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Second Session — Thirty-Second Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

LAW AMENDMENTS

31-32 Elizabeth II

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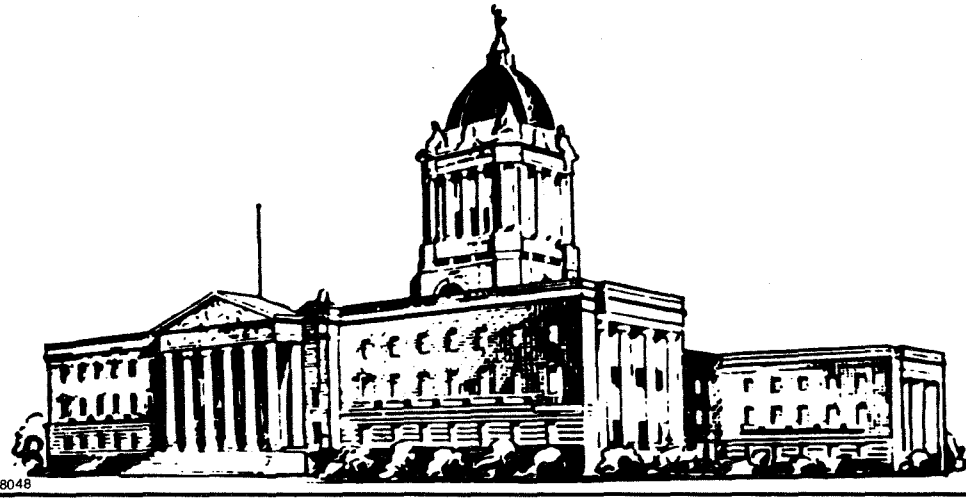
Mr. P. Eyler
Constituency of River East



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Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Thursday, 14 July, 1983

TIME - 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Phil Eyler (River East)

ATTENDANCE — QUORUM - 10

Members of the Committee present:

Hon. Ms. Dolin, Hon. Messrs. Evans, Kostyra, Mackling, Plohman, Schroeder, Storie and Uskiw

Messrs. Ashton, Corrin, Enns, Eyler, Filmon, Harapiak, Hyde, Johnston, Lecuyer, Malinowski, Manness, Nordman and Orchard, Ms. Phillips, Messrs. Santos, Scott and Steen

APPEARING: Mr. Rae Tallin, Legislative Counsel

Mr. Andy Balkaran, Deputy Legislative Counsel

WITNESSES: Presentations were made on bills as follows:

Bill No. 20 - The Occupiers' Liability Act; Loi sur la responsabilité des occupants

Mr. Norman Rosenbaum, Manitoba Association for Rights and Liberties

Bill No. 72 - The Wild Rice Act; Loi sur le riz sauvage

Mr. John P. Kelly, Grand Chief, Grand Council Treaty No. 3

Mr. Douglas Keshen, lawyer speaking on behalf of Grand Council Treaty No. 3

Chief Herb Redsky, Shoal Lake Band No. 40

Chief Ken Courchene, First Nations Confederacy

MATTERS UNDER DISCUSSION:

Bill No. 43 - The Transportation of Dangerous Goods Act; Loi sur le transport des marchandises dangereuses. Passed with certain amendments.

Bill No. 85 - The Highways and Transportation Construction Contracts Disbursement Act; Loi sur l'acquittement du prix des contrats de construction conclus avec le ministére de la voirie et du transport. Passed with certain amendments.

Bill No. 78 - An Act to amend The Manitoba Telephone Act. Passed with certain amendments.

Bill No. 86 - The Civil Service Special Supplementary Severance Benefit Act; Loi sur les prestations spéciales et supplé mentaines de la fonction publique. Passed with certain amendments.

Bill No. 89 - An Act to amend The Landlord and Tenant Act. Passed with certain amendments.

* * * *

MR. CHAIRMAN: We are considering a large number of bills tonight. We also have four members of the public who would like to make presentations, one on Bill 20 and three on Bill 72.

