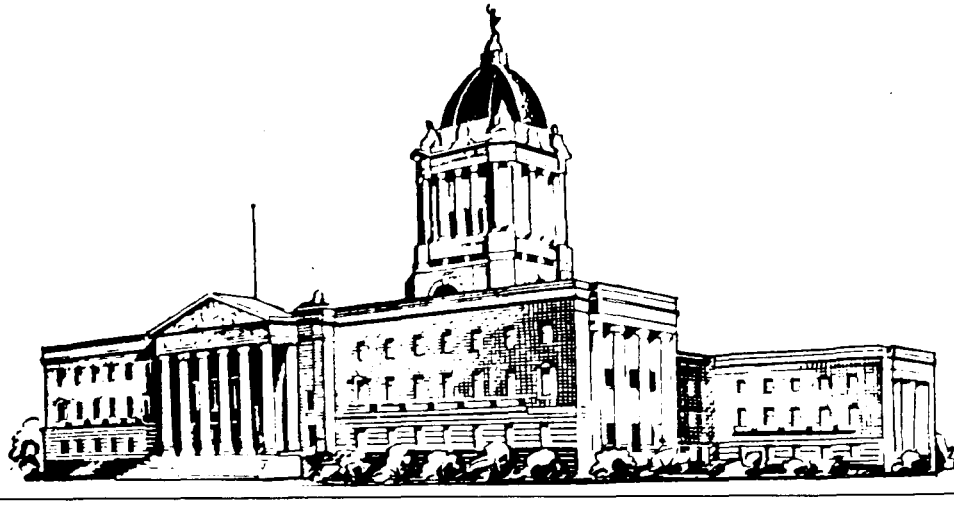
Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMENDMENTS

Chairman
Mr. William Jenkins, M.L.A.
Constituency of Logan



8:00 p.m., Wednesday, June 2, 1976.

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THE LEGISLATIVE ASSEMBLY OF MANITOBA
STANDING COMMITTEE ON LAW AMENDMENTS
8 p.m., Wednesday, June 2, 1976

CHAIRMAN: Mr. Wm. Jenkins.

MR. CHAIRMAN: Committee will come to order please. Before we proceed, I'll call out the Bills that are before the committee for consideration and then I'll ask for representations from any members of the public.

No. 21 An Act to Amend the Condominium Act (2)
No. 30, The Conservations District Act.
No. 37, The Corporations Act.
No. 39 An Act to amend the Fatal Accidents Act and Limitation of Actions Act.
No. 46 An Act to Amend the Pensions Benefits Act.
No. 56, The Foreign Cultural Objects Immunity from Seizure Act.
No. 58 An Act to amend the Civil Service Superannuation Act (2)
No. 62 An Act to Amend the Human Rights Act.
No. 63 An Act to Amend the Trustee Act.
No. 64 An Act to Amend the Civil Service Act.
No. 68, The Nuisance Act.
No. 75, an Act to Amend the Public Health Act.

Some members of the public have already given me their names signifying that they wish to make representation on the bills: Mr. N. Turner, W. Ridgeway, B. Thompson. Are there any other members who wish to make representations on the Bills? Would you come forward to the microphone and please give me your name.

MR. GRAHAM: Mr. Chairman, you indicated that Bill 75, The Public Health Act was also on here. I find it's not on the list on Votes and Proceedings.

MR. CHAIRMAN: . . .passed second reading today and the way it was posted was the bills that were there and others referred.

(Inaudible)

MR. GREEN: Well, Mr. Chairman, on the question as to whether it's in order, I suggest that it is entirely in order.

MR. CHAIRMAN: That's fine. Would you speak up please.

MR. VOGEL: Vogel. Bill 62.

MR. CHAIRMAN: And your initial?

MR. VOGEL: C.

MR. CHAIRMAN: Pardon?

MR. VOGEL: C. On Bill 62.

MR. CHAIRMAN: Fine.

MR. BOUILLON: W. Bouillon, on Bill 63.

MR. CHAIRMAN: Bill 63, thank you.

MR. BOWLES: Bowles, initial J., on Bill 63.

MR. CHAIRMAN: No one else? Then I would suggest that we proceed with these bills in numerical order. --(Interjection)-- Right. That's what I'm going to do. Hear the briefs in order of the bill number. Mr. Bruce Thompson on Bill No. 37.

MR. THOMPSON: Mr. Chairman, I'm an attorney and I represent the Manitoba Committee of the Canadian Bankers Association.

The Association has reviewed the bill and in some finds little fault to find and much to praise in its provisions. I think that one of the sections which has gained much interest and much study on the part of the Association has been Section 42 dealing with the question of guarantees, guarantees particularly of obligations, obviously in favour of banks, by parents of subsidiaries wholly and not wholly owned and vice-versa by subsidiaries of their parents, again whether or not the parents wholly own them.

I believe that a concern of the Association can best be expressed generally, and that is that in the interest of ordinary accepted commercial banking practices in our economy that a guarantee section admitting of the greatest possible flexibility, both in respect of the so-called upstream and downstream guarantees should be passed by the House.

(MR. THOMPSON cont'd)

The section in its present form has perhaps some imperfections within it to which the bankers might take exception, but in some I think with enlargement to effect the result that I have generally stated, the greater flexibility in the upstream and the downstream guarantees, would be acceptable to the Association.

I would direct my attention a little more specifically perhaps to one aspect of the bill which is of some concern to member banks, and it's the section numbered 65 in the bill which deals with the question of warranties of guarantors of signatures. As you all know, banks perform useful functions in that they from time to time guarantee signatures of endorsers of securities. Now the section is very specific about what exactly the implications of these guarantees now are. In the past, perhaps the implications have been vague at best but now they are most specific. And I draw particularly, Mr. Chairman, to the attention of the Committee that as well as guaranteeing that a signature is genuine and that a signer has legal capacity to sign, a bank in the future, if the section is passed in its present form, will be guaranteeing that the signer, the endorser of the security being it a share or whatever sort of security document, is an appropriate person, an appropriate person; and that term is a defined term and the definition is found in Section 61, which is, 61(1) actually. It's a lengthy subsection but to get across my point I need only I think refer to 61(1)(a) which includes in the definition of an appropriate person, a person specified by a security or by special endorsement to be entitled to the security. Now what of course that means is that a bank, or indeed anybody who guarantees signatures, is not only going to be guaranteeing for the benefit of those later dealing with the security - and I'll get to that in a moment - that the signature if genuine, that the signer had legal capacity to sign, but also that the signer was an appropriate person, i.e., he is entitled to the security.

I hear a question, Mr. Chairman, requesting advice as to whether or not that is not the case now. I suggest that the implications of the present practice are not so clearly set forth anywhere as they now are. Perhaps the implications are not fully understood, and I agree that it's most useful that they should be set down so that one does know exactly what they are, but to lay at the gate of a person guaranteeing a signature, that's what it is, guarantee of a signature, an obligation to ensure that the person is entitled to the security as a matter of ownership is, in the view of the association, rather onerous.

Precautions are normally taken in that bank manager don't perform this service except for customers who are known to them, and well known to them, but I suggest to you just be reference only to 61(1)(a) - and I could prolong this presentation by going through the subsection but I won't do that - I suggest to you that it is perhaps a little onerous to place an obligation of that extent on a guarantor of a signature. And I just close the point by referring to the extent of liability in Section 65(4) which is placed upon a guarantor as a result of making the guarantee of signature in question. The warranties referred to in this section it says, "are made to any person taking or dealing with the security and relying on the guarantee, and the guarantor is liable to the person for any loss resulting from breach of warranty."

So I think that the suggestion that the Association would make is that's going rather too far and perhaps a somewhat more restricted statement of the implication of guaranteeing a signature of an endorser might be considered.

Now, Mr. Chairman, as I said in sum, the Association is pleased with the provisions of the bill but, and I suppose to some degree it's echoing a common concern, that it has had but little time really to give it full study.

I am asked to say to this Committee that the Association as it continues its study this week could very well wish to make further comment or representations to this Committee and I ask for that privilege, knowing full well within the ordinary course the bill would be reported, as a result of tonight's meeting, to the House unless there were a large number of people wishing to speak to it and this Committee decided to sit again for the purpose. But I would ask if it fits in within the scheme of things at any subsequent meeting that bankers might now reserve the right to speak to the bill in more detail as they continue and indeed complete their study of it. Thank you.

MR. CHAIRMAN: Mr. Thompson, I have some members that wish to ask some questions. Mr. Spivak.

MR. SPIVAK: Mr. Thompson, just on your last point, because I think this was probably, well it's very important, I think in understanding this. There's 374 sections of this, of the Corporation Act, and I wonder if you can indicate to me in terms of the study of the Act, since its publication, have you, as solicitor for the Bankers Association, studied the Act, or do you have a group who are studying the Act, are the bankers themselves studying the Act, and what I am now really leading up to is, how many hours have already been undertaken with respect to a study of the pertinent sections and its meaning and its application.

MR. THOMPSON: A great many on my part, Mr. Chairman. The bankers have met with me on several occasions; the study is going on in the east, and there is indeed a Corporations Act Committee, this being after all more or less a standard form Act or hopefully will become more that in the future in Canada, but it of course is basically founded upon as we all know the Business Corporations Act of Canada. The Corporations Committee in Toronto, which is of course where the Canadian Bankers Association is head-office, has had the bill under study since it was provided with a copy of that when the bill was first published, and has indeed completed its study in large part and provided me with a number of its comments, many of which we have been able to satisfy them upon without having to bring them before your Committee, but except for the two sections to which I have alluded relative to guarantee and to the obligation of guarantor of signatures for the purpose of endorsement of securities.

MR. SPIVAK: But you're suggesting your study isn't completed yet.

MR. THOMPSON: I suggested - that's right - that the study has had to be hurried up and I'm sure we've all had to hurry it up. It's a very complex Act and it introduces a number of novel and new concepts, and it has not been easy to get the mind around all of them in the short time that one has had.

MR. CHAIRMAN: Any further questions. Hearing none, thank you, Mr. Thompson.

MR. THOMPSON: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Norm Turner on Bill No. 56.

MR. TURNER: Mr. Chairman, members of the Committee, I would like to make a presentation on behalf of the Winnipeg Art Gallery on the Immunity from Seizure of Foreign Cultural Objects Act.

The Winnipeg Art Gallery would like to inform this committee as it takes up deliberation on this bill, it has been the Gallery's position from the beginning that it is not acting on behalf of the Soviet or any other government. The Gallery in this instance has merely been fulfilling the mandate, which in part states that the Gallery has a responsibility to exhibit for the benefit of the general public the best works of art available for that purpose.

In order to carry out that responsibility, the Gallery learned it had to relay a certain request made by the Soviet Government through Diplomatic and External Affairs Department channels to the Manitoba Legislature. The request we refer to was that the Provincial Legislature be asked to consider and approve legislation which would protect the works of art contained within this exhibition from the Hermitage Museum in Leningrad which would be coming to Winnipeg. The Gallery felt this request was a reasonable one inasmuch as these works are and have been the property of the Soviet Government.

During second reading debate on Bill 56, it was acknowledged by its opponents that there is no chance that any of the involved art work could or would be challenged as property of a Manitoban. But it should be recognized that the Soviets have to contend with the possibility that person or persons unfriendly to their government in the extreme might bring before the courts a vexation or frivolous case designed to tie up one of their art works, Soviet property, for a year or two. It is for this reason that the legislation was requested.

Upon examination of this legislation, we hope that this Committee will note that the bill is not seeking to take away any Manitoban's rights. To the contrary, if any one of our citizens felt they have a case for claiming one of the arts, they could take legal action at any time. The only action this bill prevents is seizure of an asset by the authorities.

(MR. TURNER cont'd)

We must deliberate on and consider just who is doing whom a favour. Manitobans for allowing the Soviets to bring this marvelous exhibition here, or are the Soviets making us the benefactors by providing Manitobans with the opportunity to see, perhaps for the only time in most of our lives, art work by the world's and history's great masters. Never before have so many masterpieces of the great European painters of the past been offered for exhibition in Canada. The word "masterpieces" is no exaggeration, for these paints are objects of the highest aesthetic quality and are epitomes of the cultural milieu that produced them. The scope of the show is wide, ranging from two 16th century peices to a superb group of six late 19th and early 20th century French paintings. Great masters such as Cranach, Caravaggio, Tiepolo, Cezanne, Tragonard, Belazquez, Rubens, Rembrandt, Hals, Gainsborough, Matisse, and Picasso's, are represented and are brilliant examples of their greatest achievements. Added to this dazzling array, are 12 examples of the seldom seen late 19th and early 20th century work of Russian and Ukrainian artists. Undoubtedly this is an unparalled exhibition. These paintings would be in Canada for the first time. Few of them have been outside of the Soviet Union since their acquisition. The overwhelming approval this bill received after second reading is important. We feel that your consideration should be equally as favourable. Such legislation has been in effect in the United States since 1965 and they are benefiting culturally. Such a promise can be entertained for Manitobans and the prospects of being cultural pioneers is an inviting one to all Manitoba citizens. The future opportunities created by this issue does not exist anywhere in Canada today.

Respectfully submitted, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Turner. I have Mr. Spivak who wishes to ask a question.

MR. SPIVAK: Mr. Turner, the Art Gallery has no objection that this particular bill will in effect self-destruct after the exhibit is completed?

MR. TURNER: None whatsoever, Mr. Spivak.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Could I just ask Mr. Turner if the exhibition would be completed August 15th this year?

MR. TURNER: I understand it would be completed now on September 6th.

MR. PAWLEY: September 6th.

MR. TURNER: Yes.

MR. PAWLEY: So if the self-destruct clause read for September 30th we would be quite safe then insofar as everything being completed, wrapped up and things being out of the province?

MR. TURNER: Yes.

MR. CHAIRMAN: Mr. McKenzie.

MR. McKENZIE: Mr. Turner, do you know who drafted the bill?

MR. TURNER: Do I know who drafted the Bill? No, I do not.

MR. PAWLEY: Mr. Chairman, if the honourable member would like that information, I could provide him with that information better than Mr. Turner.

MR. CHAIRMAN: Mr. Bilton.

MR. BILTON: Mr. Chairman, through you to the witness. Would he be good enough to tell me as to why this legislation is necessary, if in the opinion of those that are handling these arts are of the opinion that there would be no reason in the world to make any challenge against it?

MR. TURNER: For the same reason, Mr. Chairman, that when we have the Olympics coming up we're going to have the most massive protection system ever implemented in mankind and I suspect this is probably for the very same reason. We have unfortunately, extremists, and also . . .

MR. BILTON: Mr. Chairman, what responsibility does the Art Gallery have for any problem developing through transportation through the Province of Manitoba.

MR. TURNER: I must be very honest, Mr. Chairman, and say I do not know.

MR. BILTON: You do not know?

MR. TURNER: No, I do not know.

MR. BILTON: Has that been thought of?

MR. TURNER: I do not know.

MR. BILTON: Again may I ask, did you get a direct communication from the Russian Embassy in Ottawa for this legislation?

MR. TURNER: I personally did not, the Director who unfortunately is away on holidays may very well have.

MR. BILTON: Now, Mr. Chairman, I must know, was this a direct request from the Russian Embassy in Ottawa to the Art Gallery, who in turn asked the Provincial Government to pass legislation to cover these art items?

MR. CHAIRMAN: Can Mr. Scholl answer that question?

MR. SCHOLL: Mr. Chairman, might I be recognized?

MR. CHAIRMAN: Yes.

MR. SCHOLL: We have with us an expert on this particular exhibition. She is our curator of Canadian art, Dr. Ann Davis, and she'd be pleased to answer any questions of a technical nature that are posed to her. Might she be recognized at this point?

MR. BILTON: Indeed. Certainly.

MR. CHAIRMAN: Dr. Davis.

MR. BILTON: May I pose the question, or did you hear it?

DR. DAVIS: Would you mind repeating it please.

MR. BILTON: I'd be delighted. Mr. Chairman, I must apologize. I didn't intend that remark should create any humour nor did I wish to embarrass our witness, but my question, ma'am, is this - or miss - are you with the Art Gallery?

DR. DAVIS: Yes I am.

MR. BILTON: Did you get a direct communication from the Russian Embassy in Ottawa to approach the Provincial Government to set up the legislation that we're discussing now?

DR. DAVIS: Mr. Chairman, that's not entirely the way it proceeded. As you know, the Soviet Embassy communicated with the Department of External Affairs and the Department of External Affairs consequently checked into whether this was federal or provincial in scope, and when they discovered that it was provincial in scope, requested us to approach you kind gentlemen here in Manitoba.

MR. BILTON: You're telling the committee that the Department of External Affairs of the Canadian Government approached the Art Gallery with a view to developing the legislation we're discussing tonight.

DR. DAVIS: Yes, that's true.

MR. BILTON: It had nothing at all to do with the Russian Embassy.

DR. DAVIS: The Department of External Affairs communicates these . . .

