LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Monday, 11 May, 1981

Time — 10:00 a.m.

CHAIRMAN — Mr. Warren Steen (Crescentwood)

BILL NO. 10 — THE BUILDERS' LIENS ACT

MR. CHAIRMAN: Committee come to order please. Standing Committee on Statutory Regulations and Orders. This morning we're dealing with Bill 10, The Builders' Liens Act. The Clerk has given me the names of a number of persons that wish to make representation regarding the bill. The City of Winnipeg solicitor, Gordon Carnegie; Winnipeg Construction Association, Mr. G.L. Greasley; the Manitoba Home Builders' Association, Mr. Don Ayre; the Manitoba Telephone System, Roslyn Roth; and the Manitoba Hydro, Ernest Pydee.

Are there are any other persons that are present that wish to make representation before the Committee? Seeing none, would the City of Winnipeg solicitor, Gordon Carnegie, be the first person.

MR. GORDON CARNEGIE: Thank you, Mr. Chairman. I don't know that the Committee has been given the benefit of the letter written by the Acting Chief Commissioner on this matter. I have extra copies of this for all of the members of the committee if that is desired. I would, however, like to state orally the gist of those comments.

MR. CHAIRMAN: Yes, please do so.

MR. CARNEGIE: Have copies been made available?

MR. CHAIRMAN: Do you have copies available?

MR. CARNEGIE: Yes, I do.

MR. CHAIRMAN: Would you give them to our Clerk and she can distribute them to members of the Committee.

MR. CARNEGIE: The concerns of the City of Winnipeg are really addressed to Sections 24 and 28 of the proposed Act, Bill 10. These are those provisions dealing with separate bank accounts and the interest rate to be paid on holdback accounts. The city views these provisions as being unnecessary insofar as they apply to the city and as containing certain problems in terms of their certainty, or rather lack of certainty.

I should say that the city takes the position that the Act, on the whole, modifies the law in a very favourable manner. The requirement, for instance, that interest should be paid on holdbacks is a position which I think has been long overdue in this province and certainly we concur at the city that this is the cornerstone, I think, of an effective manner of dealing with contractors.

There has been abuse in the payment out of holdbacks in the past and the interest provision should remedy that abuse. However, the Act as it now stands requires that the owner open a bank account in the joint name of the owner and the contractor and to pay the holdbacks, now at 7.5 percent, into that account.

For the City of Winnipeg, this means several hundred accounts, some of short, some of long duration. We view this as an administrative nightmare without any corresponding benefit to the contractors. The City of Winnipeg — and I am authorized here to speak on behalf of Manitoba Hydro as well as the MTS on this point — the City of Winnipeg, MTS, and Manitoba Hydro are not going to go bankrupt and the only reason why we should have a separate account for holdbacks is in the event that the owner goes bankrupt, or the contractor, along the line.

We are a public corporation. We are not subject to the same rules and we therefore submit that they should not apply to us. I would extend this to say that we believe this should apply to all municipalities in the province for the same reason.

We have always adopted a system of retaining holdbacks, even on contracts not caught by this Act. We have done it by way of book entry and the system has worked very well. We don't see it as a great difficulty that, as against those book entries, we would simply credit interest at a rate to be determined in the legislation. The city can see no reason why it should not be its own banker. The moneys will be available for payment out as needed. They won't be used to finance other construction, as is the case in a private owner who might well go under and leave the contractors and subcontractors unpaid. It's this threat of bankruptcy that seems to be behind this provision and I don't think that it realistically should apply to these public corporations. That's the first submission.

If I may phrase it in the alternative, the city takes the position that no separate bank account should be necessary at all, that we should be required to pay interest but it should be done by way of book entry on a particular basis. If, however, this Committee and the Legislature in its wisdom sees fit to insist upon bank accounts for public corporations, then we take the position that only a single bank account surely is all that's necessary. To have several hundred bank accounts is a very serious administrative problem and the additional cost, in my opinion, is absolutely not justified. I believe, I don't wish to speak for the province, but the financial department of the provinces have echoed this concern. I believe that they anticipated that some 600 additional accounts would be necessary in addition to the 1,000 accounts already opened in the name of the Provincial Government, were this provision in its full rigor to be applied to all public authorities, including the province. So that a single account, surely, is the very worst we would have to live with, if such an account were deemed to be advisable.

The second concern we have is with the interest rate to be paid on holdbacks. The banking system

will be very surprised, I think, when they see this provision since there is no reasonable account available, certainly at the Royal Bank, with which the city deals, to pay interest on the basis that the Act clearly intends. As I outlined in my letter, there are basically three accounts available at the Royal Bank: a true savings account with no chequing privileges. Such an account is clearly not possible because we have to pay money out of this account to subcontractors who have completed their work from time to time so there will be constant disbursement. So that account is closed to us.

There is a second form of account paying a lesser rate of interest, about 12-3/4, at the date of writing this letter; this is a chequing-savings account. However, it's not available to corporations and they tell us that they would not open an account in our name.

We are left therefore with the third possibility which pays 3 percent interest. Now clearly such an interest rate would defeat the purpose of this Act which is to make sure that the earned money of the contractor pays interest at a market rate so that he isn't at a loss for the operation of The Mechanics' Lien Act which has been the case to date.

I suggest that the banking system is going to have some difficulty I think adjusting to the holdback account and to paying a decent rate of interest, say, 10 percent. Certainly the city and the public corporations would be much more amenable to having the province set the interest rate by regulation and to making the holdbacks by way of book entry and crediting the interest against the holdbacks on a regular basis so that we would know at all times what that interest rate would be and would be able to make the book entries in the appropriate manner.