Is it the will of the committee to listen to the presentations first and then proceed through the bills? (Agreed)

BILL NO. 20 - THE OCCUPIERS' LIABILITY ACT

MR. CHAIRMAN: The first person on my list is Mr. Norman Rosenbaum who would like to make a presentation on Bill No. 20. Order please.

Mr. Rosenbaum.

MR. N. ROSENBAUM: Yes, good evening. My name is Norman Rosenbaum, I am here on behalf of the Manitoba Association for Rights and Liberties. The Manitoba Association for Rights and Liberties is a citizens' non-profit organization dedicated to the protection and enhancement of civil liberties and human rights in the Province of Manitoba. From time to time, MARL comments upon proposed legislation before the Legislature of Manitoba.

The present Bill 20, the Occupiers' Liability Act, deals with civil liability of landowners in Manitoba. While this proposed legislation is a much welcome change to the common law of occupiers' civil liability of Manitoba, MARL is concerned about certain aspects of the proposed legislation.

The overall purpose of Bill 20 is to abolish the common law rules of occupiers liability and to replace those judge-made rules with the statutory regime of tort liability based upon ordinary rules of negligence law.

By way of background, the present common law of occupiers' liability provides that those who occupy real property are subject to rules of liability to those injured upon the land which are somewhat less stringent than ordinary principles of negligence law. These rules of occupiers' liability are based upon the categorization of persons present and injured upon the land. These categories may be briefly stated:

(1) Contractees or contractual entrance. Contractees are those persons who are upon the land as part of a contractual right of entry or occupation. For example, contractees may be persons who are entitled by their tickets to occupy a seat at a football game. The occupiers' liability to the contractee is a duty to warrant to him that the premises are reasonably safe for the purpose for which the premises are being used.

(2) The second category is that of invitees. The invitee is a "lawful visitor from whose visit the occupier stands to derive an economic

advantage." The duty which an occupier owes to an invitee is that he shall on his part use reasonable care to prevent injury from unusual danger, which he knows of or ought to know of.

(3) The third category is that of licensees. Licensees are persons, such as social guests, who enter upon the premises with the occupiers' permission, although not for any business or related purpose. The occupiers' duty to the licensee is to prevent injury from concealed dangers or traps of which the occupier has actual knowledge.

(4) The fourth category is that of trespassers. An occupier owes a duty to the trespasser to take such steps as in common sense or common humanity would dictate to exclude or to warn or otherwise within reasonable and practicable limits, to reduce or avert any danger.

These above-stated duties may be contrasted with the duty imposed upon persons by ordinary negligence law. Negligence may be defined as, "the omission to do something that a reasonably prudent person, guided upon those considerations which ordinarily regulate the conduct to human affairs would do, or doing something which a prudent and reasonable man would not do."

Bill 20 proposes to abolish the common law rules of occupiers' liability in large measure. Section 2 of the proposed act proposes that the common-rules respecting:

(a) the duty of care owed by an occupier of premises to persons entering on the premises, or to persons whether on or off the premises whose property is on the premises and

(b) liability of an occupier of premises for the breach of that duty; are no longer the law of Manitoba, except for the purposes of determining who is or is not an occupier for the purposes of this act and the provisions of this act apply in place of those common law rules.

Section 3(1) of Bill 20 provides that:

An occupier of premises owes a duty to persons entering on the premises, and to any person whether on or off the premises whose property is on the premises, to take such care as, in all circumstances of the case, is reasonable to see that the person or property, as the case may be, will be reasonably safe while on the premises.

To paraphrase that rather long, convoluted sentence, Bill 20 proposes to replace the various categories of occupiers' liability with a single, more stringent duty of reasonable care. The proposed sections indicate a welcome change in the law. There is a flaw in the legislation, however, represented by Section 8(2), which exempts the Crown from the requirements of the act where the Crown is the occupier of a public highway, a public road, drainage works, river, stream, water course, lake, or other water body, except as specially developed by the Crown for recreational swimming or the landing of boats.