MR. BILTON: Now quit wiggling.

DR. DAVIS: No, I, our word was from the Department of External Affairs.

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

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman. I think Mr. Turner said that he wouldn't mind at all seeing this bill self-destruct after the show was over. I wonder if the Art Gallery wanted to bring in some of the other major world collections that contain a lot of paintings that may at one point in history have been stolen, which I understand this happens to some of the art of the world in some of the great museums - if that were to happen, would a country like France or England or the Metropolitan Gallery in New York, is there any likelihood that they would ask for the same sort of protection? Or can you answer that, is it too speculative for you?

DR. DAVIS: I would like to suggest, Mr. Chairman, that the Winnipeg Art Gallery is always most cautious about accepting even the loan of any work of art that might have been acquired under dubious circumstances.

MR. CRAIK: Well whether art acquired under dubious circumstances or not, it appears to be at what point in history it may have changed hands and how, I would imagine. No, the question is, if the legislation is left here as it is in the States, does it enhance the possibility of the Art Gallery bringing in other collections?

DR. DAVIS: It would certainly enhance the possibility of the Art Gallery having the opportunity of showing to everybody in Manitoba more first-class international art.

MR. CRAIK: Would anyone know what prompted the American legislation in 1965, was it a Russian display or was it the display of some other country coming into the U.S. that prompted it?

DR. DAVIS: I don't know what prompted it, Mr. Chairman, but I do know that it was not a Russian display.

MR. CRAIK: So it may be necessary then to have the same type of legislation for other works of art coming in to the U.S. or into Manitoba.

DR. DAVIS: I would suggest that that's a very valid possibility.

MR. CRAIK: Then I would go back to the first question. Mr. Turner said that he wouldn't mind seeing this self-destruct, but it would appear that there may be some advantage if the legislation stays on the books as it exists or if it's passed.

DR. DAVIS: I would like to suggest that the Art Gallery would prefer that the legislation not self-destruct.

MR. CRAIK: Mr. Chairman, would you call some members to order please?

MR. CHAIRMAN: Order please.

MR. CRAIK: That's all, Mr. Chairman, thanks very much.

MR. CHAIRMAN: Mr. Graham

MR. GRAHAM: Mr. Chairman, from time to time the Province of Manitoba has assisted the Art Gallery, and I believe in the last year it was almost to the tune of 1/2 million dollars. Will the people of Manitoba be able to see this display at no cost to the public?

DR. DAVIS: Unfortunately, Mr. Chairman, this particular exhibition, if it comes to Manitoba, will cost the Art Gallery more than our total annual exhibition budget. Unfortunately we will not be able to offer it to the people of Manitoba at no cost. We hope to offer it to them at the lowest possible cost.

MR. GRAHAM: Mr. Chairman, a second question. I had requested this of some of the people from the Art Gallery earlier. Could the committee be informed of what it will cost the Art Gallery to bring this exhibition to Manitoba?

DR. DAVIS: The figure, Mr. Chairman, off the top of my head, is approximately $90,000.

MR. GRAHAM: Will that $90,000 include the cost of insurance and the security in transporation. Is there any guarantee in that that will guarantee the transporation and safe return of that exhibition to the Soviet Union?

DR. DAVIS: Yes, approximately, in fact more than 1/4 of that cost is in that sort of insurance and transportation guarantee.

MR. GRAHAM: Is the Art Gallery getting insurance of that size in the Province of Manitoba?

MR. CHAIRMAN: I think I've let the member have quite a bit of latitude but I don't really see what that has to do with the presentation of this brief.

MR. GRAHAM: Well, Mr. Chairman, the Province of Manitoba is in the insurance business and I was just wondering if they'd had an opportunity to bid on that type of insurance.

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

MR. GRAHAM: A further question, Mr. Chairman. Can the witness give us some indication of what it will cost the public to view this art display, or have they arrived at a figure yet?

DR. DAVIS: Mr. Chairman, we have not arrived at a final figure. We estimate that we will have to charge adults $2.00 a person, old age citizens and children $1.00 a person.

MR. GRAHAM: Mr. Chairman, have those rates been approved by the Human Rights Commission?

MR. CHAIRMAN: Order please. I think the member is being a bit facetious.

MR. GRAHAM: Mr. Chairman, those are not facetious questions, they are questions that are legitimately handled every day by the Human Rights Commission.

MR. CHAIRMAN: Mr. Henderson. Order please. Do you have any more questions, Mr. Graham?

MR. GRAHAM: Mr. Chairman, in this art display, has the Art Gallery estimated how many people they would require to view the display to reach a break-even point?

DR. DAVIS: Mr. Chairman, I'm sure that the honourable member's mathematics is as good as mine. It depends upon how many children and how many old age citizens we get in and what proportion, that we would hope that 40,000 people would come through the exhibition.

MR. GRAHAM: Mr. Chairman, may I add one final comment? I wish the Art Gallery well in their efforts here and I sincerely hope that they end up with a profit.

MR. CHAIRMAN: Mr. Henderson.

MR. HENDERSON: Mr. Chairman, I was wondering, has this exhibition been shown in other parts of Europe?

DR. DAVIS: No, Mr. Chairman, it has not. It has been shown in five locations in the United States and in Mexico City.

MR. HENDERSON: Do you know if other exhibitions of art like this in countries in Europe have to have legislation like this to protect them, or is there restriction of the movement of art from one part of Europe to the other?

DR. DAVIS: I'm afraid I don't know the answer to that.

MR. HENDERSON: I heard that when this was considered that Ontario was going to exhibit this art and then I heard that they withdrew their legislation. Is that right?

DR. DAVIS: I have heard something to that effect.

MR. HENDERSON: Do you know if Toronto or Ontario were considering bringing it in?

DR. DAVIS: Yes, I had heard that they were considering it.

MR. HENDERSON: Could it be that the legislation wasn't passed so they aren't bringing it there, do you think?

DR. DAVIS: I think that it's very possible that as there is no legislation on the Order Paper in Ontario that Ontario will not get this exhibition.

MR. HENDERSON: Does it not seem a little odd that one part of Canada is exhibiting this art while other parts of Canada take exception to it?

MR. CHAIRMAN: Order please.

MR. HENDERSON: Well, Mr. Chairman, I was just wondering, was Dr. Davis really planning on answering my question or not. You interrupted, maybe you didn't feel that she should answer it.

MR. CHAIRMAN: Order please. Dr. Davis is here, and any witness that is here is here voluntarily and we have no right to force them to give answers. We don't have people here on oath, nobody's sworn, if she doesn't wish to answer a question, that's her privilege, and I'll ensure that she has that privilege.

MR. HENDERSON: Mr. Chairman, I wasn't forcing her to answer the question. It was because she was interrupted from the people around the table. I thought maybe it was her choice --(Interjection)-- That's right. I was just wondering if it was because she was interrupted.

MR. CHAIRMAN: Order please. One person at a time.

MR. HENDERSON: Is this the only place in Canada then that this art display is going to be exhibited?

DR. DAVIS: This is not final. The Federal Government has been looking into alternatives which the Department of External Affairs has submitted to the Russian Government, no word has yet come through on the Russian reaction.

MR. HENDERSON: Do you ever think that this legislation possibly should have been passed in Ottawa for all of Canada and not just in one province out of Canada.

DR. DAVIS: I would contend, Mr. Chairman, that the gentlemen around this table are the legislators, not I.

MR. CHAIRMAN: Very good answer.

MR. HENDERSON: That's all, thank you.

MR. CHAIRMAN: Mr. Doern.

MR. DOERN: Mr. Chairman, to Dr. Davis. I gather that six galleries requested this exhibition, is that true?

DR. DAVIS: Yes, it is, Mr. Chairman.

MR. DOERN: Have you found it difficult for the Winnipeg Art Gallery to obtain major exhibitions; for example, the recent Chinese Exhibition that was shown in a couple of places in the States and Toronto, did we bid on that or did we bid on a lot of these major ones and fail in our attempt?

DR. DAVIS: I would suggest that we have failed in the past for a number of reasons. I think that now we have a new building, a much sounder economic base and an enlightened piece of legislation before the House, all of which should enable us to present a much more dynamic, a much more positive scope of exhibitions to the people of Manitoba.

MR. DOERN: When you're bidding for a major cultural exhibition like the Chinese Exhibition as an example or many others say, excluding this for the moment, why don't more come to Manitoba. Is it largely a question of money, or is it because we don't have the clout of London or Paris or something . . .

MR. CHAIRMAN: We already called one member to order because he started asking questions that are not contained in the brief, not really pertinent to the bill. I wish the questions would be pertinent to the bill and to the legislation.

MR. DOERN: Mr. Chairman, I think the question is, I am trying to ascertain how it is that the Art Gallery has not had more major exhibitions and I'd like to know what the problem is. Is it a case of the population of Winnipeg or is it a case of we just don't have the money to compete for major exhibitions?

DR. DAVIS: I think in the past, Mr. Chairman, it has been a question of money. I would also contend that these things tend to have a bit of a snowballing effect. Once you have one very high profile, very successful exhibition, other institutions are apt to offer you their large exciting exhibitions. After the Royal Ontario Museum had the Chinese Exhibition and had such a success there, other major international institutions came forward and said to the Royal Ontario Museum, would you be interested in housing our show. I would very much like to hope that the same thing could happen here in Manitoba.

MR. DOERN: My understanding is that the King Tut and Cameron Exhibition drew something like 43,000 people here ten years ago, I think, and the Van Gogh some 15 years ago drew 51,000. Are there estimates of the number of people, for instance, my own prediction was over . . .

MR. CHAIRMAN: Order please. Now I'm going to have to rule the member out. You're pursuing a different line, I have talked to other members and I don't intend to debate it.

MR. DOERN: The Member for Birtle-Russell asked how much the exhibition would cost, he asked how much single admissions were, and I would like to know what an estimate of the number of people is. I think that's just as relevant as those questions. I'd like to know whether 50,000 or more is in fact a realistic objective or does the Gallery have a projection of how many people they expect to attend.

I'm asking another question, in case you didn't hear.

MR. CHAIRMAN: The question that he is asking now is in line with the one that the Member for Birtle-Russell, Mr. Graham asked.

DR. DAVIS: The Gallery very much hopes to get between fifty and sixty thousand people.

MR. DOERN: Fifty and Sixty thousand. Okay, that's the last question, Mr. Chairman.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I wonder if Professor Davis would indicate to me whether or not any person, any group, has indicated to the Art Gallery or representatives of the Art Gallery that they would, except for this legislation, bring any right of action or claim as against any of these paintings in Manitoba.

DR. DAVIS: Not to my knowledge, Mr. Chairman.

MR. PAWLEY: To your knowledge is there any basis upon which any such claim could be brought against any of these paintings while in the Province of Manitoba?

DR. DAVIS: Very definitely not.

MR. PAWLEY: It has been suggested in some quarters that some of these paintings might be of dubious ownership. Are you aware of any that might be of dubious ownership?

DR. DAVIS: I certainly am not and I would question that very sincerely.

MR. PAWLEY: Now if in fact Toronto does not receive this exhibition and the exhibition does not travel to Montreal, does this mean that the exhibition may be extended beyond the four-week period insofar as Winnipeg is concerned?

DR. DAVIS: We would very much like to hope so. Unfortunately we can't be more definite than that at the moment.

MR. PAWLEY: Now the date given earlier by Mr. Turner was September 6, I believe, for the completion of the exhibition. In the event that neither Toronto or Montreal receive this exhibition and it is extended, then the exhibition in fact might be shown until sometime in late September, early October?

DR. DAVIS: That is correct.

MR. PAWLEY: So that any clause which would be self-destruct, should then, I would think, be dated somewhere around the end of the year, say, 31st of December this year, for safety?

DR. DAVIS: I would feel that that would be appropriate.

MR. PAWLEY: That's all the questions I have, Mr. Chairman.

MR. CHAIRMAN: Mr. Johnston.

MR. G. JOHNSTON: Mr. Chairman, through you to Professor Davis. In view of the fact that a quarter of the Legislature voted against the bill to allow the Hermitage display to be held in Manitoba, in view of the fact that that large number of members expressed the fear that there was going to be, by the passage of the bill, be a loss of certain freedoms of citizens, do you consider this . . .well did your board discuss this and take it into consideration that there were a number of people in the province who felt that the passage of the bill represented a loss of freedom to certain people?

DR. DAVIS: Yes, Mr. Chairman, the Art Gallery has discussed this question thoroughly. We reviewed the specific attribution of each single work of art that would be in the province, we cross-checked when it was acquired by the Hermitage, we tried to determine through every possible avenue whether there would be any just legal claim for ownership of any such piece by any citizen of Manitoba. Now while I am no lawyer, it would seem to me, and I would suggest that it seems to everybody at the Gallery, that there is no validity for any claim against any piece that would be a part of this exhibition.

MR. G. JOHNSTON: So then, Mr. Chairman, what you're really afraid of is a nuisance claim or a nuisance injunction that could not only embarrass Canada and Manitoba and you in particular, so for that reason, you want the safeguard, is that correct?

DR. DAVIS: Yes it is.

MR. G. JOHNSTON: So you don't see any danger to democracy?

DR. DAVIS: No I don't.

MR. G. JOHNSTON: Thank you.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: There's just one point and I have to make reference to what you said earlier in asking this question I think it should be answered and it's not intended to embarrass you but I want to understand this because I think it goes again to Mr. Craik's question to you, as to whether realistically the self-destruct clause is in itself by the very nature of it being a self-destruct clause is going to possibly cause hardship to the Gallery in the future. You refer to the fact of an enlightened policy and the enlightened policy as far as I know is the legislation. That's what you are essentially saying. Now I then have to pose the question to you, why is the legislation, if it was to stand on the books in its present form without a self-destruct clause, enlightened? I have to ask you, you have to tell me that. I know the reasons with respect to the --(Interjection)-- no, no, she doesn't have to tell me anything but I think it would be important in understanding it so as to determine whether there is in fact validity in the position that it should not be a self-destruct clause.

DR. DAVIS: It is enlightened, Mr. Chairman, because it would permit a great many people in Manitoba to see the highest quality of international art.

MR. SPIVAK: Well, I know, but it's enlightened in the sense that it would allow the Gallery to bring in obviously art that in effect could be challenged, I mean, you're acknowledging that it could be challenged through our court procedures. That's what you're basically saying, that there is that possibility, you're acknowledging that that does exist.

DR. DAVIS: Mr. Chairman, if you will remember one statement that we made tonight a little earlier, this legislation does not prevent citizens from challenging the ownership, it only prevents the seizure of the pieces in question.

MR. SPIVAK: Yes, but the seizure in question is processed through our jurisdiction and this in effect prevents that from happening. That's the whole object of the legislation. My point to you is that in terms of the future and the future development of the Gallery and the opportunities that can arise, all the things that obviously you and others are working towards for the Gallery and for the people of Manitoba, the legislation if it was not to have a self-destruct clause and was to remain on the books, if it was to be passed by the Legislature and there was agreement on that, would be enlightened; but again I have to pose the question, I understand and I recognize that there could be seizure but I find it strange that at this point you can suggest it would be an enlightened policy, because it would seem to me that the opportunity for seizure with respect to showings of art would be rather remote at this point, you know, rather unlikely in almost all cases, and unless you can sort of cite examples to me, I wonder whether in effect it really is an advance of policy that we shouldn't be pursuing but rather should follow the procedure in each case as we understand it.

DR. DAVIS: Perhaps this is more a question for the legislators to debate than I.

MR. CHAIRMAN: Any further questions. Mr. Bilton.

MR. BILTON: I wonder, Mr. Chairman, through you on behalf of all of us, may I congratulate the witness. I think her poise and her answers have been excellent and I would wish her well in her responsibilities in the future and I think she'd make a better politician than three of us around the table. Thank you very much.

MR. GRAHAM: Mr. Chairman, I'm sure every member of the Legislature is concerned about the success of this show and I was wondering if the Art Gallery would be kind enough to give us a financial statement of their affairs when this show is over.

DR. DAVIS: I can only suggest it, Mr. Chairman . . .

MR. CHAIRMAN: I think that the Gallery publishes a statement of account every year and they're available to any members of the public that may wish to have them. I'm sure that the professor will make sure that you receive one, Mr. Graham. Mr. Dillen.

MR. DILLEN: Can you tell me if any other work of art that is coming to Manitoba has received the kind of publicity that this one is receiving as a result of the introduction of this legislation?

DR. DAVIS: Mr. Chairman, I often find it hard to judge the ins and outs of the media and I certainly think that you've had a very interesting debate.

MR. DILLEN: This free publicity that you're receiving, will that put the Gallery in a more favourable position knowing that more people now . . . this art works, I would say is being treated in the same manner as an X-rated movie, that more people will now want to see it as a result of this.

DR. DAVIS: I'm not entirely sure, Mr. Chairman, that I can agree to the analogy.

MR. DILLEN: But you will agree that this publicity has been good if you are successful in obtaining the art works here?