The Expropriation Act, of course, is the classic example of an interest rate set by the government and I can see no reason why the city would object or indeed any of the other public corporations would object to this and exactly a similar procedure being adopted. I don't know what the appropriate procedure is here. Are you supposed to ask questions at this point? Certainly I'm prepared to answer any you might have.

MR. CHAIRMAN: Mr. Carnegie, you have just answered my question. My usual question to delegations, are they in a position to answer questions from members of the committee? You have said you are.

MR. CARNEGIE: Yes.

MR. CHAIRMAN: To members of the committee, are there any questions? Mr. Desjardins.

MR. LAURENT L. DESJARDINS (St. Boniface): Isn't there such a thing as a daily savings account to add to the third list, to add to the list of three which you could be transferred? The rate varies but I'm sure it's a heck of a lot more than 3 percent.

MR. CARNEGIE: Apparently such an account would not be available to a corporation; I believe this is confined to individuals. That is certainly the information the bank led me to believe and I spoke with them personally. Certainly I may say that the provision of the Act and if I may read it, "Section 28 — Nothing in this Act obliges an owner or a contractor to obtain a higher rate of interest for sums deposited in a holdback account than the rates prevailing and offered by the bank," does not seem to me to be sufficiently certain that I as a solicitor could give the city any kind of sound advice on the point. Certainly whatever is done, what interest must be paid, has to be more clearly defined.

MR. CHAIRMAN: Mr. Mercier.

HON. GERALD W.J. MERCIER (Osborne): Mr. Carnegie, we will be proposing amendments to the Act or to the bill before us which will in effect provide that the Crown and the major Crown agencies, the municipalities and local government districts, not be required to comply with the provisions of 24(3), (4) and (5) and the effect will be that the City of Winnipeg for example will merely be required to retain the ordinary 7.5 percent holdback of payments for the required 40 days and to pay interest on holdbacks for whatever size. I take it that is what you are looking for.

MR. CARNEGIE: That's half of our submission, the other one is what if we, the government, having agreed with the position taken by the city, then what interest rate will we have to pay or how will it be set? It's a very difficult question, which I've thought a great deal about and as I say the only suggestion I can have is by regulation as far as the public corporations are concerned. I would say this, that it isn't inconceivable that a rule could apply to all public corporations which would be different in terms of interest rate from the private corporations. In other words, it should be possible to set an interest rate for the government and all public corporations by regulation and to allow the banking system to determine the appropriate interest rate as regards to private sector. I only throw out the suggestion.

Our second concern is with regard to the service requirements under this Act, Section 79(2). I believe, Mr. Chairman, this is a matter of drafting and not really a matter of being of a difference in the substance of the city's position and the intent of the drafting committee. Our concern is that the Act makes this fundamental change that it now allows service on interests which under the existing Act were not lienable and therefore no registration was possible in the Land Title's Office. Under the existing Act if you were a contractor working on a street there was no way you could register a lien and since you couldn't register a lien you had no lienable interest and therefore, the Act simply didn't apply, even though you were doing work improving property. The existing Act now allows service upon the municipality of a document making a claim. Clearly an evaluable omission has been filled here.

The policy of the Act is to expede payment to contractors and subcontractors; a very laudable one indeed. In order to make those payments, however, we must be certain that when we do pay out that all lien rights have come to our notice, that we can search in the Land Title's Office and if there is nothing registered on the 41st day and I walk across the hall to the Clerk's Office and I ask the Clerk if there are any notices filed there that at that point I can pay out the money with perfect security that

anyone who had a lien has lost it by reason of failing to give notice either in the Land Title's Office or to the Clerk. Under the drafting of this section I think this section should say something to this effect, that all notices must arrive within 40 days within the lien period, but where there is a problem in evidence when you conserve a notice by registered mail, if there is no evidence then it will be assumed to have arrived within three days of the date of mailing. But if there is evidence then it will be as the evidence indicates. In other words it should clearly indicate that a notice served by registered mail must arrive by the 40th day unless there is a conflict in evidence in which case, then this rule will apply. As it now stands, I'm not entirely sure how this provision would be construed.

MR. MERCIER: Mr. Carnegie, we will be proposing an amendment to Section 79 in (3) which would strike out the existing section and say, "Where mailing service not permitted." — that would be the heading — "Except where otherwise ordered by the court, notice of lien required under Section 45; statments of claim; notices of trial; and requests to receive copies of notices of substantial performance; shall not be given or sent by registered mail."

MR. CARNEGIE: That will satisfy the city's requirements. Thank you.

MR. CHAIRMAN: Any further questions to Mr. Carnegie? If not, thank you kindly, sir.

MR. CARNEGIE: Thank you, Mr. Chairman.

MR. CHAIRMAN: The Winnipeg Construction Association. Is G.L. Greasley present?

MR. G.L. GREASLEY: Mr. Chairman, members of the committee. Copies of our brief I believe have been supplied to you. By way of introduction, I am the executive vice-president of the Construction Association. Our employees are in administration. We do not build buildings and we do not file liens. I therefore have with me today members of the organization who are practising contractors and people in the construction industry who are prepared to answer any highly technical questions you might have. Mr. van Ginkel is our president, is also the president of Trident Construction and General Contracting. Mr. Ptolemy is a member of our board of directors and is also our legislation chairman. Mr. McDiarmid is representing that group which will be included, hopefully, in the new Builders' Lien Act, the equipment rental people. He is president of U-Rent-It Ltd.

It was our intention to go through the brief first and then answer questions; however, if the committee would prefer to stop at each section along the way, we would be quite willing to do that as well.

MR. CHAIRMAN: To the committee members, which of the two suggestions would you like to follow? I think it's the general feeling that you could complete the brief and members could go back and ask questions relating to the various sections.