Section 9(1) also exempts from the act municipalities which are the occupiers of public highways, public roads, public walkways, or sidewalks in respect to the condition of the premises, activities on the premises, and the conduct of third parties on the premises.

The above-noted exemptions are, we maintain, inequitable. The Crown and the municipalities are the major occupiers of land within the province. Municipalities including the City of Winnipeg already enjoy extensive statutory protections from liability for the condition of premises, especially public highways, roads, walkways, and sidewalks.

For example, municipalities under The Municipal Act, and the City of Winnipeg under The City of Winnipeg Act, must be notified within 24 hours of a person being injured on a sidewalk as a result of snow covering. This limitation applies notwithstanding that the facts of the injury are not known to the person injured within the 24 hours. When such a limitation is combined with the heavy onus placed upon the injured party by ordinary rules of occupiers' liability, the party is presented with great difficulties of proof.

The above-noted exemptions may be questioned as well upon the basis of social policy. The occupier exempted from the duties of care of ordinary negligence under the proposed legislation, is the occupier best able to bear the burden of victims' injuries? The occupier referred to is the Crown. Present trend of tort law and liability is to spread the cost of victims' injuries as widely as possible, especially in view of modern insurance schemes, both public and private.

The effect of the legislation would be to impose greater economic burdens upon non-governmental occupiers than upon governmental occupiers. In fact, it would impose greater costs upon the former who are less able to pay than the latter.

To summarize briefly then, MARL welcomes the proposed legislation in general, it has concerns as to exceptions in the legislation as discussed.

MR. CHAIRMAN: Thank you, Mr. Rosenbaum. Unfortunately Mr. Penner is out at the meeting on French Language Services so he wasn't able to be here tonight to hear your presentation. Do any other members of the committee have questions?

Mr. Mackling.

HON. A. MACKLING: I just wanted to add, Mr. Chairman, to what you said that a copy of the brief will be given to the Attorney-General and the committee won't be dealing with this bill tonight, so he'll an opportunity to reflect on your argument.

MR. N. ROSENBAUM: Very good.

MR. CHAIRMAN: Are there any further questions?

Mr. Santos.

MR. C. SANTOS: Yes, I'd like to ask Mr. Rosenbaum a question. There's no page on this one but it's the second page. The basis of your objection is the inequitable condition in exempting the Crown, as such, from total liability . . .

MR. N. ROSENBAUM: Yes.

MR. C. SANTOS: . . . as well as municipalities and other public bodies. Don't you agree that acting on behalf of the populace the Crown, as well as all its instrumentalities, are occupiers not because of some private reason but because of a public reason. They occupy public highways for the use of the public in

general and that is a duty that they have to comply with so there is no inequity in exempting a public body acting on behalf of the people to occupy public places for the public use from the law of private tort.

MR. N. ROSENBAUM: Well perhaps, except that the persons injured upon the land are members of the public; as well the Crown is not exempt from tort liability under our regime of civil liability in Manitoba and throughout the common-law world. In fact, the present trend is towards and away from governmental immunity. For example, the focus is perhaps more equitable when we think that is a member of the public that is being injured. For example, a person can slip on a public sidewalk or he can slip on a private driveway, whether he falls within six inches of the public sidewalk or within the private walkway it affects greatly the liability of the occupier involved.

We should really focus upon the tort of the tortfeasor. We really are talking about injuries to the public while the argument can be made that it's really the public who are occupying this land. They are certainly the body which is best able to bear the cost of injuries to other members of the public.

MR. C. SANTOS: If the Crown acting as the trust of the public is occupying public places for public use, would it not be rather paradoxical to allow a member of the public which is being protected for the public use, for the Crown to allow itself to be sued in its own courts?