DR. DAVIS: I most definitely will.

MR. CHAIRMAN: I have no further members that wish to ask questions. May I on behalf of the committee thank the Professor and Mr. Turner and Mr. Scholl for their presentations.

The next presentation, Mr. C. Vogel, on Bill No. 62.

MR. VOGEL: Mr. Chairman, I am a spokesperson for an organization called "Gays for Equality" and on this matter I think I represent all of Manitoba citizens who are homosexually oriented. I am concerned with the bill because again, like previous amendments and the legislation itself, it fails to provide protection in employment and housing and in the other categories for people who are homosexually oriented. These people, like myself, form a substantial minority in the population of the province. By applying the best available statistics to a population this suggests that men and women, about 10 percent, or 100,000 Manitobans are predominantly or entirely homosexually oriented.

I don't think that there is any debate that there is considerable prejudice among many Manitobans toward those who are homosexually oriented. Furthermore, I think the nature of the prejudice is very similar if not identical to that against other minority

(MR. VOGEL cont'd). . . . . groups already included in the Act. The objection to homosexuality is of basically a religious nature and may at one time have had economic justification for primitive societies who are at the origin of our churches. However, the enforced production of the maximum number of children which this measure was designed to ensure is no longer necessary or even desirable in modern society. For a period, in recent years, a number of pseudo-scientific doctrines had been invented to justify this prejudice, including the suggestion that homosexuality was a disease or a neurosis. These have all been regularly disproved by genuine scientific research and a collogue psychiatrists and psychologists no longer agree that there is any difference or inferiority attached to homosexuality in comparison to heterosexuality.

There are a number of arguments commonly offered why homosexual people should not be included in the Act. The first of these is that this would encourage an undesirable pattern of behaviour. First of all of course this assumes that homosexuality is in some way undesirable and rests upon the many myths that have grown up around the anti-homosexual prejudice. None of these myths were valid to begin with and all have been proven to be inaccurate. Among them were the suggestion that homosexuals were inclined to molest children or that they had undesirable morals in some fashion or that in some other way they behaved in a different or unusual fashion. Indeed, the opposite is true and because homosexuals are identical to heterosexuals and indistinguishable from them, it is one of the reasons why this prejudice has remained so long in force. All homosexual individuals are brought up as isolated individuals in society, unlike other minorities that often have a community from which to receive support. Because this community does not exist and because of the pervasive and religious nature of the injunctions against homosexuality, even gay people often believe them and for these reasons are forced to conceal themselves and their sexual orientation for fear of suffering. It is undeniable also that many forms of discrimination are employed against gay people in employment and housing and the other categories. Most of these remain invisible for reasons that I have cited, because the victims find that they are better off not to complain and, of course, in any case complaint under the present legislation would be futile.

The second consideration suggesting that this legislation, this amendment, would not be desirable is that no complaints have yet been registered with the Human Rights Commission which would suggest the necessity of the legislation. Indeed, in fact, there have been a number of complaints most of those registered by our organization in the ordinary carrying out of our affairs or by individuals who feel that they can take the risk of becoming publicly gay. However these are very small for the reasons I've suggested. Nevertheless, because open homosexual relationships are growing in number as homosexual orientated people forego concealment and artificial heterosexual relationships the number of cases is likely to increase markedly. It's desirable, of course, to have legislation before rather than after the fact.

One of the other reasons commonly asserted against, in opposition to the inclusion of sexual orientation or sexual preference in the Act, is that this factor would move too far ahead of common public sentiment. It's undoubtedly the case that many prejudices exist against gay people in our society, however, of course, it is the function of The Human Rights Act to protect minorities against prejudices. However, I think the positive publicity received by certain well-publicized cases of discrimination and the effects of our own public education campaign as well as prevailing social trends, suggests that it is indeed consistent with current public attitudes to ensure the ordinary human rights of gay people.

Finally, there are a number of minor considerations which are occasionally mentioned and which although they may seem trivial in nature and content because they are so ridiculous, are nevertheless likely to crop up. One is the insistence that if homosexuality is allowed in society, although of course this legislation no more allows homosexuality than it allows Roman Catholicism or unorthodox political beliefs, if homosexuality is permitted in society, then everyone will become homosexual. Oddly enough this suggestion is usually advanced by people whose antipathy to homosexuality is so great that I have great difficulty in imagining them becoming homosexual. Nevertheless, the number of homosexual people in our and every other society under study has not changed regardless of whether or not homosexuality is accepted or rejected or treated with indifference.

(MR. VOGEL cont'd)

Finally there is a suggestion that homosexuality and the acceptance of it by society will affect the nature of family and family union in societies. It is my belief and experience that homosexual unions being identical to heterosexual unions and under the same social and cultural influences will follow precisely the same patterns, as indeed they are beginning to now, as heterosexual unions.

The matter of children, while obviously one of considerable biological importance is not that relevant. Many heterosexual couples of course now choose not to have children, or at least not to produce them. The question for homosexual parents who do have children by adoption or from previous heterosexual marriage, is not one of whether or not they should have children but the difficulty of preventing the courts from taking them away from them simply because they're homosexual.

In conclusion, I would like to read a statement from one of the outstanding research reports in Europe on this topic: Many of the norms that are used for discrimination against gay people are indefensible from a utilitarian, legal or humanitarian point of view. They stand in opposition to all our basic values and to the spirit expressed in the United Nation Declaration of Human Rights.

Summarized in three words, Mr. Chairman, I think that the inclusion of sexual orientation or a sexual preference in legislation is good for three reasons: Because it is just, because it is needed and because it's due. Thank you.

MR. CHAIRMAN: Thank you, Mr. Vogel. Mr. Wilson.

MR. WILSON: Mr. Vogel, I wondered if you could repeat what changes you want in The Human Rights Act in sort of simple terms and sort of point terms. That was a rather rapid-fire presentation, some of it may have gone over my head and I wondered, since your group is sympathetic to the NDP and had a booth at their convention, are you now thinking of changing parties since you didn't get these changes in the Act?

MR. VOGEL: We've attempted to have booths at the conventions of all political parties. The response that we received, however, from the other two parties was not as sympathetic as we received from the New Democratic Party and that was only received after some additional effort on our part. However, it's certainly the case that a number of political caucuses including NDP, Liberal, Conservative and Social Credit, have passed resolutions favouring gay civil rights. However, we're a non-partisan political group and this measure has received support from among the following organizations: The Civil Liberties Union, the American Psychiatric Association, the American Psychological Association, the United States Civil Service Commission, the Saskatchewan Human Rights Association, the Washington, D.C., Board of Education, the San Francisco, California, Board of Education, the Young Women's Christian Association, the United Church of Christ Council for Christian Social Action, the American Anthropological Association, the National Organization for Women, the Executive Council of the Episcopal Diocese of Michigan, Unitarian Universal Church in Canada and America, the National Council of Churches, the American Personnel and Guidance Association, the American Literary Association, the Bishop of the Episcopal Diocese in New York, the Society of Friends Quakers, the National Federation of Priest Councils, the American Association for the Advancement of Science, the National Educational Association, the American Public Health Association, the American Educational Research Association and the American Federation of Teachers.

MR. WILSON: Mr. Vogel, I guess what I was trying to say was in The Human Rights Act, again I want it in simple terms, what changes you wanted because if your group was sympathetic to the current government and had expected by giving them your political support, you would get some changes, what disappointments or what omissions are still missing from The Human Rights Act? I want to know what did you not get?

MR. VOGEL: I think everything that we want isn't there.

MR. WILSON: I see.

MR. VOGEL: What we do want is the inclusion of the term, whichever is considered most desirable I suppose by the law officers of the Crown, either of sexual orientation or a sexual preference. These are the two terms already in existence in the 37 or so governments who already have such legislation, in each

(MR. VOGEL cont'd). . . . . of the categories in which discrimination is prohibited. Now they include employment and public housing and advertising and the provision of public services. There may be others but those are the ones I remember offhand. I suppose politically that we will support any member of any government or any legislature who undertakes to provide ordinary civil rights to gay people regardless of their party.

MR. WILSON: You mentioned 37 governments. Are there any other provincial governments in Canada that you've got some things in?

MR. VOGEL: No. Almost all of those governments are municipal governments, city and county governments in the United States, where human rights is indeed largely a municipal responsibility. In Canada, two municipal governments, the City of Ottawa and the City of Toronto, have passed regulations protecting the employment rights of their own employees but that's the limit of their jurisdictions. Federal or national governments who have passed such regulations exist, to my knowledge, only in Europe, although bills which undertake this are active in the American Congress and a number of State legislatures, although none have yet been passed.

MR. CHAIRMAN: Any further questions? Hearing none, thank you. Oh, Mr. Adam.

MR. ADAM: Thank you, Mr. Chairman. Mr. Vogel, I'm a bit confused because it seems to me that you want to be accepted as a part of society, as any other human being.

MR. VOGEL: Yes.

MR. ADAM: And I want to accept you as such, but if I put in this legislation the word "homosexuality" or anything that has any connotation of that, I'm identifying you as being different than I am.

MR. VOGEL: Well no more so than the references to religion and race and ethnic origin. The reason that we're discriminated against when this happens is because of a specific personality trait which has no relation to ability of an employee or tenant or credit risk or whatever, but nevertheless other people feel that this particular aspect of our personality has some unusual significance as people once did and perhaps still do - I understand the legislation is actually functioning on the basis of race, or religion or ethnic origin or whatever, because they make this distinction, we would like to ensure that they will no longer be permitted to do it legally, that won't single us out on any other basis or to any greater extent than it will be true of other minority groups. I think that answers your question.

MR. CHAIRMAN: No further questions? Thank you, Mr. Vogel. Next we have Mr. Bouillon on Bill No. 63.

MR. WALTER BOUILLON: Mr. Chairman, I'm Walter Bouillon, I'm Manager of the Guaranty Trust Company at 430 Portage here in the city. As you are no doubt aware, our company has been using fee memorandums in connection with wills for some time. We took the liberty of sending each one of the members of the Legislature a copy of our fee memorandum for wills which we use and also some suggested clauses for insertion into those wills. I also sent a photocopy of a letter from our head office to the Trust Company's Association of Canada. If I may, I'd like to refresh your memories in case you didn't get your mail delivered to you, and I quote: "I might add that while we're obviously opposed to the action being taken in principle, my own observation is that some of the statements made by the Attorney-General are not correct", and I quote: "Trust Company attaches a memorandum to any will that it prepares."

Mr. Chairman, the memorandum is not attached to any will but only to those wills in which the testator is satisfied with the fees and the memorandum is not simply attached but it is incorporated directly in the will by reference. I quote again "Trust companies unilaterally on their own are able to by means of attaching a memorandum to a will in advance." The action is not unilateral but with the knowledge and agreement of the testator, as obviously if the testator does not find the fee set out in the memorandum as acceptable, he is at liberty to select a different executor and/or revoke the appointment at any time. I quote again: "It was not the intention of the Legislature that there would be means developed in order to circumvent."

I think it is fair to say that if the history of the present legislation in Manitoba and many other jurisdictions was carefully researched it would be found that it is not

(MR. BOUILLON cont'd). . . . . preventative legislation subject to circumvention but rather enabling legislation in itself designed to circumvent the historical situation where trusteeship was gratuitously and thereby enable the courts to remunerate trustees which would otherwise not be possible. The intent of the fee memorandum incorporated in the Will is to enable the testator not only to choose his executor but to compensate that executor in a manner acceptable both to the testator and the executor selected. That was the photostat that I sent around.

Mr. Chairman, it is our belief that the testator should be free to agree to those services he needs and wishes to avail himself of as well as be free to agree to the fees to be charged for the services to be performed when required. I think we can relate to Chapter F200 of the Act to regulate and control funds provided by the pre-arrangement of funeral services whereby any person can prepay and arrange for a funeral many years before the event is warranted, and also in the normal everyday business a contract by a living person, is binding by his executors, heirs and successors, and a couple examples are mortgage loans, personal loans, etc.

I would like to point out that as far as we are aware, we have only had one complaint lodged against our fee memorandum and it would appear that this complaint went to the Law Society and they looked into the complaint and we have not heard from them and we assume that they do not feel that any action is required. I would also mention at this juncture, I assume that this is the result of this amendment coming forth from this one complaint. We do have a continuing ongoing will review situation where many have been completed and a new will is prepared which incorporates fee memorandums, all with the agreement of the testator. The impression obtained from most clients by our Trust Department is that they were pleased to see the services offered outlined and the fees to be charged explained so that they could decide whether they wished to take advantage of them or not.

It is my company's feelings, Mr. Chairman, that this is a matter of such importance that the passage of this bill be deferred until the fall sitting of the House so that we may present a full study and representation to you people by all the parties affected and due consideration given to all material submitted by the members of this House. Thank you.

MR. CHAIRMAN: Thank you, Mr. Bouillon. We have Mr. Pawley who wishes to ask questions.

MR. PAWLEY: Mr. Bouillon, could you tell me under what basis you felt that the Law Society had any authority to deal with the particular request you made of them, when you requested advice from the Law Society?

MR. BOUILLON: Mr. Chairman, we did not request advice from the Law Society. The Law Society, in circulating its members here in town, it was brought to my attention that a complaint had been made to the Law Society and subsequently they must have passed it to one of their committees and it was ruled, I assume, that there was nothing wrong with our using the fee memorandums.

MR. PAWLEY: Well would you agree with me that the only authority the Law Society would have in that particular case would be to determine whether or not there were any precise breaches of the Law Society Act. . .

MR. BOUILLON: I assume, Sir, I don't know.

MR. PAWLEY: . . . but not pertaining to whether or not in their opinion it was a proper approach or method of carrying on a trust company operation?

MR. BOUILLON: As far as I know, Mr. Chairman, they have not signified anything that was improper to carry on business in that way.

MR. PAWLEY: But you would agree with me if they had indicated to you any opinion beyond that that pertained to the jurisdiction of the Law Society, that would certainly be beyond their capacity to do so properly?

MR. BOUILLON: I would think so, yes.

MR. PAWLEY: Now if I could just pursue this a little further. Are you familiar with the approach that the courts use in Manitoba at the present time in determining the amount of fee which will be allowed to a trust company pertaining to the administration of an estate?

MR. BOUILLON: I'm not exactly sure but I'm sure one of my colleagues back

(MR. BOUILLON cont'd). . . . . there could answer that question, Mr. Chairman, if you would allow them.

MR. PAWLEY: Well, I would just ask a specific question. Are you in agreement that the courts do not base their findings as to fees allowable on the formula of a percentage of the estate?

MR. BOUILLON: Yes.

MR. PAWLEY: But that the courts instead find insofar as the fee allowed to be one which is based upon that which is fair and reasonable pertaining to the work that is involved in the administration of the estate?

MR. BOUILLON: Yes.

MR. PAWLEY: So that in the instances which you've brought to our attention, if I suggest to you that in some instances, if the schedule of fees was deleted from the Will, not attached to the Will, which you indicate your client has concurred with, that the courts might very well find that that percentage of fees was unreasonable or unfair, would you agree that there would be such instances if there was no schedule of fees attached or incorporated into the Will.

MR. BOUILLON: I believe, Mr. Chairman, if there is no fee memorandum attached or any reference thereof and that the beneficiaries of the estate that's being distributed have any qualms about the fee that they would present it to the court and at that particular time the court would peruse the statement of account and set a fair and reasonable sum. I believe that's the procedure.

MR. PAWLEY: But are you not indicating that in fact by your incorporating a fee schedule within the Will itself, that you are in fact removing that possibility of the Court establishing a fee separate and apart from that which, as you indicate, was agreed to by testator earlier prior to his or her death.

MR. BOUILLON: I'm not a lawyer, so I really don't know the answer to that one, sir.

MR. PAWLEY: But isn't that the purpose of your fee schedule, to establish a fee well in advance of the actual death with the client?

MR. BOUILLON: The testator has agreed to this fee and he has the right to change it any time after the fee, he can change his will or name another executor, so he still has the privilege of . . .

MR. PAWLEY: Prior to his or her death, but after his or her death, the fee schedule incorporated into the Will, then in fact the estate is bound by that fee which has been agreed to by the testator. Is that not correct?

MR. BOUILLON: That's correct.

MR. PAWLEY: And therefore the court is no longer able to establish what they consider to be a fair and reasonable fee under the provisions of the Trustee Act because there has been an already agreed to fee schedule on the part of the deceased.

MR. BOUILLON: Right. But if the deceased wishes to enter into that agreement as he would if he arranged his prepayment of a funeral.

MR. PAWLEY: Then I want to follow that up by asking you in your view just how many clients really have a knowledge (1) as to the volume of their estate and, (2) the complexity of that estate and in fact would be aware as to whether or not the administration fee proposed by your company would be fair and reasonable.

MR. BOUILLON: Well I would think that they would have the right to go to any other institution or person who looks after estates and find out what their fees before they would enter into any agreement with us to see if we're way out of line or way below or in the middle of the road.