MR. GREASLEY: The Brandon Construction Association and the Winnipeg Construction Association have been submitting recommendations for amendments to The Mechanics' Lien Act to Commissions and to the Attorney-General's office regularly for the past 14 years. During that time, our views have become fairly well known. In our appearance here today we will touch briefly on a number of sections of Bill 10 and to give you an overview of our reactions.

By way of background, our associations, in combination, represent 345 firms active as general contractors, trade contractors, as well as manufacturers and suppliers of construction materials and services in Manitoba. Our prolonged studies have involved contact with all segments of our membership as well as 14 specialty trade associations in this province.

Our sector of the industry is in general agreement with Bill 10 and looks forward to its final implementation. There are some points, however, that we would like to have your committee consider and which appear in more detail in our attached submission, copies of which, of course, you now have before you.

Before we outline these comments, we would like to take this opportunity to express our appreciation to both the former government, which initiated the Law Reform Commission Studies on the Mechanics' Lien, and to the present government for introducing Bill 10. Our industry views the bill as an opportunity to finally remove outdated legislation and to improve conditions under which the contractors, suppliers and tradesmen operate.

In more detail then, with respect to definitions and the definition particularly of the word material. The definition of "materials" is not sufficiently clear. We recommend the following definition: "Materials includes every kind of movable property which has, or is to be, incorporated into the structure or land under contract".

We recommend the clarification of the definition as there are a number of items of material on construction work sites which are not, and never will become, the property of the owner. They do not in themselves increase the value of the land or structure. Therefore, we contend that they should be items that are removable from the property even though a lien may be registered.

For example, equipment rental firms may have a greater value of equipment on the property than the subcontractors. If a definition of "materials" does not specifically exclude their equipment, they would be unable to remove it, being bound by Section 35(1). They would not be able to claim rental beyond the original contract price, yet their costs for the "frozen" equipment would continue to rise. At the same time, they would not have the right to remove the equipment and rent it to others in order to recoup losses.

We are certain that the authors of Bill 10 never intended for those providing material on a temporary basis to be covered by Section 35(1). We request the extension of the definition to clarify this point.

In respect to "Services" definition, our associations are pleased to note that equipment rental firms have been included as services with lien rights. We have urged the inclusion of this group for the past 10 years. The system of construction and the integration of trade skills was far different in the

days when the original Mechanics' Lien Act was developed and equipment rental firms were not active at that time.

Regarding substantial performance, we are pleased to see a form of substantial performance included in Bill 10. In our original submission we did recommend a definition of the term. The clause in Bill 10 contains a formula similar to that of Ontario. We are not going to argue with having Section 2(1) included in the new Act as it presently appears. We are prepared to accept it as provided.

We welcome the extension of coverage to subcontractors and to subcontracts and as well as that, the inclusion of the words "is ready for use" which we feel firmly establishes the doctrine of substantial performance.

As we have stated in previous submissions, it is unreasonable to expect the excavator of a major work site, who completes his operation in the first six months, to wait until the building is totally completed some three years later in order to be paid his holdback amount.

Supply of Materials: Section 2(3) introduces the possibility of delivering material to a property adjacent to or in the vicinity of the work site and indicates that the adjacent land is not lienable.

Here again some clarification is in order to the effect that Section 35(1) does not apply to the adjacent land mentioned in Section 2(3), and even though liens are registered against the work site, materials may be removed from the adjacent property.

While the present bill, upon careful reading, in effect says that this is the case, we would recommend a slight rewording to clarify the situation.

Trust Provisions: In our previous submissions we recommended some form of trust be implemented with regard to holdback funds.

We are pleased to see the implementation of the concept in Bill 10. As this will be a new system to the industry, there will be a need to fully inform all elements of the industry of these changes. Our associations, in co-operation with other specialty trade associations, are prepared to present a series of workshops on Bill 10 once the Act has received third reading. These sessions would be open to all persons in or dealing with the construction industry, who may through their activities, be eligible to register a lien or have property subjected to lien rights.

Section 6(4) deals with assignments. We understand from reading this section that contractors can continue to make direct payments to suppliers which provide materials to subcontractors once assignments have been completed. Inasmuch as suppliers are already designated beneficiaries under the trust provisions of the Act, we would agree that this continue.

We understand also from this section that contractors are allowed to continue assigning their portion of progress payments to banks or lending institutions to repay previous loans, which funds were used to further the construction of that project. The basis of our understanding is Section 6(1) and the inclusion of the term "money lenders."

With respect to Waivers of Lien. It is difficult to describe fully the extent of the relief and pleasure within the construction industry sector we represent in finding Section 11 in Bill 10.

Since 1967 we have urged amendments to make waivers null and void and against the public interest in the same way it is in other provinces. Once Section 11 of this bill passes, those persons having lien rights under the Act can no longer be forced to sign away those rights which were properly given to them in legislation. For years people in the construction industry have coerced into signing away such rights even before the project began. Section 11, therefore, is a welcome addition.

Leasehold Interests: During the hearings of the Law Reform Commission that body requested indutry comments on leasehold titles and liens. After careful consideration by our Association we concluded that leasehold titles should be lienable.

The nature of the industry has changed extensively over the years and titles to property are more complex. With the advent of developmental style of construction the number of cases of leasehold titles continues to increase. It has long been our stand that those contractors, subcontractors, suppliers and employees, who increase the value of such projects through construction should be able to expect payment for those improvements from those who are benefiting, including those who have leasehold titles.

Holdbacks: The present holdback of 15 and 20 percent were set decades ago. Development of new legislation in various areas has since provided protection to buyers of services. Other legislation has also developed over the years to protect employees. At the same time the system of financing in the construction industry has changed. As a result of changes in all of these areas, the need for that extent of holdback no longer exists.