MR. N. ROSENBAUM: Well, would it be paradoxical, for example, for a person injured and covered by the public insurance scheme of Manitoba to be able to sue the Public Insurance Corporation for recovery of damages? I mean, it's basically a premise that all bodies operating within our society must be responsible for their actions or omissions including public bodies.

MR. C. SANTOS: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Are you not saying, Mr. Rosenbaum, that despite the fact that the Crown is acting as a trustee of the public property on behalf of the public it still has the same responsibilities to take reasonable care and precautions to ensure that the property of which it is a trustee is safe, just as anybody else does?

MR. N. ROSENBAUM: We're not asking the Crown to be an insurer of persons, simply to take reasonable care; and of course the duty of reasonable care must be viewed within the circumstances of the case, so the duties may not be as stringent in any particular circumstances. However, it still is a duty to take reasonable care, as a private citizen has as much a duty to . . .

MR. G. FILMON: You can't be irresponsible just because you're acting on behalf of the public.

MR. CHAIRMAN: Are there any further questions? Order please. Any further questions for Mr. Rosenbaum?

Seeing no further questions, I'd like to thank you, Mr. Rosenbaum, for taking the time to come here tonight and I will make sure that Mr. Penner gets a copy of this brief.

MR. N. ROSENBAUM: Thank you very much.

BILL NO. 72 - THE WILD RICE ACT

MR. CHAIRMAN: Order please. The second person on my list of people wishing to make presentations is Mr. John Kelly, President of Grand Council, Treaty No. 3, making a presentation on Bill No. 72.

Mr. Kelly.

MR. J. KELLY: Thank you, Mr. Chairman. Members of the committee, we would like to table our presentation, the document, to the members of the committee . . .

MR. CHAIRMAN: The Clerk will distribute the copies.

MR. J. KELLY: . . . and other attachments, namely, our treaty and the Nolan notes taken during the signing of our treaty. This is now known as the Paypom Document.

MR. J. KELLY: Mr. Chairman, members of the committee, Chiefs, friends, and others. I want to thank the members of this committee for making giving us time to make this presentation. I want to specifically thank the Minister, Al Mackling, who we met on Tuesday for inviting us to appear before this committee.

It is indeed an opportunity to make our concerns known in this province. As Grand Chief of Grand Council Treaty No. 3, my task, my mandate is to ensure that our rights are protected. It was only about a month ago that we heard that there was proposed legislation, Bill 72, that there was going to be legislation dealing with wild rice. We commend the Government of Manitoba for this initiative, for in Ontario we do not have such legislation. We know that there has to be a system, there has to be regulations, policies to deal with wild rice. We commend the government for that.

However, it concerned us, it concerned our 25 bands in Treaty 3, and in particular, the bands of Shoal Lake 39, Shoal Lake 40, Islington, because traditionally they too, were picking rice in the Whiteshell area. If you look at the map, Treaty 3 extends into Manitoba. I understand that Whiteshell area, I guess would have to be considered as probably the most prosperous wild rice picking area. We are not attempting to displace our Indian brothers and sisters, non-Indian brothers and sisters that have been picking in the Whiteshell area. That is not our purpose. Our purpose, our duty is to insure that our wild rice, as a right, is protected and our document does emphasize; and I understand Treaty 3 is probably the only treaty that does specify that the Ojibways have the right to harvest wild rice and I do not care to enter into a debate at this point as to what other treaties have to say.

It does concern us, however, when we know that there is a chance that our treaty is going to be again abrogated. We would like to enter into some process. We would like our bands to be consulted. As a matter of fact since The Wild Rice Act is going to be in effect

for a good number of years, I would urge the Government of Manitoba to consult with our bands and as a matter of fact to put this bill into abeyance. As was stated to Minister Mackling the other day by myself and by my colleagues, we have research documents, we have analysis that we would gladly share with the technical people, advisors, that Minister Mackling uses.