MR. PAWLEY: Well on what basis is the fee schedule sold to your clients at the present time, when you propose a fee schedule to your client, on what basis is that fee schedule represented to the client?

MR. BOUILLON: Well I think if you have your folder in front of you there, the basis of fees, it quotes, "The basis and amounts of our fees outlined in the enclosed schedule follows established court practice with two modifications. Since the executor performs most of his functions during the initial period of administration of the estate, a greater portion of the fees covers the services provided during this time. Also, we apply a declining rate to large estates because we realize that the duties, costs and

(MR. BOUILLON cont'd). . . . . responsibilities of the executor and trustee are not fixed in proportion to the size of the estate."

MR. PAWLEY: But do you feel that you are in a better position to determine what is a fair and reasonable fee according to the size of the estate, the complexity of the work involved,than the courts would be at the particular time the estate is presented to them for the establishment of the fees to be charged by the executor?

MR. BOUILLON: I don't have the experience to answer that question, Mr. Chairman. I would think that if the agreement isn't in force and it goes to the court - when is the fee established, if there's no agreement it's normally established after his death. And maybe it should be established before the work is started, or before he dies. So this is, I think the . . .

MR. PAWLEY: Now I dislike very much using my profession as any example to you because certainly it's not one which is all pure and white, but usually we attempt to determine our fee as lawyers after the work is completed, when we know the amount of work that's been involved hour-wise, the seriousness of the work, the complexity of the work, we can best determine that usually after we've completed an estate for instance, doing the legal work for an estate, we can better determine that when we've completed that work than prior to its completion.

MR. BOUILLON: Mr. Chairman, have not the legal profession got a printed and established set of probate fees and fees that they have, their minimum, say, I don't know, I'm just asking the question.

MR. PAWLEY: They're subject to taxation by the courts though. The court has the final. . . they are used as guidelines subject to taxation by the court when the estate work is completed. In what way would you feel that your fee schedule that you've established and incorporated right into the Will so that it becomes part of the Will itself be preferable to permitting the court to determine what is fair and reasonable after the work is completed, rather than committing the deceased, often years ahead of the work being done, as to what fee will be charged pertaining to that estate?

MR. BOUILLON: I think it's the testator's choice if he wishes to enter into that agreement, and I assume this could work against us, Mr. Chairman, if there's no revision of the Will for 15, 20 years this is the fee structure that probably we would have to fall in line with.

MR. PAWLEY: But I say to you that even if the estate does not come into existence 10, 15 years after the fee schedule has been incorporated into the Will and that fee schedule cannot be changed by the court because it's incorporated into the Will is part of the Will, then do you not feel that the Court ought to have the opportunity to review that fee schedule in order to establish whether it's any longer fair and reasonable at that time, even if it might have been fair and reasonable looking at the estate 10 or 15 years previous to that?

MR. BOUILLON: No I don't.

MR. PAWLEY: Then could you answer me as to, even if you suggest that it is fair that the testator be committed to this fee schedule because he agreed to the fee schedule ten years ahead of his death, that circumstances change considerably pertaining to the estate, so that when the client dies the work involved is much simpler than what was originally intended and what the client anticipated would be the case, ought not then the courts to have the authority to revise that fee schedule which was established upon totally different grounds outside of the knowledge at that time of your client?

MR. BOUILLON: Mr. Chairman, we have many people dying and many old Wills, and to answer the honourable member's question, we would renounce if the estate is dissipated, is that what you're getting at? If circumstances have changed, we would renounce our position as executor.

MR. PAWLEY: But that choice is left with you as executor.

MR. BOUILLON: No. If you're elderly and your estate is dissipated and you've enjoyed your life and you're the beneficiary of this estate then we can see that I couldn't justify a minimum of $1,400 if you only had $10,000 estate, and I stand here and tell you that we would renounce our position in that case.

MR. PAWLEY: But your fee schedule starts at $1,400. Starts at $1,400. Correct?

MR. BOUILLON: Right.

MR. PAWLEY: And certainly that fee schedule places the estate of the deceased very much in your hands as to what your eventual charge will be and it is your discretion as to whether or not you alter any of those fees or not, not the discretion of the court, under the rules that you've established here. Is that not correct?

MR. BOUILLON: Would you repeat that again Mr. Chairman.

MR. PAWLEY: Are you not requesting that that discretion as to whether or not any of these fees that are incorporated in the Will be in your hands rather than in the courts' hands, isn't that what you're requesting.

MR. BOUILLON: And that's what the testator has agreed to by signing the memorandum, has he not?

MR. PAWLEY: So you are saying that if the testator has agreed to something years before that his estate ought to be committed, rigidly committed to that?

MR. BOUILLON: I didn't say rigidly committed, no.

MR. PAWLEY: Or committed, period. Except if within your discretion you allow the beneficiaries to waive that commitment.

MR. BOUILLON: Well in the example I gave, yes, we would renounce.

MR. PAWLEY: But that is in your discretion. Could I ask you whether or not this memorandum for Wills which you circulated to members of the Legislature establishing a fee schedule that you charge in connection with estates, could I ask you whether or not you feel that is in line with the fees that are allowed by the courts now pertaining to estates?

MR. BOUILLON: Not having drawn it up, I don't know the answer, but I think it must be pretty close.

MR. PAWLEY: Well have you checked personally to ascertain just what the courts are allowing other trust companies that do not use such a schedule of fees, what they are allowing those trust companies to charge?

MR. BOUILLON: No, I haven't. That's one of the reasons I think we'd like to have a postponement, so that we can present some actual facts and a fuller study on the whole matter, Mr. Chairman.

MR. PAWLEY: But why would you be incorporating a fee schedule within clients' Wills if you are unsure as to whether or not that is a fee schedule that is reasonably close to what the courts are allowing other trust companies?

MR. BOUILLON: Maybe, Mr. Chairman, I could ask if there is some precedence on recent cases that have been put before the court that the honourable member might have at his disposal at the moment to tell us whether I am in line or out of line with this fee memorandum, sir.

MR. PAWLEY: I think there are many, many precedents that can be obtained by a trust company as to what is being allowed by the courts pertaining to fair fees by a trustee, personal or corporate.

MR. BOUILLON: I think this is why we'd like to be able to give a full and more study at it, Mr. Chairman, so that we can lay these facts before you so that you then can . . .

MR. PAWLEY: But was there no work done in order to ascertain whether or not these fees were in line with what the courts allow prior to its preparation by Guaranty Trust.

MR. BOUILLON: Mr. Chairman, I only got a call yesterday that the meeting was on tonight and it's a little short notice really.

MR. PAWLEY: No, that's all.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: I'm just trying to see whether I understand the problem exactly. You are concerned with a law which would make an agreement between you and a man who's drawn a testimentary document invalid unless it is approved by the courts, and I gather that your practice is that when a person draws a Will that you often have an agreement with that person as to acting as his executors for a fixed fee.

MR. BOUILLON: Uh huh.

MR. GREEN: And you feel that your practice of having this agreement for him in which you will act for him at a fixed fee is a satisfactory arrangement made between

(MR. GREEN cont'd). . . . . two consenting adults, so to speak, and that we shouldn't be interfering with it?

MR. BOUILLON: That's right.

MR. GREEN: Now I would presume that having this agreement won't prevent the man from changing his Will and changing his executor before he passes away.

MR. BOUILLON: That's right. He has his choice of doing that . . .

MR. GREEN: Are you in some way concerned with the amounts that the courts have been allowing for your fees as trustees as executors of Wills?

MR. BOUILLON: I have only been in Winnipeg since September of '74. We have not presented anything to the courts in that year, in seven, eight months, whatever it is.

MR. GREEN: Well is your firm concerned with the tariff that is being allowed to them as executors because if there is no fee mentioned then the court will set the trustee's fee, will they not?

MR. BOUILLON: I don't think there's any concern. I don't know how many cases go before it in the Trust industry . . .

MR. GREEN: But you don't think that there is a concern?

MR. BOUILLON: No, I don't think there's a concern.

MR. GREEN: So then we have two possible situations if I'm analyzing correctly. In the one case the court will set the fee, in which case you are not concerned. In the other case . . .

MR. BOUILLON: Well, we are to the extent that we like to have fair and reasonable compensation as the other member indicated.

MR. GREEN: Yes, and that's why I put that question first. Do you have an argument with whether or not the courts have been allowing the trust companies fair and reasonable compensation for their work in connection with an estate?

MR. BOUILLON: Yes.

MR. GREEN: Okay. Now we have it. So then you are not satisfied with the amount that the courts have been allowing? That makes the problem more understandable. In matters testamentary, I presume, and I'm not sure of my grounds here, that a man could draw a Will in which directly in the Will he could name the executor and say what the executor is to get for taking care of his estate and that would be of help.

MR. BOUILLON: That's what this fee memorandum is. It's not only an attachment to the Will but it's included in the actual document, yes.

MR. GREEN: Is it part of the Will that is attested to by two witnesses, etc., is it a testamentary document?

MR. BOUILLON: Yes, sir.

MR. GREEN: So actually what you are saying is that this document could be read by the courts as being a gift, and I know you won't like that word, but there'd be nothing to prevent a testator from making a gift to his Trust Company and that this Act in fact changes the Wills Act by preventing a testator from making a gift to his trust company. Is that correct? --(Interjection)-- You like that. Why didn't you hire me?

So what you're saying is that this document changes the Wills Act by making a gift to a Trust Company or an executor who happens to be a Trust Company invalid unless it is approved by the Court; the gift in every other way being a proper testamentary document attested to by two witnesses in the presence of each other and in the presence of the testator who, at his request and with his consent, attested to the Will.

MR. BOUILLON: Sounds good.

MR. CHAIRMAN: Any further questions by any members of the committee? Mr. Spivak.

MR. SPIVAK: Mr. Chairman, you know, I think Mr. Pawley's line of questioning was really to a certain extent pursued by Mr. Green, and I don't want to add to it except to say to the witness and to be able to understand correctly what he was saying. The court in many many cases adjudicates and determines the fee and the basis has always been that it would be a reasonable basis for judgment, and I would say that while there may be individual situations where some may have been upset with the award, nevertheless the procedures that have been followed and the history of this kind of determination has been fairly good in Manitoba. I don't know of too many situations in which there has been great controversy. That may not be the case with your particular

(MR. SPIVAK cont'd). . . . . company, and if in fact there are cases to be cited and examples to be cited and specifics to be cited, then I think we have to know about it; but if the principle is to be left as to whether it was to be the court determine it as opposed to being incorporated in the Will itself and with no undertaking that the court could review it, I think you have to find in favour of the court finally making that determination – First, because it would happen many years after, and could happen many years after and circumstances could change, the nature of the economy could have changed and any number of factors could enter.

Secondly, someone has to make that adjudication in an equitable manner and we have determined in the past that the court does that in other cases where it is not specified. So unless you're going to be able to cite the specifics, unless you can bring us the examples which would show that the court itself has not acted properly and that as a result there is a need for this, it would seem to me that in terms of the protection of the public, which is our responsibility here, that the equitable way would be to leave it at the court.

MR. BOUILLON: I'm sure we will be able to present a full study with cases and the court's charges and what they've been for the last, you know, years.

MR. SPIVAK: I'm not asking for the summary with respect to comparison of awards, I'm simply saying you have to cite examples, I think, to this committee to indicate that in the past the court has not acted in an equitable manner; and unless you can cite those instances where it has not been provided in the Will that it has not been handled equitably by the court in its adjudication and it's demonstrably so, I don't know how you can ask this committee not to proceed with this kind of legislation. What I'm saying is, the onus is on you at this point.

MR. BOUILLON: That's why I'm asking the honourable member for time to the fall so that we can give you the facts that you're looking for and the examples and the cases.

MR. SPIVAK: But let me understand. What you're saying is that you could demonstrate, you know, a range of fee schedules in which awards have been given and you could make a comparison to the fee schedule that you've shown. That's not what I'm saying. There has to be examples of cases where without question it can be indicated that the court has acted unfairly. Those I think should be forthcoming very quickly. I don't think you have to need study for them. If you haven't got those examples, then I don't see where there's a validity to the position at this point that the court should not have some adjudication.

MR. BOUILLON: Well, I think we'll be able to satisfy the honourable member.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Thank you, Mr. Chairman, through you to Mr. Bouillon. Mr. Bouillon, you indicated before that to your knowledge there might possibly have been one case that was brought to your attention that had been referred to the Law Society. Is that the only case that you know of or that you have heard of that might have shown any dissatisfaction by any of the executors or the recipients in any Will?

MR. BOUILLON: Yes, that's correct.

MR. GRAHAM: Mr. Bouillon, did you read the Hansard of the Attorney-General when he introduced this Bill?

MR. BOUILLON: Yes, I did.

MR. GRAHAM: Are you aware that when the Attorney-General introduced this bill he made reference that this bill was brought in on the recommendation of the Chief Judge of the County Court and the Surrogate Court of Manitoba.

MR. BOUILLON: Yes.

MR. GRAHAM: For your information, Mr. Bouillon, I also contacted the chief judge of the County Court and the Surrogate Court to ask him if he had any knowledge of any complaints on the practices that have been carried forward by your company and he assured me at that time that he knew of no cases.

MR. CHAIRMAN: Any further questions of the witness. I wonder if we could just have a little less noise. The chair is having a difficult time to hear.

MR. GRAHAM: A further question, Mr. Chairman. Do you know, Mr. Bouillon, if there are other trust companies that employ this memorandum in their Wills or

(MR. GRAHAM cont'd). . . . . attached to their Wills?

MR. BOUILLON: I believe a number of them do. The next person presenting the case to the members might have that information.

MR. GRAHAM: Perhaps I should wait till the next person gives his testimony then.

MR. CHAIRMAN: Any further questions? Hearing none, thank you Mr. Bouillon.

MR. BOUILLON: Thank you, Mr. Chairman.

. . . . . continued next page

MR. CHAIRMAN: Mr. J. Bowles.

MR. BOWLES: Thank you, Mr. Chairman, and honourable members. Before I begin my discussion I would like to offer the opportunity to any of you to ask the same questions again that you were perhaps left some doubt in as to the answers earlier. I have had perhaps a little more experience in estate administration than has Mr. Bouillon.

My name is Jack Bowles. I'm the Vice-Chairman of the Manitoba section of the Trust Companies Association of Canada. I'm here to express our concern of the association over the potential implications of the proposed amendment to this section.

There are several points that I would like to raise with you. Beginning from a practical standpoint, just exactly when would this approval of the Surrogate Court be obtained, would it be before the document is actually signed, after the execution of the Will but before the death of the testator, immediately after the death of the testator or at the time of distribution of the estate. There's some question in our minds as to exactly the workability of this system. The proposed amendment refers to all agreements executed by a testator. Does this mean that even though the testator agrees to the fees, the beneficiaries who are adult beneficiaries agree to the fees that they. . .even though everyone agrees with the fees that are being requested by the trust company, would it then be necessary for the estate to incur the additional expense of hiring a lawyer, paying court costs for submission of their accounts to the court and further delay of having the courts approve of these fees?

Further, following along that line, does the Surrogate Court presently have the time to expeditiously deal with these matters? The proposed amendment refers to testators, testators only, however, the original section that is now being replaced would appear to have covered other trusts such as intervivos trusts, conceivably bond trusteeships, any number of other types of trusts, but the current legislation really doesn't cover that or the proposed legislation does not cover any of those.

In addition, precedents in other provinces and in the United Kingdom would appear to show that fee agreements have become quite extensively used. In the United Kingdom, for example, the fee agreement is quite universally used and there, rather than having the fee schedule posted at the time of the signing of the Will the fee schedule is agreed to by the testator as being that which is published at the time of his death, so that he's signing something he really doesn't know what he's signing, that that is presently being done in the mother of our common law provinces, our system.

Right now we appear to have a fairly workable system within the trust industry where accounts are submitted to beneficiaries where they are adult beneficiaries, there seems to be at the present time no necessity for going before the courts for approval of our fees. Relatively few, gentlemen, accounts actually are passed in the courts. We were asked earlier whether this was caused by perhaps unfair treatment in the courts, I don't wish to state that it's unfair treatment in the courts, but I do feel that in some instances the fees that are allowed in the courts are less than what we feel they should have been.

In conclusion, it would seem that this amendment is a retrograde step since no other agreements or contracts that anyone of us enter into need be approved by the courts prior to their implementation, and it would seem to be an infringement on the rights of individuals to contract for services with their own chosen executors. We feel that the amendment should either be delayed or totally altered, and for further consideration at the fall sitting to allow submissions by the Bar Association, the Trust Companies Association and by other interested persons. Respectfully submitted, Sir, and I'd be glad to answer any questions.

MR. CHAIRMAN: Thank you, Mr. Bowles. We have Mr. Green?

MR. GREEN: Mr. Bowles, you know I'm intrigued by this subject and there are a couple more questions that I'd like to ask. Would you agree that if a man is drawing his Will with a trust company that there is considerable assistance given to him by the trust company with regard to his estate plan generally?

