, I move that subsection 8(4) of Bill 29 be amended by striking out the figure "12" in the fourth line thereof, and substituting therefor the figure "15".

MR. CHAIRMAN: 8(4) as amended - passed; Page 4 as amended - passed; Page 5 - perhaps we could go down to the one that you want.

MR. SHERMAN: Page 5 (8) (6).

MR. CHAIRMAN: 8(6)(a) The Honourable Member for Fort Garry, Mr. Sherman.

MR. SHERMAN: Mr. Chairman, 8(6) stipulates that where there has been a failure on the part of the employer to comply with an order, that the division - in other words the Employment Standards Division - may file a copy of the order in the County Court. My question to the Minister is, does this mean thatonly the division may file such an order? Why can't an employee file an order on his own or her own behalf?

MR. PAULLEY: I believe - and this is subject to correction by legal counsel - I believe that when we get to this stage on hearings of the Payment of Wages Act, that the division is acting on behalf of the employee after the employee has drawn to the division's attention that there has been a default in the payment of wages, and then the division takes over from the employee. Is that correct, Mr. Balkaran?

MR. BALKARAN: There's one other distinction, Mr. Minister, that is, at this point in time the order is the order of the division, and that's what's being filed, and it's not an order made by the employee. So the status to file that order is that of the division on behalf of the employee.

MR. SHERMAN: So, that this is just a terminology. But it doesn't detract from the individual initiative of the employee himself?

MR. BALKARAN: If the employee is armed with that order of the division and would want to file it himself for himself, well I don't see any reason why they couldn't do it. The question is, you have two channels open to file it. Chances are the division wanting to make sure would do it itself.

MR. SHERMAN: All right, Mr. Chairman, thank you.

MR. CHAIRMAN: Page 5 - passed; Page 6 - there are amendments.

MR. WALDING: Mr. Chairman, I move that Section 11 of Bill 29 be amended (a) by striking out the words "an application" in the first line thereof, and substituting the words "a complaint"; and (b) by striking out the word "application" in the last line thereof and substituting therefor the word "complaint".

MR. PAULLEY: Also, Mr. Chairman, change the word "application" in the heading of this section. I'm sorry.

MR. WALDING: Yes. And a similar change in the heading of the Section, Mr. Chairman.

MR. CHAIRMAN: 11 as amended - passed.

MR. WALDING: Mr. Chairman, I move that subsection 12(1) of Bill 29 be amended (a) by striking out the word "Minister" in the first line thereof, and substituting therefor the words "Lieutenant-Governor-in-Council"; and (b) by striking out the words "acceptable to the Minister" in the third line thereof.

MR. CHAIRMAN: 12(1) as amended - passed. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, starting here at 12(1) on the bottom of Page 6 and moving through Sections 12 to 14 inclusive, which covers the next two pages, the word "division" has been substituted throughout for the word "board" which appeared in the earlier legislation. And I'm concerned that what is taking place here is something in the nature of an administrative procedure that might not work to the benefit at all times of the individual employee.

Under the "board", by putting these kinds of powers under the "board" you really had them in the hands of what is, in effect, a quasi judicial body. By putting them in the hands of the division, I suggest Mr. Chairman, that we're really putting them in the hands of a bureaucratic and political body, and I wonder whether this is intended by the change of wording, or whether the change of wording has some other intention behind it.

MR. PAULLEY: Certainly not in my opinion. Your point, Mr. Sherman, is that reference to the division rather than the board - now what section were you particularly concerned with, because I don't see reference to division until we get down to 13(1). There's nothing in 12 that I can see dealing with the division. I don't think 12 really covers your point. It may be in 13 where reference is made to the division.

MR. SHERMAN: Well, excuse me then, Mr. Chairman, through you to the Minister, I may have picked it up one section too early. The first reference may be in 13(1). It was on these two pages that I was concerned with that difference in terminology. The Minister appears to be correct, quite correct in suggesting that it starts at 13(1) rather than 12(1). So perhaps we should revert to passing Page 6, Mr. Chairman.