I guess in closing, members of the committee, I want to formally request again that this Bill 72 does not proceed into the third reading because I understand once the third reading has been made, it's just a matter of time for the proclamation of a new act.

With that, ladies and gentlemen, I want to thank you for your time. If there are questions, my people here will answer any questions. We have our legal counsel; we have a Chief here and we have members from the other bands from Treaty 3.

Thank you very much.

MR. CHAIRMAN: Are there any questions for Mr. Kelly? Mr. Enns.

MR. H. ENNS: Mr. Kelly, thank you for your presence. A question of equitable assignment, if you like, or recognition of rights to wild rice harvest have of course presented problems to different governments on both sides of the Ontario and Manitoba border from time to time.

My question to you, sir, is in stating this claim - which I don't take issue with you - this historical claim to treaty rights to hunt and to harvest in that portion of Manitoba, the Whiteshell, that covers the Treaty 3 in the accompanying map, my question to you is, do you extend the same privilege to our Indian brothers of Fort Alexander or others to hunt in that portion of the area that is designated and that is, in fact, in Ontario? In other words, can some of my Indian cousins from Fort Alexander, or for that matter, from that region come and harvest rice in Ontario?

MR. J. KELLY: Sir, they have in the past.

MR. H. ENNS: Mr. Chairman, that's probably a very honest answer.

MR. J. KELLY: It is.

MR. H. ENNS: My question is though, do they do so with your assent?

MR. J. KELLY: There's a gentleman sitting in the back there that has a . . . There is a process I believe. There is protocol in place, in particular where Fort Alexander band members could go to a wild rice area in Ontario. Through the permission or the authorization of the Chief in Council, they can pick rice, but I think there is in place some agreement if they picked so many pounds, they give some to the band.

MR. H. ENNS: Through you, Mr. Chairman, to Mr. Kelly or Chief Courchene, would you then envisage that the consultations that you are asking for, that a similar arrangement be provided by Manitoba Indians who, if indeed somebody from the Kenora area or other parts within the Treaty 3 area wished to harvest rice in Manitoba in the Whiteshell, that that would be done by agreement with the Indian bands in Manitoba? Or does that have to be negotiated with the Minister of Natural Resources and the Department of Natural Resources?

MR. CHAIRMAN: Mr. Courchene.

MR. K. COURCHENE: Mr. Chairman, members of the committee, Mr. Enns, I say unequivocally that there is an arrangement between some member bands from Ontario along with our general band membership from Fort Alexander, that we work in co-operation and in conjunction with some of our basic aspirations, and that's the honouring of basic treaty and aboriginal rights.

I know in the past, and also in the immediate past, we have worked closely with our relatives - and I say relatives in the affinity sense - that we have relatives in the White Dog Reserve; that's members of our own band that are related over there and of course the kinship is honoured and it's close; and I say that we have worked in co-operation and in conjunction with our fellow bands from Ontario.

MR. H. ENNS: Mr. Courchene, I feel a little more at ease in addressing you as a fellow Manitoban. I'm a little disturbed by the fact that we have had a very hard look at the wild rice industry, partly initiated by myself when I was last Minister of Natural Resources. You may or may not recall a chap by the name of Harold Ross that looked at the wild rice industry. I never found fault with the present administration and the present Minister for not necessarily accepting those recommendations, but indeed having that studied again by - what's the name of the former NDP Minister - Harvey Bostrom, that's right, they do have a way of looking after their friends from time to time, but nonetheless, Harvey Bostrom looked at that report again.

I'm a little disturbed by Chief Kelly's statement that this is the first that you people, who are most directly involved in this resource, that it was on June 12th that you first met with Mr. Mackling and that the whole question about a fact that a new Wild Rice Act was being passed in Manitoba.

Surely, Mr. Courchene, - and I believe you that the kinship crosses the Manitoba-Ontario border, you expressed that very well - my question is, why was this not being brought to the attention of either Mr. Bostrom, who was restudying the Ross Report and brought to the attention of this present government and the present Minister, prior to the fact that we are now at committee stage of considering a new Wild Rice Act?