Our Association originally recommended a standard holdback of 10 percent. Later, in our discussions with the Federal Goverment contracting aurthorities, concerning their system of 5 percent holdback, we found them to be well satisfied. In a later submission we did recommend 5 percent holdback.

We do recognize that 7.5 percent holdback, as set out in Section 24, is a considerable improvement over existing legislation.

What must be remembered is that it is the contractor — and not the owner — that finances the front end of the construction projects. Until the first progress payment is received from the owner, it is the contractor who uses his own funds to pay salaries and wages as well as obtain services and supplies.

The progress payment from the owner merely replaces the contractor's original investment to that point in time. The contractor then repeats his extension of credit to the owner for the next progress period.

With current interest rates and holdbacks in Canada exceeding $2 billion on any given day, the ability of contractors to extend this credit to buyers is becoming more restricted. The lower holdback rate proposed will help to stabilize contractors by increasing their cash flow. This in turn will help them to continue businesses, to remain stable, and to be able to continue offering employment to those in the industry.

We agree with the inclusion of Sctions 24(3), (4), (5) in Bill 10. The contractor who borrows money to finance a project faces high interest rates. The

contractor who uses his own funds to finance the project loses the interest potential on his own money. It is only fair then that in both cases that the holdback funds be placed in a special interest-bearing account and that those to whom funds are owed should share in the interest earned.

In regard to reserved holdback, we note the inclusion of Section 27 (3), whereby holdback funds with respect to the defaulting contractor cannot be used to complete the contract.

We agree with this subsection.

Holdbacks are a portion withheld from those funds which were authorized to pay for services already performed. The funds are due to those who have already performed the services and construction. Such funds should not be used for future construction costs for which other holdbacks will eventually be retained.

We originally suggested that employees not be included in the new lien legislation, as they had adequate protection under other employment-oriented legislation.

In view of changes made to The Payment of Wages Act, affecting employees, we, on study, have no objection to Section 34 being included in Bill 10.

As stated previously, Section 35(1) does not clearly cover certain situations on the job site as the term "materials" is used subject to the existing definition. Once again, we recommend that the Act be amended to include a better definition of "materials" and to indicate clearly that those materials restricted from being removed from the property are those materials intended to be incorporated into the structure or the land under the contract and none other.

In our original submissions we recommended a 40-day period during which liens could be filed following substantial completion of the work. The Commission White Paper suggested a 50-day period. Our Association supported the proposed Section 43 of Bill 10, providing for a 40-day time limit.

As we explained previously, with changing procedures in finance and accounting, the existing 30-day period simply isn't sufficient time to recognize potential defaulting payments. This is particularly true where computer accounting is involved.

Where companies are not large enough to own computers, they may rent computer time — and many of them do. This frequently means that there are only one or two specific days a month when data is processed, including accounts payable. If progress payments do not get into the computer data at that time, the account may be processed for payment well beyond the 30-day limit.

It is also the practice within the industry for subcontractors to collect material supply invoices and hold them until such time as they are ready to submit their progress payment, processing them all at once. The general contractor in the same fashion collects the progress requests from the various subcontractors on the project by the deadline date and then processes them as a group. Once the architect receives the request for payment, a site inspection is usually necessary to verify that the progress costs being claimed represent the amount of work actually done. Then the approval is given, the owner contacted, the funds drawn, the cheques processed for the general contractor.

Once received by the general contractor they have to be reprocessed through the bank for each individual subtrade and following receipt there the same system again applies before the material supplier cheques and payments are made. In many cases these payments are not received within the present 30-day time limit.

In a survey of general contractors, trade contractor and manufacturer and supplier members of the industry, we found a greater acceptance for the extension of time to 40 days. However the industry would not welcome a time period for filing a lien that was unreasonably long. This would delay cash flow within the industry and negate the benefits of reducing the holdback to 7.5 percent, therefore our industry sector feels that a 40 day period is a very appropriate length of time.

In respect to Right to Information. When the concept outlined in Section 58(1) first came to our attention we anticipated some objections would be raised by contractors, however that has not been the case. In reviewing this section with general contractors, straight contractors and suppliers we received no objections. There are standard documents already in use in the industry which tie the trade contractors performance to the conditions outlined in the main contract between the owner and the general contractor. In these cases the trade contractor already has access to this type of information. The attitude of the majority of firms with which we spoke regarding information on bank accounts was that every person who was legally entitled to a portion of the holdback funds, should have access to information with respect to these funds. We recognize that Section 58, Sub-section 3 concerning information for mortgagees or unpaid vendors is not now readily available in the construction industry. When questioned on this particular sub-section, contractors and suppliers were neither strongly for nor strongly against this particular item.

In closing we would like to comment briefly on four other sections of the Act.

Section 10(1) — it would be clearer if the first sentence in this section began: Every contractor or sub-contractor — each contractor is to maintain records separately and not jointly and therefore we recommend the change from the word "and" to the word or. We note that the word or is used in succeeding subsections.

Section 16 and 17. We presume that some prior clause has been removed but the clause numbering has not been changed. Therefore a references in Sections 16 and 17 to a Section 12 should actually be made to a Section 13.

Section 24(4): The limit of $150,000 refers to the total cost of the project or the contract of the principle contractor and not to each separate trade sub-contract on the site. Perhaps there is some clearer way of stating this.

Section 79(2): While registered mail may be deliverable within three day periods within the City of Winnipeg, the authors of Bill No. 10, seem to place a high degree of faith in the postal service with respect to notices in outlying rural areas and northern Manitoba. It has been our experience that registered mail is often not delivered within three days. Would it not be more realistic then to have a longer period of notice in this Section?