MR. CHAIRMAN: 12(1) as amended - passed. Page 6 as amended - passed. Perhaps we'd go down, 12(2) - passed. 12(3) - passed. 12(4) - Mr. Walding.

MR. WALDING: Mr. Chairman, I move that subsection 12(4) of Bill 29 be amended by striking out the words "be the Minister in the 5th line thereof and substituting therefor the words "under subsection (1)".

MR. CHAIRMAN: Is that the 5th line or the 3rd line?

MR. PAULLEY: It's reference to the Lieutenant-Governor-in-Council rather than the Minister.

MR. CHAIRMAN: Oh, yes. That's fine. 12(4) as amended - passed. 13(1).

MR. WALDING: Mr. Chairman, I move that subsection 13(1) of Bill 29 be amended by striking out the word "decision" in the 4th line thereof and substituting therefor the word "division".

MR. CHAIRMAN: 13(1) as amended - passed.

MR. PAULLEY: This is the section, I believe, Mr. Sherman, that you asked a comment on.

MR. SHERMAN: This brings it back to that point. Thanks, Mr. Chairman. What I'm asking is whether this makes this an administrative procedure rather than a quasi judicial procedure, putting this process in the hands of the division rather than the hands of the board, or whether anything is intended by that change at all, other than just a simplification of procedure. It seems to me, much of this was in the hands of the board before, and I'm wondering why it now goes into the hands of the division. That's what I'm asking.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Actually the reason for this is to attempt to streamline the procedures for recovery of wages as much as we can. The division hasn't any quasi judicial powers or rights. As I understand it, that where a complaint is received by the division under Section 8 and the division has reasons to believe that this is a fact, it can establish that the wages should be paid. But then, as far as the actual decision, almost judicially, it still rests with the board. One of the purposes behind this, as I understand it, Mr. Chairman, is to cut down on the overload to the board itself where the division could more or less streamline the work up until that point of reference to the quasi judicial body.

MR. CHAIRMAN: 13(1) as amended - passed. Page 7 as amended - passed. Page 8 . . . Mr. Sherman.

MR. SHERMAN: Mr. Chairman, at the bottom of Page 8, if you want, if there's anything earlier I leave it in your hands. --(Interjection)-- I wish to raise a point at the bottom of Page 8. If there's anything earlier I'll wait for you to move down clause by clause.

16(1) at the bottom of Page 8, Mr. Chairman.

MR. CHAIRMAN: Proceed on that.

MR. SHERMAN: Thank you. That gets back to the question that was raised a few minutes ago by Mr. McKellar when Mr. Coulter was appearing before the committee, and I had intended to ask the question of the Minister myself as to the procedure and the equity now, where there is a case of an employer who has paid to an employee, wages to which he - that is the employer - feels the employee is not entitled. Under the old Act under Section 5(7) the employer was given the power to apply to the division for the recovery of such wages. The new legislation on the surface appears to take care of this same situation. But it's really not precisely the same. It sets up the procedure and the machinery here for appealing the decision or order to a Judge of the County Courts, but it doesn't provide that the application can be made to the division, as the old legislation did. I wonder if the Minister would explain the reasons for that change.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I would suggest that the point raised by both Messrs. McKellar and Sherman are taken care of in 16(1). "Any person affected by a decision or order of the board". Now, "any person" of course would include an employer as well as an employee. So I would suggest that that is so, and in the present Act as I understand it, there is a limitation of seven days. This is being increased now to 15 days for that appeal to be made to a County Court Judge in the district in which the employee resides.

I don't think there's anything really deviating from the principle established of the rights of appeal from a decision of the board.

MR. SHERMAN: Well, Mr. Chairman, through you to the Minister. Does this mean that there is no appeal to the division, there is only an appeal . . .

MR. PAULLEY: No, because the division is only acting really in an administrative capacity. It's the board that has the quasi judicial powers of order. The division hasn't got the precise powers of order. So therefore there wouldn't be an appeal to the division.