MR. K. COURCHENE: I don't know, I can't speak for the government and I don't mean that rhetorically. But, Mr. Chairman, if I make the presentation, maybe it would answer some of the questions.

MR. J. KELLY: Before another presentation is made, are there other questions? I wanted to point out to you, Sir, that we heard about the proposed legislation about a month ago and we immediately set to task to get in touch with the right people and a meeting was arranged between Mr. Mackling and ourselves.

There were two other items that I wanted a clarification on and I was going to ask our legal advisor to clarify those two.

MR. CHAIRMAN: Mr. Enns, do you have a question for Mr. Kelly?

MR. H. ENNS: Mr. Chairman, just before you do that, I'd like to hear from the government and from the Minister.

Mr. Chairman, if it is the Minister's intention not to proceed with this bill at this time, I'm not particularly raising objection to that course. I think it's important that these kind of matters be fully discussed and that a mutually acceptable arrangement be arrived at and I'd like to ask the Minister, if it is the Minister's intention to consider withdrawing this bill at this time, then perhaps we could all save ourselves some time at committee at this point in time to allow those discussions to proceed, and then carry on. This is the government's bill; it's there by his initiation. Perhaps the Minister could give us some guidance at the committee stage as to whether or not we are talking about a bill that the government has not got intentions to proceed with.

HON. A. MACKLING: Mr. Chairman, Chief Kelly has confirmed that he recently met with me and brought to my attention their concerns. On Page 6 of the written brief, in the last paragraph, he has pointed out that there's a concern that there be notice to people who exercise rights in respect to wild rice, that there is a contention, a claim by the Chiefs of Treaty 3, that they have an entitlement in respect to wild rice.

The concern, as I understand it, is that anything that we do should not in any way prejudice what they consider to be existing rights. I indicated that certainly I would have to take that matter under consideration, that a bill was before committee. We were going to hear representations including representations from Treaty 3, following which I and my advisors would make recommendation to my colleagues in government as to how we proceed with the bill; whether it would be necessary to make any amendments, or whether it would satisify the concerns if we recognized them as requiring some change, or whatever disposition we would make.

It is my intention, Mr. Chairman, to hear all of the submissions, not to deal with the bill tonight clause-by-clause, but on another occasion then review the bill in Law Amendments Committee, then indicating a decision as to the disposition of the bill.

MR. H. ENNS: Mr. Chairman, the Minister doesn't really help make our job much easier. The problem is, as the short brief points out, the bill has some very specific ramifications for the Indian people living under Treaty 3. We're talking about giving 10-year leases, etc., and harvesting rights to certain people and I don't think the Minister can have it . . .

MR. CHAIRMAN: Order please, order please. Order please.

The purpose of these hearings is to get the input of the public, to get their opinions on the legislation at hand. It is not to make decisions before their presentations are made. The procedure will be to listen to the public, then we will proceed with the legislation. There's no real need to discuss or to debate within the members of the committee at this stage. When we get to consideration of the bill, then we will debate among ourselves.

Mr. Enns.

MR. H. ENNS: Mr. Chairman, with all due respect on the same point of order, that's a pecular way of looking at our work at this committee. Either we're dealing with a bill that this government intends to pass and then the representation made to us is relevant. If we're not going to pass this bill, then the representation is welcome, but at least we should be told in advance that the government does not intend to pass the bill.

MR. CHAIRMAN: Mr. Schroeder.

HON. V. SCHROEDER: Mr. Chairman, I think the best approach would be for us to hear the public, and then we can decide whether we wish to proceed or not to proceed.

HON. A. MACKLING: Mr. Chairman, on the same point of order, I've indicated that we have placed the bill before the committee. We want to hear representations. I've indicated I don't want the bill to proceed clause-by-clause tonight. On the next occasions before Law Amendments Committee, the committee then will decide the disposition of this bill.