MR. BOWLES: Yes, Sir, that's certainly one of the services which we offer.

MR. GREEN: And would there be a lawyer at the trust company whose advice he would get as well?

MR. BOWLES: Not in any of the branches in this city, there is not a lawyer - well no, that's not true, a couple of the trust companies do have lawyers. What is in practice done is that the consultation is conducted by the trust officer or by whoever is involved, it is then discussed with the individual's lawyer, his own choice of lawyer, and/or accountants, life underwriters whoever is involved and whoever is felt to be necessary to conduct a proper estate plan.

MR. GREEN: Would it be possible for a man to go to a trust company and have them do his whole estate plan and have his Will drawn and signed in the presence of witnesses at the trust company and have them do the whole service for him?

MR. BOWLES: I would suggest that it might be possible but it is not the usual practice.

MR. GREEN: But you do agree that the trust company is giving him assistance in the preparation of that Will?

MR. BOWLES: Yes, Sir, I do agree with that.

MR. GREEN: Now, you know that with the law testamentary there have been extraordinary things done, for instance, if a person is a witness to the Will he cannot be a beneficiary to the Will.

MR. BOWLES: Correct.

MR. GREEN: Do you think that as a result of this practice, which I must admit is somewhat new to me although it may not be new, do you think that for the same reasons as the Wills Act protected, or at least prohibited a witness from receiving a gift - I'm going to ask you a question which I rather suspect. . .

MR. BOWLES: I expect the question, Sir.

MR. GREEN: Do you think that there should be, for the same reasons, maybe even more compelling, that a trust company helping a person draw his estate should not receive a gift in that estate?

MR. BOWLES: I would suggest that that same question might be asked of a lawyer who assists in the preparation of a Will and who then receives a fee for service.

MR. GREEN: It is not a fee.

MR. BOWLES: Well it is a fee for services rendered in the administration of the estate, Sir.

MR. GREEN: Well, of course, the Executor is not even under an obligation, I think, to take a direction in the Will as to who the lawyer shall be, is he?

MR. BOWLES: I think that is correct, yes.

MR. GREEN: So that there have been, there have been, in order to protect the nature of testamentary dispositions which are a little different than other dispositions, there have been rules established by common law and by statute which try to create a different situation relating to those documents as would apply to other documents, that a beneficiary cannot be a witness to the Will.

MR. BOWLES: Right.

MR. GREEN: Really this stems from the answer to my original question and perhaps therein lies the problem. If you were satisfied with the amounts that have been awarded by the courts to executors and trustees you would not be here.

MR. BOWLES: No, that's not true. We are . . .

MR. GREEN: As a matter of fact all that the amendment does is to ensure that the amount that you would get would be the amount that would normally be allowed by the court to a trustee. There's no way that the trustee could lose under this amendment, if he is satisfied with the court awarded fees.

MR. BOWLES: We are basically concerned about the lack of the individuals' ability to make his own decision.

MR. GREEN: Well, yes, but if you are satisfied with the amount, and you've indicated that you're not satisfied, and I'm really not sort of being critical of you, I think that you certainly have a good position, but the key to this problem seems to me that the amount that the court has been awarding to trustees is not satisfactory as far as you're concerned.

MR. BOWLES: But the result of that, Sir, is not the fee agreement. I believe the question was asked earlier if any of the other trust companies were using a fee agreement. The answer to that, currently in this province, is that there are no other trust

(MR. BOWLES cont'd) . . . . . companies currently having fee agreements signed, although my particular company, I have been told to make use of them, I have not done so. I was about to when this proposed amendment came about.

MR. GREEN: So there's nobody now doing this that you . . .

MR. BOWLES: Other than Guaranty Trust. And we, however, are not saying that they are in any way wrong in entering into it, which is of course the reason why I'm here representing the Trust Companies Association, that we in fact are saying that they have every right to have that agreement entered into.

MR. GREEN: But don't you agree that there is a danger, don't you agree that there is a danger, and if we look at thelaw as it relates to testamentary instruments, you know it looks like an insignificant section, but it's a very strong change . . .

MR. BOWLES: Oh no it's very important, yes.

MR. GREEN: That the whole law as was built up relating to testamentary instruments tried to protect a testator from doing something which conferred a benefit on those people who were very close to him in the drawing up of his estate. And now you have developed a practice where you agree that you are involved in the advice on this bill, you agree that you cannot lose if you are accepting what the judiciary has been saying is a reasonable fee, and yet you're opposing this amendment which just protects those two situations.

MR. BOWLES: No. I did not agree that we were being - I'm not sure how you worded it, but we have in fact felt that there have been instances where we have not received adequate compensation from the courts.

MR. GREEN: That's right. You say that that is the problem, that is the problem?

MR. BOWLES: Right. But the result of that situation though has not been the implementation necessarily of the fee agreement, the result of that has been that fewer and fewer accounts are being passed in the Surrogate Court. Accounts are now being submitted more and more frequently directly to the beneficiary for their approval.

MR. GREEN: If all of the adult beneficiaries - you've given the impression that if all of the adult beneficiaries agree you still have to go to the Surrogate Court, now.

MR. BOWLES: No, no, that is not the case now.

MR. GREEN: And even with this amendment, if all of the adult beneficiaries agree, then I for one would think that you could pay him whatever you want to. If all the adult beneficiaries agree they can decide they're going to give their gifts to the Trust Company if they wanted to, so that no court would prevent that.

MR. BOWLES: Well except that's not what the amendment reads, sir. The way the proposed amendment reads it would appear to us to open the avenues of being required to have all fees approved by the Surrogate Court.

MR. GREEN: Well, I can tell you, sir, that if the law said that an agreement was invalid unless agreed to by the courts but two people agreed that it was valid, that they could then proceed to deal with an agreement that it is valid. I do not think that that is the problem. I think that the problem is that you are not agreeable to having the Court assessment of the trustees' fees.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Bowles, would you find during the course of an individual's life, that often during a certain period of his life he might be involved in investment and shares, investment capital in one form or another, later in life convert those investments into safer investments, such as bonds, certificates, etc.?

MR. BOWLES: Certainly, it happens all the time, Sir.

MR. PAWLEY: So that in fact a Will that is established during the stage in one's life in which he is heavily involved in a speculative market, which would involve very extensive estate work on the part of a trustee, would certainly mean that after a passage of years into the next stage when that person had converted his investments into another form of investment, bonds, all in bonds, Canada Savings Bonds, for instance, that the amount of estate work would certainly be simplified a great deal. Would that not be true?

MR. BOWLES: The theory behind what your question has asked is not necessarily true. The conversion of a common stock is no more difficult or no more complicated than the conversion of a Canada Savings Bond, in some instances.

MR. PAWLEY: But if the stock is invested in a large number of companies scattered all over the United States and Canada and the individual has converted all his investments into Canada Savings Bonds, then it's a much simpler estate to handle, isn't it?

MR. BOWLES: That's correct, which is one of the reasons why all trust companies including my own and Guaranty Trust have a policy of reviewing all of their Wills, contacting all of their testators on a regular basis, asking them the question: Has your Will changed, have your circumstances changed, has your need for a Will changed, please come in and talk to us to see whether your circumstances have altered.

MR. PAWLEY: Well, are you suggesting to me that every so often Guaranty Trust in their circulation of their clients might be circulating them, saying to them now, has the nature of your estate changed such that we should be re-examining the fee schedule that we incorporated into your Will some years ago? Is that particular question asked of Guaranty Trust clients?

MR. BOWLES: No, I would think that that would be a reasonable question, and I think the answer that you would be given would be that in some instances Guaranty Trust and other trust companies have made the statement to individuals who have in fact been clients over a number of years, that your circumstances have changed to such a degree that you no longer need the expertise that is offered by our company.

MR. PAWLEY: I would suggest to you that it would be very rare that the fee schedule would be changed after it's incorporated into the Will, unless there has been a very distinct change insofar as the volume of that estate is concerned - as far as incorporating the fee schedule right into the Will itself.

MR. BOWLES: I cannot say in fact that the fee schedule has been changed, simply because the fee schedules have not been used for a long enough period of time to have analyzed that situation, sir.

MR. PAWLEY: Would you not agree then with me that the Court ought to have the final say as to whether that fee schedule is any longer fair or reasonable. The client has incorporated that fee schedule many years before, the nature of the estate has changed, the investments have been altered, Mr. Spivak says, the economy may have changed considerably, should the courts not be in that position, an independent body, to adjudicate as to whether or not that fee schedule is any longer reasonable in view of the passage of time.

MR. BOWLES: I would really not disagree with that principle but that is not the principle that I understand to be behind this Bill. I would not object as an individual certainly representing a trust company to having a review system available to clients, to people who feel that the fee schedule is in fact wrong, that they want out of it, or that the testator's beneficiaries do not approve of it; but where I am concerned as an individual is that I am fearful that perhaps that is not what is being said in this Bill.

MR. PAWLEY: Well what is being said in the Bill is that the estate, the fee schedule is not applicable, that the Courts may determine what is fair and reasonable and that the estate is not necessarily bound by the fee schedule incorporated into the Will.

MR. BOWLES: Well the way I read this Bill, it says, "any agreement executed by a testator is not valid unless it is approved by a Judge of the Surrogate Court," which means to me as a lay-person, not a lawyer, with no legal background, but I read that amendment and I say to myself and to my people in Toronto and elsewhere, that I'm concerned that this means that every agreement that we enter into or every agreement that any trust company or any other individual enters into dealing with a fee must be approved by the Surrogate Court. I would not object, I would not be here, Sir, if the amendment has read, and I can't word it for you, but if the amendment had in some way implied that where there was a disagreement by the beneficiaries of the fee agreement that had been entered into by the testator I personally would find that there would be no real objection to this. But that is not the way that I read this Bill.

MR. PAWLEY: What if I suggested to you that if the beneficiaries waive and concur with the fee schedule, they waived their concerns in connection with the fee established, that in fact the fee schedule which is included within the Will, and this is after they of course, have obtained independent legal advice, that in fact that fee schedule would be upheld, would that cause you any concern if the beneficiaries, each and every one waived their objections to the fee schedule incorporated in the Will?

MR. BOWLES: That's putting it in a relatively negative way. I would prefer, I think, to see it in such a way that if they had any objections that they could be expressed to the courts in such a way that then the fee agreement would be reviewed. What I'm suggesting is that. . . I don't know how to word it, I'm concerned that we would be bogged down with situations where in each instance we would have to discuss with the clients their alternatives and have them given the opportunity of going to the court, and forcing them, in effect, to go to the court and say, "we agree," where I feel that it would be just as effective and much less work involved for everyone concerned if they were given the right to appeal the fee, but not be asked to agree to the fee. In other words, just reversing the situation that you're suggesting, Sir.

MR. PAWLEY: Now, how often are you required to pass accounts, now, how often are you bogged down now insofar as your estates are concerned?

MR. BOWLES: Sir, we pass accounts in the courts as seldom as possible. Each time the accounts are passed in the courts there are additional legal fees and court costs incurred, and where the beneficiaries are adult, as was mentioned earlier, are consenting adults, the accounts are not passed in the courts.

MR. PAWLEY: This Bill was introduced for second reading some weeks back, and I'm sure during the course of that period of time you as a representative, I gather, of all the trust companies, sir, your Association is an umbrella for the trust companies, that you have had an opportunity to review this schedule of fees which has been used by Guaranty Trust, would that be a reasonable assumption for me to make?

MR. BOWLES: It would be a reasonable assumption for you to make. I have not studied it thoroughly because their fee agreement is based primarily on a fee agreement that was used in Ontario by my company and their fees are very similar to that which are being used in Ontario by my company.

MR. PAWLEY: Well, of course in coming tonight have you checked as to the rulings by the Manitoba courts as to what is a fair and reasonable fee to be charged in the administration of an estate?

MR. BOWLES: I have had two experiences since I have been in Winnipeg of accounts going into Court. The results of those - no, that's not correct, I have had three. The results of those three appearances in court have been inconclusive to me in establishing just what is the system being used by the courts. In one instance, a fee of 2 ½ percent, in effect 5 percent of the assets involved was approved by the court. In one other instance what appeared to me to be relatively similar circumstances in some ways, a fee of less than 3 percent over all was approved.

MR. PAWLEY: If I suggest to you that the courts in Manitoba avoid utilizing a fee basis but instead attempt to base it upon the complexity of the work involved rather than one a percentage basis, would you agree with that statement?

MR. BOWLES: I would agree that that appears to be the system that is being used but as a trust officer of some eighteen years experience in administration of estates, this is the first jurisdiction in which I have been employed where that system was utilized and I find it difficult as a manager now to know what to expect the courts in Manitoba to allow.

MR. PAWLEY: If I indicate to you that this fee schedule used by Guaranty Trust is in many cases much more generous than that which the courts would allow, would you be in a position to disagree with that statement on my part then?

MR. BOWLES: No, Sir, but I think it would also be fair to say that in some instances, again my experience in Manitoba is relatively limited, but in some instances I have had situations where the fee agreement in fact has been less than what the courts would have allowed, so that I believe in some instances, we can talk in terms of generalities, but in some instances it has worked both ways. My position as a representative of the Trust Companies Association is that regardless of what may or may not be approved by the courts we feel that an agreement entered into by an adult who presumably knows what he is doing is a valid agreement.

MR. PAWLEY: But would you not agree, and certainly has been my experience, that so many people that when it comes to involvement with their estates are not well informed as to just what is involved at the time of their death and the administration of their estate and if an agreement like that is arrived at without independent legal advice that in

(MR. PAWLEY cont'd) . . . . .fact they may often agree to percentages of fees that may in fact be not reasonable, and a court might in fact not find those fees to be fair and reasonable if the court had the opportunity to adjudicate upon those fees incorporated within the Will.

MR. BOWLES: I believe that in some instances you may be quite correct, but I believe that there are other agreements that all of us enter into on a relatively frequent basis which are perhaps just as erroneous or just as excessive, but . . .

MR. PAWLEY: Excuse me, if I could follow up on that. Why would you want to eliminate, to remove the right of that individual then, that individual's estate, to have that agreement examined by the courts as to whether it's fair or reasonable?

MR. BOWLES: You have misunderstood me, Sir, I have not stated that. I have said that I would be in favour of the beneficiaries having the option of objecting. What I am being critical of, if I may use the word, is that I read this Will as being a situation where the, regardless of what the beneficiaries say, the agreement must be approved by the Surrogate Court, and I feel that that's an infringement on their rights.

MR. PAWLEY: But, I would suggest to you that it's only the agreement, the agreement between the testator and the trust company which is invalid, not in the proposed Will anything that might be . . . not any waiver or consent by the beneficiaries after the death of the testator.

MR. BOWLES: You gentlemen have more experience in legislative matters and wordings of bills than I, I do not interpret this bill . . .

MR. PAWLEY: Would you be satisfied if you were assured that in fact that is the legislative intent of this amendment?

MR. BOWLES: I would prefer to see the amendment corrected rather than leaving some doubt in the minds of some lawyers with whom I have discussed this amendment and in the minds of some relatively novice type individuals as myself who have difficulty in interpreting legal language.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Thank you, Mr. Chairman. Through you to Mr. Bowles. I'd like to ask Mr. Bowles a couple of questions. In your opinion, Mr. Bowles, would this amendment when it is brought into force, would it expedite the settlement of any estates?

MR. BOWLES: No.

MR. GRAHAM: In your opinion could it possibly prolong the settlement of any estate?

MR. BOWLES: I believe that it could.

MR. GRAHAM: Second question, Mr. Chairman. In your opinion, Mr. Bowles, could this add to the cost of settlement of any estate?

MR. BOWLES: Undoubtedly.

MR. GRAHAM: Thank you, Mr. Chairman.

MR. BOWLES: May I comment on the . . .

MR. GREEN: Mr. Bowles I can certainly give you many other ways of expediting estates which certainly have been perfected against to the benefit of the beneficiaries. But let me ask you this. As I understand you, you say that if the beneficiaries don't agree with the fee agreement you're prepared to have the fee tested by a court. Then would you agree with the amendment if we added these words. Have you got the amendment before you? You will understand these words, I think. I'm putting these words at the beginning of the section: "Unless concurred with by all the beneficiaries, any agreement, instrument or document executed by a testator or person on his behalf, etc."

MR. BOWLES: Could you repeat that again, my shorthand is terrible.

MR. GREEN: "Unless concurred with by all the beneficiaries" and then the section follows. Just hold on. "Unless concurred with by all the beneficiaries, any agreement, instrument or document executed is not valid unless it is approved." In other words if it is concurred with by all the beneficiaries then you don't have to go to court.

MR. BOWLES: My question in regard to your proposed amendment to the amendment would be, is it a negative concurment or a positive one.

MR. GREEN: It's a positive concurment. That they will concur with the agreement.

MR. BOWLES: As a trust company would we be required to produce evidence of the concurment?