MR. SHERMAN: I see the point the Minister is trying to convey to me, Mr. Chairman. Under the old legislation however, I stand to be corrected, but my examination of the old legislation gave me to believe that there was the power to apply to the division for the recovery of such wages, and that's what prompted my question. It seemed to me that this has become a substantial change in procedure. The Minister is suggesting that the employer or the employee are protected equally well under this wording, then I'm prepared to accept his word for that, Mr. Chairman.

MR. PAULLEY: I'm also informed, if I may, Mr. Chairman, that under the old Act the division didn't have the right to make an order as it will in this.

MR. CHAIRMAN: Is that correct?

MR. SHERMAN: Didn't have the right to make an order as it will under this new legislation?

MR. PAULLEY: Yes.

MR. SHERMAN: Well, then Mr. Chairman, just moving a few words further along in Section 16(1), there's a reference there to the "County Court District in which the employee

(MR. SHERMAN cont'd) . . . . . who was a party resides or in which the matter complained of arose, whichever is more convenient to the employee". I wonder whether there is not some omission in wording here, so as to ensure that the same kind of equal treatment is given the aggrieved party, should the aggrieved party be the employer.

MR. PAULLEY: Well, Mr. Chairman, if I may on that point, the reason for this is the employer may be domociled in some town or village or area that is miles away from the locale of the employee, and the purpose of this is to accommodate the employee within his home tenting ground rather than the employer who may be an absentee employer, but the employee is always at the location. That's the reasons for this. It's not any attempt to be discriminatory against an employer. We realize that an employer, as I indicated, can be far removed from the location in which the employee resides and performs work.

MR. SHERMAN: But would this be mandatory or in a situation where the employer lived in the province and in a particular accessible region, or community, or municipality, or County Court district, could the appeal then be organized so as to accommodate him?

MR. PAULLEY: Mr. Chairman, if I may comment on that. We have to make a decision one way or the other. I don't recall exactly how many County Courts we have but in some industries the employer can say, for instance, live in Thompson and it's only a function that is being performed down in Sprague - thinking in terms of timber right now - and the county court that covers Thompson, it would be, I would suggest, prejudicial against the employer and the employee, but for the convenience of setting it out in the Act, we've arrived at the conclusion that the benefit should go to the employee and his County Court district. Because after all, it has to be established that the employee is being deprived of wages that he allegedly earned.

MR. SHERMAN: That's only one side of the section though. With all respect, Mr. Chairman, we're dealing here with appeals. And appeals can come from either party.

MR. PAULLEY: That's correct. But we had to make a decision as to outlining or setting a County Court area in which the appeal could be made. Now, if we opted for the employee, well, then we can be faulted for our judgment. On the other hand, we couldn't have in legislation, at least in my opinion, we couldn't have in legislation an option as to which County Court the appeals could be held in, because we'd never know where we were going.

MR. SHERMAN: Well, Mr. Chairman, it seems to me that with some imagination and some effort that the section could be structured so as to establish the hearing or the appeal in the County Court district of the party launching the appeal, be it employer or employee. But that won't be the case under this clause as it's presently worded. It will always be in the County Court district that is the home district of the employee even though the employer may be the party that has entered the appeal because he feels he has paid wages to an employee to which that employee was not entitled.

MR. PAULLEY: That is correct to some degree, Mr. Chairman, but in all due respect I would suggest to the Honourable Member for Fort Garry, as I indicated, the employer could be an absentee employer in Toronto, for instance, and we would have to be able to I would suggest, to agree to the point raised by the honourable member; if we alter it from this it's quite conceivable if the employer initiated the appeal, the employee would be required to journey to Toronto or somewhere else to have a case heard.

MR. CHAIRMAN: Page 8 -passed. Page 9. Mr. Walding.

MR. WALDING: I move that Section 16 of Bill 29 be amended by adding thereto at the end thereof the following subsections:

Notice of appeal to be given to board.

16(4) The appellant under this section shall, not less than 7 clear days prior to the date fixed for the hearing of the appeal, serve a copy of the notice of appeal on the board.

Payment into court.