Our associations feel that the general Bill No. 10 is acceptable in its present form with the minor revisions commented upon and we look to the proclamation of the Act. We realize that implementing some of the conditions because they are new to us may cause some temporary problems and we are prepared to encounter them. We will strive to work out the solutions to any of the temporary problems. If any adjustments to The Builders Lien Act are required at a later date, we are prepared to recommend amendments at that time, however we do not wish to hold up the bill at the present time for the sake of trying to guess what, if any, problems may occur or may not.

The comments we have made today and the recommendations are by the large minor adjustments to the Act — correction of English here, adding a few words to a sentence there — and should not delay the committee's consideration and hopefully recommendation for a Third Reading. We appreciate the opportunity to speak to you today and to present our viewpoints and would be prepared to discuss with you any questions that you may have concerning our approach to Builders' Lien and to Bill No. 10.

Thank you.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Greaseley, thank you very much for your brief. I have two questions. One, you referred to the definition of materials in Section 35(1). Section 35(1) reads, "During the continuance of a lien no portion of the materials affected by it shall be removed." I conclude from that section, Mr. Greaseley that doesn't mean that the rental equipment can't be removed but the materials affected by the lien.

MR. GREASELEY: I'm happy to hear you say that. We weren't too sure. We realized the words "affected by it" were there, but when we went back to substitute the definition in place of the word "materials" we still came up with every kind of movable property. If it is in fact the interpretation that the words "affected by it" refers to those types of materials to be incorporated, then we would welcome that definition.

MR. MERCIER: Secondly, on page 2 you indicate that you through your association would be prepared to present a series of workshops on Bill No. 10, and that brings into question the date of proclamation of the Act. Do you have any views on that?

MR. GREASELEY: No, anytime after tomorrow morning would be fine. Not meaning to be facetious, but we have been waiting 14 years.

MR. MERCIER: Thank you.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Mr. Greaseley, on page 7 of your brief, (c) limit of $150,000, you are suggesting that it should be made clear. Could you elaborate on that or could you make a suggestion of the change that you would like?

MR. GREASELEY: With respect to the $150,000 we were just trying to clarify a point. It is our understanding and interpretation from reading the bill that the $150,000 is the total value of the project. In other words, if it was $160,000 project then the clause with respect to interest bearing bank account would take effect which would benefit all of those trade contractors who may only have $20,000 contracts as part of that total. We are trying to assure ourselves that the $150,000 didn't mean that every separate trade contract had to be $50,000 within the overall contract.

MR. DESJARDINS: But you have no specific recommendation for the wording, the change that would satisfy you?

MR. GREASELEY: No, we haven't really come forward with a definition. We felt that there have been legal minds working on this for again as I say 14 years, and certainly we are relatively flexible on that as long as we are correct in understanding that the interpretation that it does not apply to each individual subcontractor; that it is the total value of the project.

MR. DESJARDINS: Thank you.

MR. CHAIRMAN: Any further questions to Mr. Greaseley? Seeing none, thank you kindly, Sir.

Mr. Don Ayre from Manitoba Home Builders Association. Is Mr. Ayre present?

Roslyn Roth from the Manitoba Telephone System.

MS. ROSLYN ROTH: Basically at this time the only submission that the Manitoba Telephone System wishes to make is to state that we concur with the position of the City of Winnipeg as stated today. Our concerns as we see them are basically the same and our position will be quite similar as well.

I would like to stress that we are concerned about the interest provision and we see that the committee has addressed many of the concerns that we do have and I would like to stress that one of concerns also that remains unanswered is how the interest will be set. Will it be by regulation or otherwise?

Thank you.

MR. CHAIRMAN: Any questions to the representative of the Telephone System? Seeing none, thank you, kindly.

Ernest Pydee from the Manitoba Telephone System, or the Manitoba Hydro, my apology.

MR. ERNEST PYDEE: Thank you, Mr. Chairman. Manitoba Hydro's concerns are as expressed by the City of Winnipeg relating to the administration of a large number of bank accounts, interest payments, the rate of interest to be paid and so on. But, in view of the Honourable Attorney-General's remarks, Manitoba Hydro's concerns have been alleviated somewhat. The only concern left with us at the moment is the rate of interest to be paid.

MR. CHAIRMAN: Any questions to Mr. Pydee? Seeing none, thank you kindly, sir.

Are there any other persons present who wish to make representation regarding Bill 10? Seeing none, Mr. Mercier, do you want to consider the bill this morning?

MR. MERCIER: Mr. Chairman, can I propose that we distribute some proposed amendments, with

explanations of the amendments, and that we recess for 10 minutes in order to allow an opportunity to discuss a few points with the lawyers.

MR. CHAIRMAN: The amendments and explanations will be distributed to members of the Commitee and we'll take a 10 to 15 minute recess. Agreeable? (Agreed)

Committee come back to order please so we can deal with the bill. It has been suggested, perhaps, page-by-page and Mr. Mercier can introduce the amendments. Page 1. Mr. Mercier.

MR. MERCIER: Mr. Chairman, perhaps, Mr. Kovnats will move the amendments. We have distributed the amendments with an explanation.

MR. ABE KOVNATS: I move that the definition of Crown in Section 1 of Bill 10 be struck out and the following definition substituted therefor: "Crown" means Her Majesty, The Queen in right of Manitoba;

"Crown agency" means:

(1) The Manitoba Agricultural Credit Corporation; (2) The Manitoba Public Insurance Corporation; (3) Manitoba Development Corporation; (4) Manitoba Health Services Commission; (5) The Manitoba Housing and Renewal Corporation; (6) Manitoba Hydro; (7) The Liquor Control Commission; (8) The Manitoba Telephone System; or (9) The Manitoba Water Services Board.