MR. GREEN: I could put it the other way. I could put it the other way. If objected to by any beneficiary, which makes it the other way, any agreement is void.

MR. BOWLES: I would prefer it, I believe, in that manner.

MR. GREEN: Now would you believe me, sir, if I tell you that the section as now worded has the same effect with or without the language that I have just given you?

MR. BOWLES: I didn't hear your question but I . . .

MR. GREEN: I say that the section as now worded, in my opinion, has the same effect with the words "unless concurred with by all the beneficiaries", is exactly the same thing, or if objected to by any beneficiary, that really that is the effect of the amendment, that this can only arise if the beneficiaries do not like what the trustee is taking. That's what it says now.

MR. BOWLES: I can only say, Sir, that I am very pleased by your interpretation of it. Legal counsel with whom I have discussed the amendment have not been able to read your interpretation into the amendment.

MR. GREEN: Well the Legislative Counsel who is here, if you don't like my interpretation, he is here, I think will give you virtually the same interpretation. That this could only be meaningful if some beneficiary does not like what is being paid.

MR. BOWLES: I would certainly be happier with the words added, Sir.

MR. GREEN: Well we'll have a look at that.

MR. BOWLES: Thank you, Sir.

MR. CHAIRMAN: Any further questions? Hearing none, thank you Mr. Bowles. Mr. Ridgeway. Do you have copies of your brief?

MR. RIDGEWAY: Yes, they're just coming around . . .

MR. CHAIRMAN: You can proceed if you like, Mr. Ridgeway.

MR. RIDGEWAY: Mr. Chairman and gentlemen, you have a brief before you which is prepared by the Manitoba Government Employees Association relative to Bill 64 which is amendments to the Civil Service Act.

In December of 1975, the government through a directive of Management Committee of Cabinet announced its intentions to deny annual merit increments to any employee who receive a promotion during the past twelve months where the salary increase was at least one increment. Regulations to the Civil Service Act were passed which gave rise to this announced intention and several hundred employees who had been promoted during the period of January 1st, 1975 to December 31, 1975 and who were entitled to receive a merit increase of one step in the integrated salary scale, January 1st, 1976 were denied that adjustment.

Similarly, despite a series of events, employees who would normally have been entitled to merit increases on April 1st of 1976 and whose circumstances were the same as those aforementioned were also denied the merit increments to which they were normally entitled.

Bill 64 which is before this committee today is in the opinion of the Manitoba Government Employees' Association nothing more than a last stand against granting employees merit increases on their normal anniversary date if a promotion has been received in the preceding twelve months.

The Association further contends that Bill 64 is a hastily contrived and ill-conceived piece of legislation and it would not be before this committee today had it not been for the decision relative to the denial of increments in the Court of Queen's Bench earlier this year.

Bill 64 contemplates an amendment to Section 11(3) of the Civil Service Act by the addition thereto of Section 11(3)(1) which provides for a change in the anniversary date on certain promotions. Where, on a promotion or transfer an employee receives an increase in rate of pay equivalent to one or more merit increases the anniversary date on which the employee may be granted his next merit increase shall be determined in accordance with the regulations as if he were a new employee as of the effective date of the promotion or transfer.

In laymen's terms this article really provides employees of the government who are the recipients of promotion from one position to another having a higher maximum salary or who are transferred under similar circumstances shall not be entitled to receive an increment adjustment of one step in the integrated salary scale on their regular

(MR. RIDGEWAY cont'd) . . . . .anniversary date.

To better understand the existing situation it is necessary that you be aware that employees of the government who are assigned an anniversary date following initial employment, this anniversary date is the first of the following quarters which falls immediately after their original date of employment, being January 1st, April 1st, July 1st, and October 1st.

Provisions of the existing master agreement between the Province of Manitoba and the Manitoba Government Employees' Association provides in Article 10(10), that the definition of a merit increase is as follows: "Merit increase means an increase in the rate of pay for an employee within the pay range and granted, as provided in the Civil Service Act and regulations, in recognition of satisfactory service with the approval of the employing authority and Management Committee. The key words in this article are "satisfactory service". It is obvious that if an employee's service is not satisfactory he would normally not receive his annual merit increase. On the other hand, unless his service is not satisfactory, the employee should normally receive a merit increase on his respective anniversary date.

The Civil Service Act in Articles 10(3) and 10(4) support the contention that increments are given for satisfactory service. Article 10(3) states as follows: "The pay plan set out for each class (a) a minimum rate of pay; (b) a maximum rate of pay; and (c) such intermediate rates of pay as are considered necessary to permit periodic increases in remuneration as regard for satisfactory service unless in the opinion of the Lieutenant-Governor-in-Council such variety of rates is unnecessary.

10(4) states "where a minimum, maximum and intermediate rates of pay are set out in a pay plan for a class, the rates of pay for each employee in that class may if the employing authority reports that a merit increase is granted the employee increase progressively as provided in the regulations until a maximum rate of pay for the class is reached."

It is clear therefore that the Civil Service Act and the Government Employees Master Agreement both provide that employees are to receive a merit increment annually on their anniversary date until reaching the maximum step and that that merit increase is given as a reward for satisfactory service. The effect of Bill 64 and its provisions relative to changing anniversary dates on certain promotions would be to remove the incentive for an employee to apply for or accept a promotion in a Manitoba Government Service.

Since the Manitoba Civil Service Classification Plan divides the many positions into relative groupings or series, most promotions tend to be within a particular series. For example, clerks tend to move within the clerk grouping, from Clerk I to Clerk V. Conservation Officers tend to move within that particular series from one level to another, and so it goes throughout the government service. While there are exceptions, where conservation officers may be in fact promoted to administrative services officers, for example, or where a clerk may be promoted to the administrative officer level, promotion within a series generally tends to carry a one step adjustment in salary at the time of promotion. It follows, therefore, that an employee whose anniversary date is July 1st, and who could rightfully expect to receive a merit increase on that date providing he was not then at the top of his existing salary scale, would be just as well off financially to refuse to accept a promotion in the month of June which carries with it the usual one-step salary adjustment. The employee would of course know that if he remained in his existing position his salary would be equal to that offered him by his anniversary date, in this case, July 1st.

The following example sets out rates of pay for two positions in the Clerk series. Taking a person in a Clerk II position, and you can follow it through, can be readily seen that an employee who was at step V of the existing Clerk II series, that's the one that's underlined, a Clerk II rate in June and received a promotion to a Clerk III in that month would have his salary increased from $7,284 annually to the first step of the Clerk III range or $7,596 annually. It is further readily understood that if the employee did not receive this promotion in the month of June, that on July 1st, his normal anniversary date, he would move to the top step of the Clerk II range and in this case be $7,596, which of course exactly the same salary he would receive had he not been promoted. This is only one of the dozens and dozens of examples in the Government Pay Plan

(MR. RIDGEWAY cont'd) . . . . .wherein an incentive for promotion is to be denied by Bill 64. Therefore the employee is taking on greater responsibility at the Clerk III level with no actual increase in wages as compensation.

During the first few months of 1976, the Association vigorously protested government's move to curtail the provisions of the Civil Service Act and the agreement by the institution of Regulation 1553/75. Government's refusal to accede to our request resulted in employee, naming Betty Pritchett, who had been eligible for an increment on January 1st, 1976 filing an action in the Court of Queen's Bench alleging that Regulation 1553/75 was contrary to the stated intent of the existing Civil Service Act and the Government Employees Master Agreement. It was subsequently ruled by Justice Louis Deniset of the Court of Queen's Bench that Regulation 1553/75 was ultra vires and the Association again pressed government for the increment due the complainant, in this case on January 1st, 1976.

The continued refusal by government to pay the amount due Betty Pritchett resulted in her case being heard by the Civil Service Commission in normal appeal proceedings late in May 1976. The Civil Service Commission upheld her appeal and ruled that she was in fact entitled to this increment on January 1st, 1976.

We stated earlier that Bill 64 was an attempt by the government to amend the Civil Service Act to legalize and therefore implement those conditions of employment which had formerly been spelled out in regulation 1553/75 and which were ruled ultra vires by the court. In this regard we would ask you to particularly note the provisions contained in Bill 64 for the effective date of the amendment to the Civil Service Act to be April 1st, 1976. While this would seem to leave the way open for those employees with anniversary dates January 1st, 1976, and who still are waiting for their annual increments to receive them, it definitely would deny annual increments due April 1st and subsequent anniversary dates to employees who have been promoted during the previous twelve month period.

The Manitoba Government Employees Association implores members of the Law Amendments Committee to find that the provisions of Bill 64 are regressive and have no place in the government service of 1976. While undoubtedly the government considered that the denial of merit increments to employees who have been promoted would be a money saving factor for the government, the value of any alleged saving would be more than offset by the reluctance on the part of employees to accept promotion where no monetary reward is visible.

It is a well established fact not only in the service of the Manitoba Government but in any field of employment that a promotion brings increased responsibilities and increased monetary rewards according to those values. To give on one hand and to take away with the other is the denial of the very basic principles of employment. Employees of the government who receive a promotion where only one salary adjustment increment is attached only to find their normal merit increment of equivalent value denied later received no salary benefit whatsoever.

The existing Civil Service Act and the Government Employees Agreement while being very confusing documents in several instances are both clear on the fact that merit increments are to be given for satisfactory service. If the government is prepared to promote an employee to a higher position, grant him a small salary adjustment at that time only to withhold his merit increment a few months later, it clearly follows that they should have to confirm that his service is in fact not satisfactory. It is highly unlikely that this condition exists where the employer has seen fit to promote an employee.

One other point, gentlemen, is that this amendment, if you want to check the legislation and go back it's ten to twelve years, the system that is proposed in Bill 64 was actually in effect at that time, and it was only through some long and hard fights at that time by the Association that it was removed. This in our mind is a step backwards for the service to the Province of Manitoba and the people that are working for the Province of Manitoba.

MR. CHAIRMAN: Thank you, Mr. Ridgeway. I have Mr. Green.

MR. GREEN: Well, Mr. Ridgeway, the right that you are now talking about is the right that exists in legislation, that is a legislative right, and therefore I agree with you. The government passed a regulation which it thought was the legislative right which was taken to the court and challenged and held to be not the legislative position. So you

(MR. GREEN cont'd) . . . . . would concur that the Legislature has a right to take one legislative right that they have given and change it to another legislative right? They couldn't do it by regulation but they can do it legislation.

MR. RIDGEWAY: Mr. Green, I'm not arguing with your rights to amend legisation, what I'm arguing with . . .

MR. GREEN: You're arguing against what we are doing.

MR. RIDGEWAY: That's right.

MR. GREEN: But I really wanted to establish that what we are talking about now is a right that you have, not by virtue of a collective agreement but by virtue of legislation.

MR. RIDGEWAY: Both legislation and the collective agreement, Sir.

MR. GREEN: Well it seems to me that if the legislation was not there, that you would not have the right to a merit increase on the anniversary date. That's not in the collective agreement.

MR. RIDGEWAY: Pardon?

MR. GREEN: That is not in your collective agreement. It's the legislation on which you rely to obtain that right to a merit increase on the anniversary date. It is not in your collective agreement. If it was in the collective agreement we wouldn't be arguing about this.

MR. RIDGEWAY: Anniversary dates are spelled out in the collective agreement.

MR. GREEN: Yes, but the right to the merit increase that you are talking about, you are deriving that by legislation not by the collective agreement. Or if it's in your collective agreement then the legislation won't change anything because 57.1 which is in this same bill, says that the collective agreement supersedes any legislation.

MR. RIDGEWAY: Okay.

MR. GREEN: So that if this right that you are claiming, is in your collective agreement and you don't need the legislation, then what you are saying we are doing won't affect your members at all.

MR. RIDGEWAY: Well if it's not going to affect, why do you want it in there?

MR. GREEN: Well because we say that it is not in your collective agreement and you say that it is. We do not believe that it is in your collective agreement.

MR. RIDGEWAY: So now we're going to go around the circle all over again.

MR. GREEN: Mr. Ridgeway, I'm really trying to determine what your position is. If you say that this is a legislative right, that it is not something that you have in your collective agreement, then you wouldn't have it if it were not for the legislation. You say that you have it in your collective agreement. Or am I wrong? I mean if I'm wrong I want to be corrected.

MR. RIDGEWAY: I'm saying that in the collective agreement the anniversary dates are spelled out. Okay?

MR. GREEN: Well I suggest to you that if you then look at 57.1 and if you say that this is now in your collective agreement, then the changing of the anniversary date will not affect you. Although I don't agree with you. I say that what you've got, you've got by legislation not by the collective agreement. However if you're right then you don't have to worry about the legislation because 57.1 takes care of it. You were right before, you beat us once in court and you may beat us again in court on the collective agreement. I happen to think that you won't but if you're right 57.1 protects you.

Now you've described certain situations. Would you agree that the following situation could take place? A person could be in a classification - his anniversary date is January 1st. On December 15th he has the classification of let us say a clerk with a salary range between let us say $9,500 and $11,500 - I'm making these up so I don't . .

MR. RIDGEWAY: You sure are . . .

MR. GREEN: I don't want you to be held to them. Well, maybe a senior clerk - I don't know what the rates are. But let's say there was a classification which said Clerk Supervisor, $9,500 to $11,500 and that his anniversary date is January 1st.

MR. RIDGEWAY: Okay.

MR. GREEN: On December 15th we wish to make this person an Assistant Director at a salary of $14,500 a year.

MR. RIDGEWAY: Okay.

MR. GREEN: On January 1st the way things are now, he would get the $14,500 plus an immediate merit increase.

MR. RIDGEWAY: That's right.

MR. GREEN: Which may take him to $15,200.

MR. RIDGEWAY: Okay.

MR. GREEN: Now you agree that that is possible the way the legislation is written now.

MR. RIDGEWAY: Yes.

MR. GREEN: You are suggesting to the members of the Legislative Committee that it is unfair for that employee who has been shifted in that way not to receive an immediate merit increase although he has been on his new position for 15 days after receiving a wage increase of $3,000 a year.

MR. RIDGEWAY: Mr. Green, if the promotions in the Government Service were on that basis where people were going up by an amount of $3,000 and $4,000 on promotion and every promotion was operated on that principle, I probably wouldn't be here arguing with you.

MR. GREEN: Do you agree, Mr. Ridgeway, that some could be that way and that is what the problem is.

MR. RIDGEWAY: A very small percentage.

MR. GREEN: All right. Now if we pass this legislation as we are suggesting it will prevent the kind of situation that I have spoken of but will not prevent you from negotiating a collective agreement which deals with the kind of problem that you are talking about since the collective agreement will supersede any regulation that we make.

MR. RIDGEWAY: That is possible.

MR. GREEN: That's all I want to know.

MR. CHAIRMAN: Mr. Uruski.

MR. URUSKI: Mr. Chairman, to Mr. Ridgeway. Would you consider in your comments on the merit increase that your key to the definition of the article on Page 3 is "satisfactory service"? Would you not consider that the effect of a promotion into a higher paying salary is also recognition of satisfactory service?

MR. RIDGEWAY: It may be recognition of satisfactory service but a promotion let's say from Clerk 2 to Clerk 3 also carries with it increased responsibilities. What we're saying is that the amount that this person receives going from Clerk 2 to Clerk 3 - and I'm not here to try and negotiate a contract or anything like that--(Interjection)--Well I invited you to come to the bargaining table before, Mr. Green, I haven't met you there yet.

MR. GREEN: The government is afraid to send me. They think I'm too generous.

MR. RIDGEWAY: Getting back to the question however, that if a person goes from a Clerk 2 to a Clerk 3 that person is taking on additional responsibilities.

MR. URUSKI: Right.

MR. RIDGEWAY: There is a certain amount of salary increase there which is supposedly compensating for those increased responsibilities. Now that person however, if they had stayed in their regular pay range, sticking with a Clerk 2 to go from step five to step six would be at exactly the same salary scale on, let's use July 1st, as the person who was promoted is at. Therefore why should I accept the additional responsibility, besides that laying myself open again into the probationary period where I have not received any tangible monetary benefit which you would receive as a salary increment tied in.

MR. URUSKI: Yes, okay. Taking your example specifically that you have pointed out, let's just say that that in effect happened as shown on your brief, Page 5. Would that not also leave the employee open on the matter of promotion to be in a new category with an additional five steps of merit increases in the future, versus a one-step position where he had only one step to go in his previous position.

MR. RIDGEWAY: I never said that the maximum in the Clerk 3 was not higher than for a Clerk 2. It's there, sure.

MR. URUSKI: Okay.

MR. RIDGEWAY: The only thing is that our contention is that when a person

(MR. RIDGEWAY cont'd) . . . . . goes from a Clerk 2 to a Clerk 3 and getting back to what Mr. Green was talking about before, this is where the majority of the promotions in the Civil Service take place, from within a series, not going from a clerical position to an assistant director's position, that that person should receive, beyond the compensation for their additional duties, they should also receive their merit increase because they're still within the same occupation. They're still within the same occupational range, the same occupational line. A Clerk 2 to a Clerk 3, if they are a Clerk-typist 2 to a Clerk-typist 3, they're still involved with filing, typing, so on and so forth.