16(5) Where the appellant under this section is an employer, the judge shall require the employer to pay into court the amount ordered to be paid under subsection 15(2) before hearing the appeal; and upon completion of the hearing the judge may order the disposition of the moneys paid into court in such manner as he considers just.

MR. CHAIRMAN: 16(4) - passed. 16(5) - passed. Page 9 amended - passed. Page 10.

MR. WALDING: Mr. Chairman, I move that Section 20 of Bill 29 be amended by striking out the word "this" in the 4th line thereof and substituting therefor the word "his".

MR. CHAIRMAN: Section 20 as amended - passed.

MR. WALDING: Mr. Chairman, I move that subsection 21(1) of Bill 29 be amended: (a) by striking out the words "to any matter or proceedings under this Act" in the 1st and 2nd lines of clause (b) thereof; and (b) by striking out the words "in any matter or proceedings under this Act" in the 1st and 2nd lines of clause (c) thereof.

MR. CHAIRMAN: 21(1) as amended - passed.

MR. WALDING: Mr. Chairman, I move that Section 22 of Bill 29 be amended by striking out the word "invested" in the first line thereof and substituting therefor the word "vested".

MR. CHAIRMAN: 22 as amended - passed. Page 10 as amended - passed. Page 11.

MR. WALDING: Mr. Chairman, I move that subsection 23(2) of Bill 29 be amended by adding thereto immediately after the word "mail" in the 2nd line thereof the words "or certified mail".

MR. CHAIRMAN: 23(2) as amended - passed.

MR. WALDING: Mr. Chairman, I move that clause 25(d) of Bill 29 be amended by striking out the figure "9" in the second line thereof and substituting therefor the figure "12".

MR. CHAIRMAN: 25 as amended - passed. Page 11 as amended - passed. Page 12. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, Page 12, Section 26 provides for a regulation to take precedence over a statute or an Act of the legislature. I find that somewhat troubling, and I'm wondering what the propriety is of that kind of provision.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: I would suggest, Mr. Chairman, that this has reference to priority in claims. It's my understanding - and as my honourable friend knows I haven't received my admission to the Bar yet - but as I understand it, this deals with the question of priorities under the Financial Administrations Act. I think that it's established a right of claim there, and the purpose of this is to make sure, and counsel will correct me if I'm wrong, to make sure that the priority of claims, once established with amendments in the Bankruptcy Act, will also apply to the Financial Administration Act of our province, so that an employee will have precedence over an amount owing under our Financial Administration Act.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, in addition to that under that Financial Administration Act, to be able to get moneys out into the hands of - a member of the public sometimes takes a long time - and by regulation it would probably act to that to process in the event of that, the Payment of Wages Fund is established, and you want to get moneys into the hands of an employee from that fund, it will not be subject to the same amount of red tape that other payments might be subject to.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: But once again, Mr. Chairman, by saying that Mr. Balcaran is underscoring what the Minister has said, in fact, that this provision only refers to the priorities of a claim.

MR. BALKARAN: It deals with both, Mr. Sherman.

MR. SHERMAN: I beg your pardon.

MR. BALKARAN: It deals with both. It refers to the priority, but even when that priority is established you still have to get the moneys out to the employee who is not paid his wages.

MR. SHERMAN: And that's when it's in a fund?

MR. BALKARAN: Yes, of a fund in which "X" number of dollars is sitting, and if you have to go through the process of Order-in-Council each time to pay John Doe $55 or $200, you know, it takes a long time.

MR. SHERMAN: Oh, well I see, it would be the next step in settling the claim?

MR. BALKARAN: Yes, but it would still be related to the claim.

MR. SHERMAN: Thank you.

MR. CHAIRMAN: Page 12.

MR. WALDING: Mr. Chairman, I move that Section 30 of Bill 29 be amended by striking out the words "the day it receives the royal assent" and substituting therefore the words "a day fixed by proclamation".

MR. CHAIRMAN: Page 12 as amended - passed. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I have a question here that I've held for Page 12 because I didn't know where it should apply earlier in the legislation, and perhaps I missed a point, but I couldn't see an applicable point earlier.