MR. CHAIRMAN: Agreed? (Agreed) The next.

MR. KOVNATS: I move that Section 1 of Bill 10 be amended by adding thereto the immediately after the definition of "materials" . . .

MR. CHAIRMAN: Page 1 — pass; Page 2 — Mr. Kovnats.

MR. KOVNATS: I move that Section 1 of Bill 10 be amended by adding thereto immediately after the definition of "materials" the following definition: "municipality" includes a local government district and "clerk of the municipality" includes the resident administrator of a local government district.

MR. CHAIRMAN: Any questions? All in favour — pass.

The next motion is on what page, Mr. Mercier? Page 2.

Mr. Kovnats.

MR. KOVNATS: I move that the definition of "owner" in Section 1 of Bill 10 be amended by striking out the words "including the Crown" in the first line thereof.

MR. CHAIRMAN: All in favour? (Agreed)

MR. KOVNATS: I move that the definition of "public work" in Section 1 of Bill 10 be struck out.

MR. CHAIRMAN: All agreed? (Agreed) Page 2 — pass; Page 3 — pass; Page 4 — there's one on Page 4.

Mr. Kovnats.

MR. KOVNATS: I move that Clause 2(l)(b) of Bill 10 be amended by striking out the word "of" at the end of the first line thereof.

MR. CHAIRMAN: Agreed? (Agreed) Pass. Page 4 — pass; Page 5 — there's an amendment, I'm told.

Mr. Kovnats.

MR. KOVNATS: I move that Section 3 of Bill 10 be struck out and the following session substituted therefor: Crown, etc. bound. Section 3. The Crown, all Crown agencies, and all boards, commissions and bodies performing any duties or functions under an Act on behalf of the Crown are bound by this Act.

MR. CHAIRMAN: Agreed? (Agreed) Pass. Page 5 — pass; Page 6, as amended — pass; Page 7 — pass; Page 8 — pass; Page 9.

Mr. Mercier.

MR. MERCIER: Just before we get to the amendment to Section 10(4), if I could move that Section 10(2) be amendmed by striking out the words "at all times" in the second line thereof and substituting therefor the words "not less frequently than monthly." The intention is particularly for smaller home builders to put it on a regular basis.

MR. CHAIRMAN: Agreed? (Agreed) Pass.

Mr. Kovnats.

MR. KOVNATS: I move that Section 10(4) of Bill 10 be amended by striking out the word "or" in the first line thereof and substituting therefore the word "and."

MR. CHAIRMAN: Agreed? (Agreed) Pass.

Mr. Kovnats.

MR. KOVNATS: I move that Subsection 10(5) of Bill 10 be amended by striking out the words "of the Department of Labour and Manpower" in the second and third lines thereof and substituting therefor the words "appointed under the Department of Labour Act."

MR. CHAIRMAN: Agreed? (Agreed) Pass. Page 9 as amended — pass.

Page 10. Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that Section 13 of Bill 10 be amended by striking out the last five lines thereof and substituting therefor the following lines: in performance of a contract or sub-contract for any owner, contractor or sub-contractor has, by virtue thereof, a lien for the value of the work, services or materials which, subject to Section 16, attaches upon the estate or interest of the owner in the land or structure upon or in respect of which the work was done or the services were provided or the materials were supplied and the lands occupied thereby or enjoyed therewith.

MR. CHAIRMAN: Agreed — pass; Page 10 as amended — pass. Page 11, Section 16 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that Section 16 of Bill 10, be struck out and the following section substituted therefor:

Liens against Crown, etc.

Section 16: Where the owner of the land or structure upon or in respect of which any work is

done, or services are provided, or materials are supplied, is the Crown, a Crown agency, or a municipality, the lien created by section 13 does not attach to the interest of the Crown, the Crown agency or the municipality, in the land or structure but constitutes a charge on amounts required to be retained under section 24 and this Act, mutatis mutandis, applies and shall be construed to have effect in the enforcement of the charge on the amounts retained without the requirement of registration of the lien or a claim for lien against the land or structure.

MR. CHAIRMAN: Amendment — pass. 17(1) — same page — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that subsection 17(1) of Bill 10 be struck out.

MR. CHAIRMAN: Agreed? — pass. Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that subsection 17(2) of Bill 10 be renumbered as section 17 and that the figure "12" in the last line thereof be struck out and the figure "13" substituted therefor.

MR. CHAIRMAN: Pass; Page 11 as amended — pass; Page 12 — pass — Section 18(2) — Mr. Mercier.

MR. MERCIER: I move, Mr. Chairman, that subsection 18(2) of Bill 10 be amended by striking out the words "the greater of", in the fourth line thereof and by striking out clause (b) thereof.

MR. CHAIRMAN: Mr. Tallin.

MR. RAE TALLIN: This is the section which makes the landlord liable for the full amount of the contract price, in the event that the tenant doesn't pay off. What this does is limits the landlord's ability to the amounts of the holdbacks that the tenant would have been required to holdback, rather than the whole cost of the contract.

MR. CHAIRMAN: Agreed. Any more? Page 12 as amended — pass. Page 13 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that section 24 of Bill 10, be amended by adding thereto at the end thereof, the following subsection: Holdbacks, under Crown contracts, etc. 24(6) — I guess that starts . . .

MR. CHAIRMAN: Therefore page 13 as amended — pass. Page 14 — Mr. Kovnats.

MR. KOVNATS: For 24(6)?

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: That subsection 24(3) of Bill 10 be amended by striking out $150,000 in the second line and again in the fifth line and substitute therefor the words: the amount prescribed in the regulation for the purposes of this section.