MR. URUSKI: Are you saying that there maybe should be a differential in dealing with promotions? If an employee receives a promotion going out of the type of work that he normally does, he should be treated one way for example and if he goes into a promotion in similar work that he has been doing previously, that he should be treated possibly the way that you suggested, the way that it is now?

MR. RIDGEWAY: I can't really say that I agree or disagree with you, Mr. Uruski, because we'd have to tie down definitions as to what was similar and what was not similar and this type of thing. You get into a long involved discussion I think as to the similar type of duties. As far as I'm concerned a person going up through the clerical range to a Clerk 5 and then going into the Administrative Officer range is still following the same chain, the same line of work. You might think otherwise and therefore our definitions might be difficult to . . .

MR. URUSKI: Okay, thank you.

MR. CHAIRMAN: Is that all, Mr. Uruski?

MR. URUSKI: That's all.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, through you, Sir, to Mr. Ridgeway. Could you just sketch briefly for the committee's benefit, Mr. Ridgeway, what you actually see the merit increase in the kind of situation that we're talking about here, as being designed to reward for merit or is it something that was effected as a means of what the MGEA considers bringing pay scales up to a position where they're competitive with private industry or the private sector?

MR. RIDGEWAY: Mr. Sherman, the way the pay scales are set up is that you have a minimum range which is the recruiting level and you have a maximum range which in the minds of the MGEA is the working level for that position. In between there you have steps by which a person on ability and merit, experience and so on and so forth progresses to that maximum step which is the working range in our mind for that position. A person then by experience, by merit and doing a good job in that position progresses from one level to the maximum scale. In the minds of the MGEA we do not consider the minimum range on any pay range is anything more than a recruiting range period. I'm not going to say here that we consider the maximum range as being the ideal position. That's the maximum that has currently been negotiated for that range.

MR. SHERMAN: As I understand it then in the MGEA you view the working range as being the range that would be, in your view, relatively competitive with let's say the private sector. Therefore an employee coming into the public service under this system is viewed by you, through this step process, as having the opportunity to move up ultimately to that competitive range.

MR. RIDGEWAY: To that maximum position, that's right.

MR. SHERMAN: That's your concept of it.

MR. RIDGEWAY: That's right. Subject to negotiations.

MR. SHERMAN: I understand that but I just wanted to understand the different perspectives, the different approaches being taken on the merit increase as an institution. Mr. Ridgeway, we're concerned here basically with the condition that results when a public servant is promoted. What would happen if a public servant was promoted twice in the same year? What would happen if there was a promotion and the effects stipulated, as you would like to see them in your presentation, were carried out and the employee then received a second promotion within the same 12-month period?

MR. RIDGEWAY: Well he'd only get the one merit increase on his anniversary date. However, in the current system he would receive at least two steps, one step in each position on that promotion. Plus he'd still get his merit increase on his anniversary date.

MR. SHERMAN: So that if that happened you would envision that it would be fair and equitable that he or she got the two steps that would be involved plus the merit increase?

MR. RIDGEWAY: Under the current legislation that is what happens. Now I don't see this happening all that often, people getting two promotions within one year. I don't want to get into a statistical hassle here. It doesn't happen very often that a person gets two promotions. In fact it's very very seldom that a person would get two promotions in one year. I would say that most government employees - and here I'm shooting off the top of my hat and my research people will probably throw stones at me - but I would say most government employees are promoted probably about four times in their career.

MR. SHERMAN: Well could we just look at the . . .

MR. RIDGEWAY: Maybe I could clarify this just one little bit. In the Government Service, moving from a Clerk 1 to a Clerk 2, to a Clerk 3, to a Clerk 4, to a Clerk 5; in private industry that person would still probably be called a clerk and every time they're given additional responsibility they get some more pay for it but it's not a promotion for them, it's just additional responsibility being given to them as they evolve in the service. Whereas with government service every step which has a little bit of increased responsibility constitutes a promotion. One of the big arguments that members have been giving to me is: why should I lay myself open into that probationary period again and then have to start all over again as a new employee without receiving any monetary benefit for it?

MR. SHERMAN: Well this is one of the things I was going to ask, Mr. Chairman. What actually is the condition of promotion? When a public servant accepts promotion, and rightly or wrongly I think most laymen consider that public servants enjoy a degree of tenure in their positions, does that apply throughout the relationship? Would that apply immediately following a promotion?

MR. RIDGEWAY: Immediately following a promotion the government employee is in a probationary period and they have to serve that probationary period for six months prior to becoming a permanent employee again. This happens on every promotion.

MR. SHERMAN: So what you're saying is that on accepting promotion, a public servant is really gambling that they can cut the mustard in the new job.

MR. RIDGEWAY: That's correct.

MR. SHERMAN: If they don't, are they in a position where they can grieve or appeal if anything happens to them, if they are terminated?

MR. RIDGEWAY: Well here we're getting --(Interjection)-- What, going back? --(Interjection)-- How many times a person goes back - I can't give it to you, I don't know.

MR. SHERMAN: But if they're terminated can they grieve or appeal?

MR. RIDGEWAY: If a person is terminated on promotion?

MR. SHERMAN: Yes. During the probationary period.

MR. RIDGEWAY: During the probationary period, that's one of the areas that we've had great difficulty in getting appeals heard on, I can tell you that. Whether it's appealable, I would say no.

MR. SHERMAN: So there's really no security or tenure in the accepted sense until after the probation period is completed.

MR. RIDGEWAY: That's correct.

MR. SHERMAN: I take it then what your essential message is, the kinds of provisions being sought here in Bill 64 then work against incentives for those who would like to get ahead and take the risk and take the gamble of moving into positions of promotion. Is that right?

MR. RIDGEWAY: That's correct. To me it's kind of a funny situation where you're penalizing the person who's being promoted, who supposedly is the good employee, the one that's going to be carrying out the new program or going to be implementing a new program and so on. The person who is going to be carrying the increased workload is the guy that's getting penalized for it. The person who sits back, doesn't take any additional training, doesn't take any additional qualifications, doesn't work towards any promotion just keeps on carrying on right through to the top of their scale.

MR. SHERMAN: Thank you. That's all, Mr. Chairman.

MR. CHAIRMAN: Mr. Osland.

MR. OSLAND: Some of my questions were answered through Mr. Sherman's questions, Mr. Chairman. In your last paragraph on Page 7, I don't really agree with what you state there. If the government is prepared to promote an employee to a higher position, grant him a small salary adjustment at that time only to withhold his merit increment a few months later, it clearly follows that they should have to confirm that his service is in fact not satisfactory.

MR. RIDGEWAY: That's correct.

MR. OSLAND: I don't quite follow through. I was with the Federal Civil Service and also with the Navy before that in the service and we never passed up any promotions. But we understood that when we went up say from a Leading Seaman to a Petty Officer you were automatically on the tightrope again until you proved yourself. You're also on to another pay ladder, pay scale, so that your chance of advancing your pay cheque, you've entered another field again. I don't really see that what you're telling me is that the Clerk 1 is a recruit level and you're going through certain stages until you level off at your working level . . .

MR. RIDGEWAY: No, no, no, no, no.

MR. OSLAND: I'm sorry.

MR. RIDGEWAY: I'm saying that each clerical level, Clerk 1 has a maximum which is the working level for the responsibilities attached to Clerk 1. Clerk 2 is another level within that clerical series which also has a maximum on it. Okay?

MR. OSLAND: Right.

MR. RIDGEWAY: What I did say was that the clerical people normally in promotions, if they are going to be promoted, if they seek promotion, will be promoted within that clerical series. It doesn't mean that every person who starts at Clerk 1, through merit increases, automatically ends up as a Clerk 5.

MR. OSLAND: It is not automatic then?

MR. RIDGEWAY: Oh, no way. No way, because there's different levels of responsibility attached to each one of those clerical levels.

MR. OSLAND: Well, it still doesn't change the fact that he's in a new pay scale. I don't think that your statement is quite correct in the fact that you're saying that we're saying he's not satisfactory. We're saying that he's satisfactory so much so that we are now willing to take him to another level, but at the same time that he will go through a probationary stage on that level. Now the only thing that enters my mind as a question: supposing he flunks at that level, my concern would be if he can go back down to where he came from as a Clerk, say the scale below.

MR. RIDGEWAY: No, we're not negotiating that right at the moment.

MR. OSLAND: They're not going to be kicked out of the service.

MR. RIDGEWAY: Pardon?

MR. OSLAND: They're not going to be kicked out because he didn't quite make it on his probationary . . .

MR. RIDGEWAY: Under current situations they sure can be. --(Interjection)-- Pardon?

MR. URUSKI: Has that happened?

MR. RIDGEWAY: It has happened.

MR. URUSKI: Often?

MR. RIDGEWAY: Not often, but it has happened.

MR. OSLAND: Okay, thank you, Mr. Chairman.

MR. RIDGEWAY: Just for clarification again, and very briefly, on Mr. Osland's point regarding the Federal Services so on and so forth. The current situation in Manitoba for its employees relative to merit increases and so on and so forth is in our mind better than what the Federal Service has. We don't want to go through the regressive step of going back to what the Federal employees are . . .

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: I just have one question. If we are to consider merit increases anything but automatic increases, then how can you assess somebody in less than a year? There's supposed to be an annual increase relative to a year, not to any other period but a year as I understand it.

MR. RIDGEWAY: When a person moves from a Clerk 1 to a Clerk 2 to a Clerk 3, if you look at the job classifications, the job specifications for those positions, there's really not very much change in them. They're very similar. There's some additional responsibility but it's slight.

MR. BOYCE: But if you accept one class, one step then how can you rationalize an additional increase which is supposedly relative to a merit increase for a period of assessment after one year?

MR. RIDGEWAY: You have had the opportunity to assess that person as I've said. A person who's performing in the clerical field, you're assessing them in the clerical field. You therefore assess them, they're a good clerk, they're qualified, you then promote them, you give them some additional responsibility. Your promotion increase supposedly covers that additional responsibility but yet they're still serving in the same field and therefore your assessment is over the same type of work that the person's been doing.

MR. BOYCE: Yes, okay.

MR. CHAIRMAN: Any further questions? Thank you, Mr. Ridgeway.

MR. RIDGEWAY: Thank you.

MR. GREEN: Mr. Chairman, the reason that I've sort of taken the mike. We do have one more delegation. Are we through with Mr. Ridgeway?

MR. CHAIRMAN: Pardon?

MR. GREEN: I'm not asking questions.

MR. CHAIRMAN: I have no more people that wish to ask questions. Thank you, Mr. Ridgeway.

MR. GREEN: Mr. Chairman, before we call - I think Mr. Coulter is the last person with a delegation - I'm going to propose the following: I am going to propose that we hear Mr. Coulter and that we then terminate. But that we agree to go back into Law Amendments Committee if either tomorrow morning or tomorrow afternoon we happen to finish early, like let's say we finish at 11 o'clock in the House, then on these bills which we shouldn't then have to give notice again to the public on that we go back into Law Amendments Committee and deal with them.

I will deal with what other committees we're dealing with tomorrow morning. But that the deal now be that we go back into Law Amendments Committee either tomorrow at 8 o'clock or 11 o'clock or 4 o'clock if we happen to finish early in the House as we did today. So then we would hear Mr. Coulter. Is that agreed? (Agreed).

MR. CHAIRMAN: Mr. Coulter. Bill No. 46.

BILL NO. 46 - AN ACT TO AMEND THE PENSION BENEFITS ACT

MR. COULTER: Thank you, gentlemen. This Act, those three parts, was before this committee last year and when we had an opportunity to speak on it we were told that Part I and Part III were going to be dealt with at that session and Part II was going to be laid over for consideration during the recess and further opportunities to discuss it. I'm pretty sure I attended the last meeting of the Law Amendments Committee when they did report out Parts I and III, not reporting Part II, but they must have subsequently dealt with that in the House.

This spring we were somewhat shocked to find that wasn't the case. We'd been making representation to the government on the fact that it hadn't been passed and naturally we're here to day to deal with what we think there should be in the way of amendments to Part II. You have Bill 46 before you which provides some amendments but it sure doesn't do what we were wishing done and which we think are very important. As a matter of fact we are so sure that they should be provided that we're going to take some time to try to convince you people and the government to make some further amendments with Bill 46 to do what we wish. --(Interjection)--

MR. GREEN: . . .what you're going to say.

MR. COULTER: Yes, I have. I'll leave it with you I have one copy of a proposed amendment to the section. I must say that May 7th the News Service of the province reported comments of the Minister in the House and I'll quote it, the starting of a paragraph: "The Act is designed also to protect the pension benefits of an employee who has completed at least ten years of service."

(MR. COULTER cont'd) . . . . . And we're dealing with Section 21 of the Act and Section 21 is being amended by item 7 in the bill before you, but it provides very minor amendments with respect to age 45 and this is brought in with respect to other provinces.

Now when we were dealing with this legislation earlier this spring, you had representation here from ourselves as well, and we had representation from the insurance industry that recommended that the vesting be improved to after five years of service and age 40. The legislation in the other provinces, Ontario which has been in existence for about 11 years or so, is just that, ten years before you get vesting and then at age 45.

Now the organization of civil servants that administer these programs in the other jurisdictions, including the Federal, CAPSA, about two years ago, two and a half or three years ago they recommended to those members - that didn't include Manitoba at that time - that the vesting in legislation of that day, that's about three years ago, be changed to after five years and age 40.

Now we had the insurance industry come here before this committee to ask the same thing and we have been asking for this not only in basic principle but because it is easily provided in many cases. Now the only thing I can see here is why the bill is drafted the way it is, and we've had many sessions with business people, with people from your Commission. As a matter of fact they had a day's session at the Fort Garry Hotel not too long ago. We had a good exercise there and there wasn't anybody could defense a reason why vesting couldn't be improved in this bill. There wasn't one employer stand up to say that it shouldn't be done. And we've got the insurance industry saying it should be done after five years and age 40. Labour takes the position that contributions by the employer to a pension plan is deferred wages. And that is a fact. The AIB, the Anti-Inflation Board, are recognizing those as wages, and there's no question about that. But here we find that irrespective of the fact that they are wages and they're being put aside, deferred, that if the man changes his job before he has served ten years, then they're no longer wages, they're going to go back to the employer. And we say that's wrong, completely wrong in principle. We wonder how this thing has got off track.

Now the other thing I would like, before I go much further, is some interpretation of the legislation dealing with Section 21, and particularly with the words of the Minister that I referred to. And it says, "that the pension benefits of an employee who has completed at least ten years." Now my reading of Section 21.1(a)(i), under the terms of the pension plan in respect of service on or after the qualifying date, and that's July 1, 1976. So that means nobody is going to get any vesting rights for another ten years from this July 1st. Now you can tell me if I'm wrong and the comments of the Minister would imply that anybody today that has worked ten years for an employer and contributed to a pension plan would have those benefits tomorrow if he was to terminate his employment.

MR. GREEN: Could we have that . . .

MR. TALLIN: I don't know whether I could give it offhand but I'm trying to read it.

MR. GREEN: I think, Mr. Coulter, that it would be preferable if you'd just continue on that and then we would have to just consider what you are saying and tell you whether your interpretation . . .perhaps the words haven't come out as the intention should be. Because frankly I haven't looked at it that closely.

MR. COULTER: All right. Well, I've said that there's no question in our minds that those pension benefits that the employer has paid on behalf of the employee are actually those of the employer, the deferred wages, and we think and we argue that that should be vested from Day One. And I can tell this committee that where you have a funded plan and you've got balanced contributions, that they can in fact, and they are, able to vest them from Day One. Fifteen years ago - you know, it doesn't seem that long ago - when we were in Metro and trying to bring pension plans to a uniform basis because of the different municipalities, we had Mercers as the consultant, and I happened to be on the committee, and we asked Mercers what is the extra cost for providing for vesting instead of after ten years before you start to get any credit. And the answer was infinitesimal. So we as an administrative body as an employer, said if that is so then why shouldn't we give the employees full vesting from Day One. And the Metro Pension

(MR. COULTER cont'd) . . . . . Plan was drafted in that way. Now I can't conceive at all why in this day and age we're saying to employers of like kind, that have like pension plans, that are well able to pay the vesting portion or leave it vested in the name of the employee when he retires, because that's what it is, it's retained to his benefit, why that can't be done and why it shouldn't be done.