In the old Act under Section 9(3) it was provided "that where the board applies the proceeds of a bond toward the payment of unpaid wages, the board shall in writing, as soon as possible, notify the employer to that effect."

I have not been able to find an equivalent provision in the new Act, Mr. Chairman, but I defer to your direction. I may have missed it.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I must confess, I must have missed the last council -

MR. BALKARAN: It's not in there.

MR. PAULLEY: It's not in here. Is there no requirement for it? Or you don't answer to that, of course. I'm in an embarrassing position, and to some degree your question is, that there was the matter of the payment.

MR. SHERMAN: Just the notification in writing.

MR. PAULLEY: Yes, in writing.

MR. BALKARAN: The bond has been used.

MR. PAULLEY: The bond has been used.

MR. SHERMAN: Yes, it's just a written notification that the bond was being used, being applied.

MR. PAULLEY: Yes.

MR. SHERMAN: Could we put that in?

MR. PAULLEY: Well, Mr. Chairman, may I suggest, and I may not be legally correct or technically correct, but if the order is made by the Lieutenant-Governor-in Council it will be by Order-in-Council, and all Orders-in-Council, as my honourable friend knows, is the public in any case, so it does become public through that methodology, whereas in the original proposal was the Minister, which isn't by way of Order-in-Council. But I think the point raised by my honourable friend may be a valid one and could be contained in the regulations, that any order made shall require the notification to the person affected, in addition to the Order-in-Council. That might cover the point that you raised, Mr. Sherman.

MR. SHERMAN: I'd be happy, Mr. Chairman, if the Minister could give me that assurance that that provision could be contained in the regulations.

MR. PAULLEY: Yes. Well, the legal counsel has made a suggestion, which may accommodate this, if the committee is agreeable. If we go back to Page 7, Mr. Chairman, 12(2) and add at the end of the word "where employee" in the fourth line, or the last line thereof, and "the employer shall be notified" --(Interjection)-- "and shall notify the employer accordingly", and that would cover the point you raised. If that's agreeable to the committee.

MR. CHAIRMAN: So move, Mr. Walding.

MR. WALDING: That's so moved, Mr. Chairman.

MR. SHERMAN: It's certainly agreeable to me. Thank you.

MR. CHAIRMAN: Mr. McKellar.

MR. McKELLAR: Yes. Well, I just wondered, are you going to ask the question about proclamation?

MR. SHERMAN: No thanks. That's it. Thank you.

MR. McKELLAR: Well, I've just one question. I'm just wondering why it's been changed from "royal assent" to "proclamation"?

MR. CHAIRMAN: Well, can we deal with this proposed amendment here. We're on Page 7 right now.

MR. McKELLAR: Yeah, okay.

MR. CHAIRMAN: It's a bit irregular, but . . . Page 12(2) as amended - passed.

MR. McKELLAR: I was just wondering why they changed from "royal assent" to "proclamation". Is it because of regulations?

MR. PAULLEY: No, Mr. Chairman, it's not related to regulations. It is regulated - has reference to at the present time - under the Bankruptcy Act there is an order of priorities which places income tax, federally and provincially, ahead of payment of wages. Through consultation with my colleagues, Ministers of Labour, we've made an appeal to the Federal authority to change the order of priorities and place payment of wages ahead of payments to the public treasury, and one or two other considerations. And the reason for proclamation rather than royal assent is because of a bill that is before committee in Ottawa at the present time that will establish this priority under the Bankruptcy Act.

MR. McKELLAR: Would it be proclaimed before the end of the year, or some approximate date?

MR. PAULLEY: It all depends on how quickly we can get Ottawa to move, and if they don't move fast enough it would be my intention to recommend to the Lieutenant-Governor, or the Cabinet, that we proclaim this bill and take our chances on the possibility of a legal battle as to our authority to change the Order of Priority in the Payment of Wages.

MR. McKELLAR: Would it not be possible to proclaim some sections without proclaiming it all, like leaving out the one section?

MR. PAULLEY: Well, I think that would be rather difficult, Mr. Chairman, to my honourable friend, because the whole Act itself is all intermingled one section with the other.