The intent is just to be able to allow for inflation in the future and to be able to raise it by regulation.

MR. TALLIN: And there's a similar amendment to 24(4), perhaps they could both be voted on at the same time.

MR. CHAIRMAN: All right, 24(4) — Mr. Mercier.

MR. MERCIER: I move that subsection 24(4) of Bill 10 be amended by striking out $150,000 in the second and fifth lines thereof and substituting therefor in each case the words: "the amount prescribed in the regulations for the purpose of this section."

MR. CHAIRMAN: Those two amendments pass — pass; Page 14 as amended — pass. Page 15 — I think Mr. Kovnats your, 24(6) would occur here.

MR. KOVNATS: I move that section 24 of Bill 10 be amended by adding thereto, at the end thereof, the following subsection:

Holdbacks under Crown contracts, etc.

24(6) Where the owner of the land or structure upon or in respect of which the work is done, the services are provided or the materials are supplied, is the Crown, a Crown agency or a municipality, subsections (3), (4) and (5) do not apply but the Crown, the Crown agency or the municipality, as the case may be, shall pay interest on any holdback made under subsection (1) or (2) calculated from the day on which the payment was made of the amount from which the holdback was held back to the date the holdback is actually paid at a rate and compounded, as prescribed in the regulations.

MR. CHAIRMAN: Agreed? (Agreed) — pass; 25 same page — Mr. Kovnats.

MR. KOVNATS: I move that subsection 25(1) of Bill 10 be amended by striking out the word "under" in the last line thereof and substituting therefor the words "subject to".

MR. CHAIRMAN: Agreed? (Agreed) Page 15 as amended — pass. Page 16 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that subsection 27(2) of Bill 10 be amended by striking out the word "claims" in the 2nd line thereof and substituting therefor the word "liens".

MR. CHAIRMAN: Agreed? (Agreed) Page 16 as amended — pass. Page 17 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that section 30 of Bill 10 be amended by striking out the figures "12" where they appear in the 2nd line thereof, and again in the 4th line thereof and substituting therefor, in each case, the figures "13".

MR. CHAIRMAN: Agreed — pass; Page 17 as amended — pass. Page 18 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that section 31 of Bill 10 be amended by adding thereto, immediately after word "orders" in the 2nd line thereof, the words "recovered, issued or made or".

MR. CHAIRMAN: Agreed — pass; Page 18 as amended — pass. Page 19 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that section 36 of Bill 10 be amended by striking out the word "engineer" in the 4th line thereof and substituting therefor the word "engineering".

MR. CHAIRMAN: Agreed — pass; Page 19 as amended — pass. Page 20 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that subsection 37(4) of Bill 10 be amended by striking out the word "of" in the 3rd line thereof and substituting therefor the word "for".

MR. CHAIRMAN: Agreed — pass; Page 20 as amended pass; Page 21 — pass; Page 22 — pass; Page 23 — pass. Page 24 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that subsections 45(3) and 45(4) of Bill 10 be struck out and the following subsection substituted therefor:

Giving notice of claim on Crown, etc.

45(3) The notice required under subsection (2) shall be given

(a) where the owner of the land or structure is the Crown, to the member of the Executive Council having charge of the construction or improving the land;

(b) where the owner of the land or structure is a Crown agency, to an officer of the Crown agency; and

(c) where the owner of the land or structure is a municipality, to the clerk of the municipality.

MR. CHAIRMAN: Agreed — pass; Page 24 as amended pass.

MR. MERCIER: Mr. Chairman, the next motion really applies to two pages.

MR. CHAIRMAN: All right, then we'll hold back the motion of 24 as amended — passed, until we have the remaining motions to section 45 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that section 45 of Bill 10 be amended:

(a) by renumbering subsections (5) to (10) thereof as subsections (4) to (9) respectively;

(b) by striking out the figure "(10)" in subsection (9) thereof, as printed (subsection (8) as renumbered) and substituting therefor the figure "(9)"; and

(c) by striking out the figure "(9)" in the lst line of subsection (10) thereof, as printed (subsection (9) as renumbered) and substituting therefor the figure "(8)".

MR. CHAIRMAN: Agreed? (Agreed) Page 24 as amended — pass; Page 25 as amended — pass; Page 26 — pass; Page 27 — pass; Page 28 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that subsection 49(3) of Bill l0 be amended by striking out the word "the" in the lst line thereof.

MR. CHAIRMAN: Agreed? Pass. Page 28 as amended — pass; Page 29 — pass; Page 30 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that Section 55 of Bill 10 be amended by adding thereto at the end thereof the following subsection: Vacating lis pendens on certificate of clerk of court.

55(6) Where an action to realize a lien has been discontinued or dismissed, a certificate of the clerk of the court in which the action was begun may be registered, and where registered, the certificate discharges and vacates the lis pendens relating to the action.

MR. CHAIRMAN: Agreed? Pass. Page 30 as amended — pass; Page 31 — pass; Page 32 — pass; Page 33 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that subsection 58(4) of Bill 10 be amended by striking out the words "documents or" in the 5th line thereof and substituting therefor the words "copy of the document or the".

MR. CHAIRMAN: Pass — Mr. Kovnats.

MR. KOVNATS: I move that clause 58(5)(a) of Bill 10 be amended by striking out the words "documents, statements" in the 3rd line thereof and substituting therefor the words "copy of the document or the statement".

MR. CHAIRMAN: Pass as amended. 59(l), is that on the same page, Mr. Kovnats?

MR. KOVNATS: It's on page 33. I move that subsection 59(l) of Bill 10 be amended by striking out the figure "(4)" in the 1st line thereof and substituting therefor the figure "(3)".