This bill here says that no, no, that might be fine, not that you're going to get it if you've worked ten years for that employer, but after you have worked ten years from this July 1st, which is a bunch of poppycock. You know, it's just a farce as far as I can see, and I just can't conceive how anybody would draft legislation today on that premise. It's just inconceivable and that's one thing that we are desperately wanting to change. Now as I said we discussed this at the conference at the Fort Garry. We had the Chairman of the Commission, the Pension Commission there and he agrees. And one of the problems they seem to rely or fall back on, that really, sure it's a good thing in principle, no reason why it can't be done but we don't want to be out of step with legislation that's in Ontario and other provinces. And I say to you here today that why should you be coming in today with legislation that's already over ten years old and out of date. The people that administrate these programs in the other jurisdictions represented in the organization of CAPSA, three years ago have said that it's time for improvement. But you know how difficult it is for even a regulatory body of that nature in that province to move that province to change the legislation, to improve it the way we've mentioned. And they would have the co-operation of the insurance industry to do it. They were here and demonstrated that. Everybody agrees that it should be done. God help us, let's see that we can get it done here.

Now, you know, on these principles really we're suggesting that vesting be provided after five years of service, and you know we could go lower than that, but it would be reasonable at this juncture with so much support for vesting after five years to put it in in this province. And I can see or foresee if that were done in this province then the other provinces would see the benefit of moving towards that standard which their administration has already recommended to them over the last couple of years. Why wouldn't they? If uniformity means something, why shouldn't they do it? So I suggest to you, for God's sake move this here at least in this province to show that there is some leadership and not relying on legislation that's already out of date.

And the other thing is that we, using my interpretation of the legislation with regard to the small (i) under 21.1(a), that it means, it doesn't matter if a person has worked ten years for the employer, he's going to have to work another ten years. So we're suggesting that you scrap all those three qualifications in that Section (i) (ii), (iii), because they're not necessary and the rest of the provisions, (b) and (c) can stand and we would have a half decent piece of legislation. So that I have here at least a proposed amendment to that Section and it does not include the amendment that you've got in Bill 46 which goes around about to accommodate the other jurisdictions with regard to the age 45. I don't think that is necessary if you move ahead and adopt this and the amendment that I have here I wish to leave with you, is that vesting should be after five years or having attained the age of 30. Now that's less than 40 no doubt but what we're saying, that once a person reaches the age of 30 he should be starting to build up for a pension when he becomes pensionable age - and I hope by that time it will be around 60, so that he has some 30 years or so to contribute - maybe by being employed for three, four, half a dozen different employers, with the opportunity to get the vesting and have them mobile as to portability to go with them, then they have something. But unless they start at that age, you're going to continue to have the same problems of people coming to retirement age with very inadequate pensions.

And the principle I'm referring back to again is that in the Metro Plan we gave them vesting from Day One, no age barrier; there was one minor thing and you've got it in this bill already, that if the pension was less than $10.00 that it would be paid out to the individual. It wasn't worth the administration to carry it for a small item. I think this legislation has $25.00, if I'm not mistaken. But that's not that important, other than the fact that the principles are there and we would ask you to give serious consideration to moving some major improvements to this legislation to make it at least a modern concept of what pension legislation should be and is being asked for in all jurisdictions

(MR. COULTER cont'd) . . . . . and by everybody that we can find. Fair employers are not Indian givers. When they employ people and they make a bargain that five, six percent is going to be contributed to a pension plan, if the employee does likewise, then that's a bargain, and we don't think that that should be taken away by the fact that there's lack of legislation to make it mandatory. And as a matter of fact the fact that legislation is there that doesn't provide it, gives the employers and the fair employers I would think even at that, some thought of not dividing the vesting and they get the residue or the benefit of those contributions that have already been made.

And I can understand some apprehension with regard to new plans or plans that are very minimal, that you may have a difficulty with new employers or those who have had a minimal plan for so long having to now adjust to provide for vesting and the cost of that to be paid out or to be returned at the end. And, you know, I don't think this would be that much out of the way to have some relief valve for the Commission to waiver some of this thing if there is such a situation. But surely to goodness where you have adequate funding and you have balanced contributions, there should be no hesitation to give them full vesting after five years.

MR. CHAIRMAN: Thank you, Mr. Coulter. Mr. Green.

MR. GREEN: Well, Mr. Coulter, the big part of your representation I take it is not on Bill 46 but on that part of the bill which relates to the benefits, what is prescribed with regard to the plans themselves, which you feel are not satisfactory. There are some parts that relate to this bill, for instance Section 5 and July 1st, 1976, etc., but the major thrust relates to the . . .

MR. COULTER: Most definitely, and you see they do deal with, in the bill, deal with Section 21 but it means by qualifying with other provinces to some extent, and I just haven't thought that through how important it is but I have had this reviewed by a so-called expert in pensions and the draft here is supposedly adequate to meet the situation and what I've been asking for.

MR. GREEN: But I gather that the major portion of the bill . . . we are dealing with voluntary pension plans, we're not dealing now with the pension plan that the government gives its employees, we're dealing that when a pension plan is given by an employer to an employee, that that shall have certain provisions, and one of them is that he will have a right to examine at any time what the plan is, etc., that there are some plans which are in existence whereby the employee makes contributions, the employer makes contributions and the employee leaves in a certain period of time, then the employer contributions are forfeited. You are suggesting that if an employer does have a pension plan that he can't do that, that there be requirements . . . not being allowed to do that. Now is there any danger that an employer if he is required to have the kind of pension plan that he doesn't want, he just won't have a pension plan?

MR. COULTER: I've said that but really the legislation has said that the basic foundation of plans have to meet these requirements and it says in ten years they have to do it period.

MR. GREEN: Right, I agree.

MR. COULTER: Now I understand . . .

MR. GREEN: I'm asking you whether if you make it . . .the stronger the provisions that you make which require a pension plan to be in a certain way, the possibility is that the employer could resist instituting a pension plan. The tougher the plan on him, the bigger the chance that he won't have a pension plan. These are all voluntary plans. These are not . . .

MR. COULTER: It all depends on how you look at what he is doing, whether he's an Indian giver or whether he's not or whether the plan is able to accommodate or not. Now we know that there are plans through which, if people stayed and the vesting was there, the employer would not be getting so much credit back towards his costs. We are satisfied there are many pension plans, so-called, that the employer is supposed to be contributing to and in fact he does little, if any, because of the return of credits that should have been returning to the worker that has left. That particular type of work is the type of thing that does it.

MR. GREEN: Well that's my recollection. What the government was legislating, that when a plan was in existence that we had proposed legislation which would make sure

(MR. GREEN cont'd). . . . . that what was there was being done, that the moneys were being deposited, that the employee could rest assured that whatever was provided would be reasonably protected by legislation. But, I think . . .

MR. COULTER: It's not.

MR. GREEN: Well, all right. That's what we ask your representations for. I think we are not as strong as you are suggesting we be as to say what the actual plan should be. This is where your strongest pitch is today with regard to when an employee is entitled to vesting, etc., and those things are not as you would like them in the existing bill.

MR. COULTER: Right. There's no question about that.

MR. GREEN: All right. Well then I think that you should leave a copy of your remarks with us so that we can deal with the representations as you have made them.

MR. COULTER: This draft says five years and age thirty and I've already said that we would find a great improvement if it was five years and age forty which is the standard which CAPSA and the insurance industry have been asking for and suggesting.

MR. GREEN: The insurance industry of course would like us to legislate a minimum of as good a plan as possible because they are in the business of dealing with pension plans. It is the employer who wants to have a lesser plan, voluntarily. That might be the problem in terms of legislating something which is beyond that which he is prepared to do. That's really the issue that you're discussing, is it not?

MR. COULTER: No it is not, it sure is not. I don't want to see or you to allow the plans that are able to provide vesting relegated to a standard to which you're trying to say that we are going to beg employers to come into providing plans. I think that those that are able to do it should do it and the legislation should provide that they do do it. There's no excuse for not doing it.

Now if you want to give some out to a lesser plan that can't afford it or the basic principles are not up to standard yet, the commission could be given a period of time - they've got outs in this thing already - to give plans time to adjust to meet these particular standards. But surely those that are at that standard now should be required to provide vesting. It's as simple as that. The same as the Metro Plan, fifteen years ago it was able to provide it, cost infinitesimal.

MR. GREEN: Yes, but Metro decided to do that.

MR. COULTER: Right.

MR. GREEN: We didn't. There was no legislation requiring Metro to do that.

MR. COULTER: No, that's right.

MR. GREEN: That's the difference. You're proposing that the legislation require the kind of thing that Metro did to existing pension plans, I think, or I've probably got it wrong.

MR. COULTER: No. I've said that in principle we agree with vesting from Day One. That's what was provided. We are asking here for vesting after five years, for God's sake.

MR. GREEN: But it's still a legislated plan. I'm not arguing, I'm not really...

MR. COULTER: Well if that's the standard that you want to provide you might as well bloody well shove it. That's about the size of it. You've got to wait another ten God damned years after - anybody 55 years of age would get no benefit out of this thing. It doesn't matter how long. If he's worked ten years for a firm. I think that that's incredible.

MR. GREEN: I think that it is a fact, Mr. Coulter, and I'm not condoning it, nor am I at this point taking another position, that there are people who work ten years for a firm and there is no pension plan, that there are firms that have no pension plans. I don't think that's good but there are firms that . . .

MR. COULTER: We'd like to do something about that too but we haven't got enough governments prepared to do it.

MR. GREEN: I don't think that everything comes about by governments. I have no further questions.

MR. CHAIRMAN: Well, I think Mr. Craik and before that I think Mr. Coulter asked a question. I think the Legislative Counsel is now prepared to answer that question. Mr. Tallin.

MR. TALLIN: As I read the Section 21(1)(a) what it says is that of July 1st, if you've got ten years' service you start getting your vesting. With respect to any service after July 1st. So that you . . .

MR. COULTER: Just a minute. That's not what he said.

MR. TALLIN: If you've got ten years' service as of July 1st, 1976, then your vesting starts as of July 1st, 1976. You don't have to wait for another year for your vesting. Right? But what vests is only the service after July 1st, 1971, because people ..

MR. COULTER: Exactly.

MR. TALLIN: You're changing the rules and you don't want to change the rules retroactively on people because then you've got them into a position which they didn't expect to be in at the time they entered into the agreement.

MR. COULTER: Well you're agreeing with my interpretation at the beginning.

MR. TALLIN: Well no. You said that you had to wait ten years for vesting but you don't. You start accumulating your vesting rights . . .

MR. COULTER: Yes but you can accumulate it for nine years and never get any benefit. You've got to make that tenth year before you get it.

MR. TALLIN: No, no. It's vested. If you quit on July 1st you're entitled to a pension right with respect to that one day, a vested right, because you were employed ten days prior to it.

MR. COULTER: Well that's still not good enough. It sure doesn't satisfy us with regard to those plans that are able to provide vesting and the intent all along is to do it. They should be required to do it. If you still have that hangup, surely that vesting period should be reduced to five years and not ten. As you say, if they start to get vesting after July 1st or on that day then some of us that just have maybe a few days longer than that five years, we might get the full vesting.

MR. GREEN: Mr. Coulter, if you legislated something about a pension plan which now exists which requires more than what is there you are penalizing the employer that has a plan, however inadequate, against an employer who has no plan and is required to do nothing.

MR. COULTER: I can't see where you get that assumption or thought in your mind. When an employer is making balanced contributions he's putting that out for a purpose, for that guy when he retires. Now he doesn't put it there for the purpose to get it back.

MR. GREEN: Well I gather there are some that are doing that. You tell me that they are doing that.

MR. COULTER: But they're inferior plans, yes.

MR. GREEN: That all figures out actuarially in the cost of the plan. I'm not saying that it's fair, I'm not saying that it's otherwise. I'm saying that it is a fact. We will have to deal with the submission that you made.

MR. COULTER: Fine. Well I hope that you do and I hope you see some merit in it because I think the way it is is really inadequate.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, maybe just a couple of questions to try and clarify. At the present time if you do have a pension plan that is vested and you move your employment to an employer that has no plan, what happens to your contributions and your former employer's contributions. You are vested. Where do you move it to?

MR. COULTER: It remains with the fund that it's in. Now this bill provides the opportunity for the Pension Commission to provide a fund to which it can be transferred and we would prefer to have that. --(Interjection)-- That's right. The difficulty with purchasing an annuity at that time - you know what government annuities have been. Anybody that bought them ten years ago, fifteen years, what the hell are they getting today? If that was into a fund that was growing with today's interest rates he would be getting a lot more. You know this is one of the criticisms of government annuities. Insurance companies have been doing the very same thing with the funds that have been vested. I happen to have some myself from 1963 and it burns my . . .when I think about it. At that time they may have been paying four percent or anticipating the return of four percent to be able to pay out the annuity at 65. Well they've been doing a hell of a lot better than that. We suggest that there should be a transfer into the central fund, the

(MR. COULTER cont'd) . . . . . third fund. That is one that can expect to grow with the times and provide the type of adjustment that is necessary to the cost of living, etc.

MR. CRAIK: With that sort of an arrangement then your pension becomes more or less divorced from your conditions of employment.

MR. COULTER: Uh hm.

MR. CRAIK: In other words if you decide to move employment your pension that way is not hung up. It makes it more portable than what is provided.

MR. COULTER: That's right.

MR. CRAIK: Under the plan you referred to, the Metro Plan, did I understand you correctly to say it is vested immediately?

MR. COULTER: Yes --(Interjection)--

MR. CRAIK: The employer's share is vested immediately. So if a person left the employment after two years of employment, left Metro, at that point, both contributions would stay in the Metro Investment Plan but he at age 65 would become eligible for . . .

MR. COULTER: And if he worked for five or six other firms in the process of time, by retirement he would have those as well.

MR. CRAIK: Yes. Under this legislation, if you had a Metro employee who was vested after two years and he moves over to another company that have a plan, would he move it or would it still stay back with Metro?

MR. COULTER: I think that the municipalities in the province are getting around to trying to establish a central pension fund for municipalities that will allow that type of thing to happen.

MR. CRAIK: I'm not familiar with the full definition of what you mean by portability. Portability from a fund into a third party fund or portability into the new employer's fund?

MR. COULTER: It's portable to the extent that it goes with you if you leave the employer.

MR. CRAIK: Yes. But to where? To a third party fund or . . .

MR. COULTER: Well just to your credit until you grow the grey hair and reach retirement age. Then you get the benefit of it or you die. Then your beneficiaries are the lucky ones.

MR. CRAIK: Yes. As it stands now in that fund, a person who say only worked for two years, moved to another employer, his money stays back there and he gets the employer's share of it and his share of it at age 65.

MR. COULTER: Yes. He'll get a report every year showing exactly at what that stands.

MR. CRAIK: Yes. Isn't it pretty much an actuarial problem to solve to get around . . .

MR. COULTER: There's no doubt about it. But you see what we're trying to get across here is that when employers go into these plans they do it on the basis of a cost factor that they attach to the wage cost. That's deferred wages as far as the worker is concerned. It's deferred wages as far as the Anti-Inflation Board is concerned. We suggest that it's really his and why should the employer get it back at some time subsequent if the man leaves. That's one of the problems with pension plans. They were brought in as a paternal measure by employers as a means of retaining employees, rather that they not move, and we've moved quite a bit away from that. Many employers don't want the employees that long and many employees don't wish to stay in the same vocation. They have other expectations and we're living in different times.

MR. CRAIK: Would you prefer to see pensions really not a negotiable item if you could achieve complete portability and complete vesting and uniform regulations on this. For the average person would this be a better arrangement effectively divorcing his pension really from his conditions of employment entirely.

MR. COULTER: We are in support of extending the Canada Pension Plan to provide 75 percent of final earnings. It is designed now and it has reached that level of 25 percent. Now I understand and I read at least two years ago that the Liberal Party nationally had passed a resolution in that party that they wished to move the Canada Pension Plan to achieve 50 percent which would have meant a continuation of the progressing year to year to provide up to 50 percent. We're saying to keep it going until it gets

(MR. COULTER cont'd) . . . . . to 75 percent. But in the interim we've got private pension plans and they have to be protected by legislation of this nature. If those plans ever come into play then private pension plans would be reduced, they'd go out of business, there would be no requirement for them. But both of them should integrate or match one another, one progressing and the other declining as far as this is concerned.

MR. CRAIK: But in a universal plan like that you would lose the flexibility of . . .

MR. COULTER: No, no.

MR. CRAIK: You'd lose some flexibility. Would you not have certain circumstances where a person may enter a plan at a certain age, perhaps an older age, where he wants to build up a reserve more rapidly than would normally be necessary and therefore between the two parties, the employee and the employer, they come to an agreement that he would take less immediate salary and take more as a pension. Wouldn't you lose some flexibility . . .

MR. COULTER: I don't think so. You have that now. The same type of thing has been designed for that purpose really.

MR. CRAIK: Well you still have an upper limit though. If you're in a pension plan what was $2,500 extra now has gone to 35? It still puts a restriction on the amount of flexibility that . . .

MR. COULTER: That's a heck of a lot of contributions towards a pension plan just the same, in one year.

MR. CRAIK: Well, it is at a younger age in particular but it may not be at an older age.

MR. COULTER: Yes, right.

MR. CHAIRMAN: Any more questions? Hearing none, thank you, Mr. Coulter, Committee rise.