MR. CHAIRMAN: Page 12 as amended-passed; Preamble-passed; Title-passed. Bill be reported. (Agreed)

BILL NO. 46 - THE GAS STORAGE AND ALLOCATION ACT

MR. CHAIRMAN: Bill No. 46, we had completed except we held an amendment to Section 25 on Page 9.

MR. USKIW: I move that Section 25 of Bill 46 be amended by numbering the present section as subsection 1, and by adding thereto at the end thereof the following subsection: "Exception 25(2). Subsection 1 does not apply where the Crown or an agency of the Crown, or a corporation in which the Crown is a shareholder is:

(a) the holder or one of the number of holders of a permit; or

(b) a participant in the exercise of a permit."

MR. CHAIRMAN: 25(2)(a)-passed; (b)-passed; 25(2)-passed; Page 9 as amended-passed; Preamble-passed; Title-passed. Bill be reported.

A MEMBER: When are you going to put gas in there . . . ?

MR. USKIW: Got to take it all out of the Legislative Chamber first.

BILL NO. 55 - AN ACT TO INCORPORATE LA CENTRALE DES CAISSES POPULAIRES DU MANITOBA LTEE.

MR. CHAIRMAN: Bill No, 55, an Act to Incorporate La Centrale Des Caisses Populaires du Manitoba Ltee., page by page.

MEMBERS: Page by page.

MR. TALLIN: They have a report on this.

MR. CHAIRMAN: Page 1-passed. Oh, there is a report from the Law Officer. Would you proceed, Mr. Tallin, please.

MR. TALLIN: This is a private bill. "As required by Rule 110 of the Rules of the House I now report that I've examined Bill 55, an Act to Incorporate La Centrale Des Caisses Populaires du Manitoba.

"I would like to bring the attention of the committee to subsection 5(2) of the bill, which together with clause 5(1)(q) will authorize the company to issue shares in lieu of payments of dividends to members without their consent.

"I would also like to draw attention of the committee to subsection 14(1) which authorizes the company to purchase or redeem its shares at a value to be determined by the Board of Directors.

"I'd also like to draw attention of the committee to subsection 14(2) which refers to the par value of shares of the company, whereas Section 2 of the bill provides that shares of the company will not have a par value."

MR. CHAIRMAN: Page 2 - Mr. Green.

MR. GREEN: With regard to the Legislative Counsel's report, the information given when the bill was presented was that this bill brings into line the provisions of Caisses

(MR. GREEN cont'd) . . . . . Populaires to the provisions of the Manitoba Credit Unions, and I just wonder whether you could tell us whether the same provisions are located in the Credit Union Act, The Co-operative Credit Society.

MR. TALLIN: I'm afraid I couldn't tell you, but I suspect that at least the first two - well I don't think that they're unusual.

MR. GREEN: The first two are not unusual.

MR. TALLIN: The second one, I don't know whether the par value question is in the other one or not. It's just an inconsistency.

MR. GREEN: Yes. It seems to me that the third one will have to be corrected because it is inconsistent to talk about par value shares when there are no par value shares. And that would have to be corrected. You'd have to deal with that.

MR. CHAIRMAN: Perhaps we could have Mr. Guay here make an explanation. Mr. Guay.

MR. GUAY: Yes, Mr. Chairman. This is simply actually a consolidation of CCSM's bill. And this bill was similar in every respect with the exception of a few minor changes - not those that have been pointed out - relating to the special nature of the Centrale Des Caisses Populaires. Any provisions that are in here, even if they are inconsistent, would necessarily be in the CCSM's Act as it presently stands - it's a private bill also amended.

There is one change which is of necessity even more material to the Centrale and that's clause 14(3), Section 14(3) where it's stated that the number of members must not be less than 50 - again this is identical to that in the CCSM - and since the Centrale Des Caisses has only 30 some odd members at the present time, this must necessarily be lowered to 20. And in the Credit Union's Act the present limit is 25.

MR. GREEN: Well, Mr. Chairman, I would just like to ask Mr. Guay a question. With regard to referring to par value shares when there are no par value shares, wouldn't we of necessity have to correct that?