MR. CHAIRMAN: Page 33 as amended — pass; Page 34 — Mr. Mercier;

MR. MERCIER: Page 34, Mr. Chairman, if I could move an amendment to section 59(3), that subsection 59(3) of Bill 10 be amended by striking out "$50,000" in the 4th line and again in the 5th line and substituting therefor "the amount prescribed in the regulations for the purpose of this section" and that's for the same purpose of allowing for inflation.

MR. CHAIRMAN: Agreed — pass; On the same page, Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that section 61 of Bill 10 be amended by adding thereto, at the end thereof, the following subsection:

Discontinuance of action.

16(3) An action to realize a lien shall not be discontinued except on the order of a judge after such notice to lienholders affected as the judge may direct and, where a lienholder who has commenced an action to realize his lien wishes to withdraw from the action but other lienholders who, under subsection (1), are treated as though they were parties to the action, wish to continue the action to realize their liens, the judge may give directions respecting the continuation of the action.

MR. CHAIRMAN: Agreed — pass; Page 34 as amended — pass; Page 35 — pass; Page 36 — pass; Page 37 — pass; Page 38 — pass; Page 39 — pass; Page 40 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that subsection 79(3) of Bill 10 be struck out and the following subsection substituted therefor:

Where mailing service is not permitted.

79(3) Except where otherwise ordered by the court,
(a) notice of lien required under section 45;
(b) statements of claim;
(c) notices of trial; and
(d) requests to receive copies of notices of substantial performance;
shall not be given or sent by registered mail.

MR. CHAIRMAN: Agreed — pass; Is that the same page? Page 40 as amended — pass. On page 41 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that section 80 of Bill No. 10 be amended
(a) by striking out the word "generalitiy" in the 5th line thereof and substituting therefor the word "generality"; and
(b) by adding thereto, at the end thereof, the following clause:

(c) prescribing the rate of interest, and the method of compounding interest, for the purposes of subsection 24(6),

(d) prescribing an amount for the purpose of section 24, an amount for the purpose of section 59.

MR. CHAIRMAN: Member of the Committee, there was a small addition added there — (d) — Is that agreed? (Agreed) That's page 40 as amended — pass;

MR. MERCIER: That was for 41, there's another motion.

MR. CHAIRMAN: Another motion on Page 41 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that section 81 of Bill 10 be amended by renumbering subsection (2) as subsection (3) thereof and by adding thereto, immediately after subsection (1), the following subsection:

Contracts and sub-contracts being performed.

81(3) Where, on the coming into force of this Act, a contract or sub-contract is in the course of performance and subsection (1) does not apply, if any holdback has been retained under The Mechanics' Lien Act, being chapter M80 of the Revised Statutes, the holdback may, subject to any contractual obligation or right, be reduced to the holdback required under this Act and the balance being paid out shall be paid in accordance with the contract or sub-contract.

MR. CHAIRMAN: Agreed? (Agreed) That's page 41 as amended — pass; Page 42 — pass; Now in our Schedule of Forms, we have some amendments. Page 43 — pass, or is that the first Form that's going to be amended? Page 43 — Mr. Kovnats.

MR. KOVNATS: I move that Form 1 in the Schedule to Bill 10 be amended by striking out the "or" in the 10th line of the 1st paragraph thereof and substituting therefor the word "for".

MR. CHAIRMAN: Agreed? (Agreed) Page 43 as amended — pass; Page 44 — pass; Page 45 — pass; Page 46 — pass. On page 47, Form 5 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that Form 5 in the Schedule to Bill 10 be amended by striking out the words "in respect of a public work (or a municipal public road, roadbed, lane, pipeline, drain, sewer or sidewalk) owned by (hereby state the name of the owner — Crown, minister, Crown agency or municipality)" in the last 3 lines of the 2nd paragraph thereof and substituting therefor the words "in respect of land or a structure of which (here state the name of owner — Crown, Crown agency or municipality) is the owner."

MR. CHAIRMAN: Agreed? Page 47 as amended — pass; Page 48, Form 6 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that Form 6 in the Schedule to Bill 10 be amended by striking out the words, "in respect of a public work (or a municipal public road, roadbed, lane, pipeline, drain, sewer or sidewalk) owned by (here insert name of owner — Crown, minister, Crown agency or municipality)" in the last 3 lines of the 2nd paragraph thereof and substituting therefor the words "in respect of land or a structure of which (here state name of owner — Crown, Crown agency or municipality) is the owner."

MR. CHAIRMAN: Agreed? Page 48 — pass; Page 49 — Form 7 — Mr. Kovnats.

MR. KOVNATS: I move that Form 7 in the Schedule to Bill 10 be amended by striking out the words "on it" in the 2nd line of the 2nd paragraph thereof and substituting therefor the words "on the land hereinafter described."

MR. CHAIRMAN: Agreed? Page 49 — pass; Page 50 — Form 8 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that Form 8 in the Schedule to Bill 10 be amended (a) by adding thereto, immediately after the word "between" in the 1st line thereof, the words "(here insert name and residence)"; (b) by adding thereto, immediately before the words "as contractor (or sub-contractor)" in the 3rd line thereof, the words "(here insert name and residence)"; (c) by striking out the word "address" in the 1st line of the 4th paragraph thereof and substituting therefor the word "residence"; (d) by striking out the word "address" in the 5th paragraph thereof and substituting therefor the word "residence"; and (e) by striking out the Note at the end thereof.

MR. CHAIRMAN: Agreed? Page 50 — pass as amended; Page 51 — pass; Page 52 — pass; Page 53 — pass; Title — pass; Preamble — pass; Bill be reported — pass.

Committee rise.