MR. GUAY: That's correct.

MR. GREEN: In other words we would have to take that section and cross out what is referred to as par value shares.

MR. GUAY: That's correct, and simply insert the words "no par value".

MR. GREEN: It can't be done . . .

MR. TALLIN: It can't be done . . .

MR. GREEN: We just have to strike out where it says "par value."

MR. TALLIN: That's right.

MR. CHAIRMAN: Any further questions?

(Pages 1 to 6 were read and passed) Page 7 - Mr. Green.

MR. GREEN: Mr. Chairman, I would move that Section 14, subsection (2) subsections (a) and (b) be amended by striking out the words, "or par and whichever is the lesser" wherever they appear there. I'm crossing out the inconsistency in the section which refers to par value shares when there are no par value shares.

MR. CHAIRMAN: 14(2) as amended-passed.

MR. JOHANNSON: 14(3), Mr. Chairman, I would move that the last word of the section, the word "fifty" be deleted and the number "20" be substituted.

MR. CHAIRMAN: 20?

MR. JOHANNSON: 20.

MR. McKELLAR: 25 is in the other bill, in the other Credit Caisses Populaire bill.

MR. GREEN: They said the other had 50 and they used the same bill, but they have only 34 members, therefore they want it at 20, so that gives them a little bit of elbow room.

MR. CHAIRMAN: 14(3) as amended-passed. (The remainder of Bill 55 was read and passed) Bill be reported.

BILL NO. 57 - THE PENSION BENEFITS ACT

MR. CHAIRMAN: The Honourable Mr. Schreyer.

MR. SCHREYER: Mr. Chairman, it may be perhaps useful, and expedite proceedings of this committee if I merely point out, as I did in the House, that the intention is to proceed with Part I and Part III, and Part II being the substantive governing laws to the nature of pension plans and their regulation, is to be deferred for consideration by an intersessional committee, and to await detailed preparation by the commission established under Part I. Accordingly the Minister of Labour will be moving an amendment at the very end of the bill,

(MR. SCHREYER cont'd) . . . . . the last section of the bill, which will provide for a specifically deferred proclamation date on Part II. I trust that will be satisfactory; if not, there's an alternative.

MR. CHAIRMAN: Is that agreeable? (Pages 1 to 17 were read and passed) Page 18 - the Honourable Mr. Paulley.

MR. PAULLEY: I have an amendment, Mr. Chairman, that Section 35 of Bill 57 be amended by adding thereto at the end thereof the words and figures, "but Part II shall not come into force prior to April 1, 1976."

MR. CHAIRMAN: Page 18, with that amendment-passed. Mr. Jorgenson.

MR. JORGENSON: Mr. Chairman, I just want to be sure that I understand the amendment, I think I do as it reads, but that does not necessarily mean that it will come into force after April 1st, it will still have to depend upon whether or not that legislation is passed and proclaimed. It just simply means that it will not come into effect before April 1st.

MR. GREEN: That is correct. Well just so that there is no misunderstanding, it appears as it would be, the legislation could be proclaimed after April 1, 1976.

MR. JORGENSON: Yes.

MR. CHAIRMAN: (The remainder of Bill 57 was read and passed) Bill be reported.

BILL NO. 59

MR. CHAIRMAN: Bill 59, an Act respecting the transfer of Federal Business Development Bank of all Property Rights and Obligations of the Industrial Development Act. Page by page?

Page 1-passed; Page 2. . .

MR. McKELLAR: Mr. Chairman, just one question I wanted to ask. I just wonder if the Premier could tell us if there's any indication when the Federal Business Development Bank Act will be passed at Ottawa? Within a year or six months or . . . ?

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: The bill it is now enacted in Parliament, it's passed but it has not been proclaimed because they have administrative difficulties in getting everything lined up, such as this kind of thing, with the provinces and with all the different offices of the old Industrial Development Bank.

MR. McKELLAR: Oh, yes.

MR. CHAIRMAN: (The remainder of Bill 59 was read and passed) Bill be reported.

Committee rise.