MR. CHAIRMAN: Are there any questions for Mr. Kelly?

Mr. Santos.

MR. C. SANTOS: I have some questions for Mr. Kelly.

MR. J. KELLY: Mr. Chairman, if I could interject here. There were two points that Mr. Keshen was going to address.

This time I'd like to thank Mr. Courchene for elaborating on the close ties that we have. Being from Ontario, I'd feel awkward for me to ramble on on the kinship and the close ties that we have with the people from Manitoba, it's a bit ticklish for me. I thank Chief Courchene for having done that.

MR. CHAIRMAN: Would you identify yourself please?

MR. D. KESHEN: My name is Doug Keshen, and I'm the solicitor with Grand Council Treaty 3.

I am prepared to respond to any technical questions you may have. I'd just like to take the opportunity to very briefly reiterate a few of the points that are included in Grand Chief Kelly's brief, because you really didn't have the opportunity to read it before the session began.

Grand Council Treaty 3 has done considerable legal and historical and anthropological research over the last several years. It was only relatively recently that we became aware of the Nolin and Paypom documents. They've been thoroughly researched, and we've had some very very expert legal opinions prepared for us, and they all reaffirm the position that those documents were authentic documents, and they were promises made at the time of the signing of the treaty.

So, when you look on Page 3 of the brief - again, the indented portion - it says, "The Indians will be free as by the past for their hunting and rice harvest." Well, that has been legally interpreted and researched, and there is no doubt whatsoever in our minds, and in the minds of the legal people that have looked at it, that very much represents a term of the treaty that was negotiated in October, 1873.

I also point out on Page 4 of the brief, the fourth paragraph, we just briefly mentioned to you that there have been discussions, negotiations with the Province of Ontario, and we have recently met with the Premier and other representatives of the Ontario Provincial Cabinet. Their position is most favourable, and we are continuing to discuss the matter with them in order to come up with a reasonable resolution which will satisfy all parties.

Again, I'd like to reiterate what Grand Chief Kelly stated, and perhaps I can point out what he says on Page 4, at the very bottom. The intention of making this presentation today and the intention that the substance and intent of the whole process is to not conflict with your legislation in the sense that there is a consensus that it is very very important that the wild rice harvest be properly and fairly regulated. There is no dispute whatsoever in that regard, but in order for that legislation to have true meaning, and in order for the people that are going to have the licences, and as one of the individuals here pointed out, these licences are subject to 10-year periods. In order for that to have substance and meaning, it's necessary that everyone understand what conditions - in particular, conditions - there maybe attached to those issuances of those licences. For that to take place it's absolutely crucial that everyone realize that there is treaty right to wild rice that the people of Treaty 3 have.

So it's Grand Chief Kelly's position and the position of the chiefs of Treaty 3, that it's very important that your people have an opportunity to analyze the documentation and as Grand Chief Kelly points out, we are prepared to share our legal research with you and that might expedite matters somewhat. However, again the conclusion, I think the only reasonable conclusion to be derived is that the bills should not proceed until such time as that analysis is able to be prepared by your people and, as well, you sit down with the people of Treaty 3 in order to work out a reasonable resolution which may be mutually satisfactory to all.

HON. A. MACKLING: I would take it then, in essence, what you're saying, Mr. Keshen, and what is said by the Treaty 3 Bands is that you really don't want to thwart management and regulation of wild rice, but you don't want anything to foreclose or pre-empt historic treaty rights. I think that it was intimated to me the other day that it might be possible to include a clause in any act which indicated that without necessarily committing or acknowledging the rights, that there is an understanding of an outstanding claim in respect to rights - in essence then, kind of a warning to anyone that there is a claim in respect to those rights.

MR. D. KESHEN: I believe that's substantially correct. What we're saying is that there should be something in the legislation that acknowledges Treaty 3's right to wild rice.

HON. A. MACKLING: Treaty 3's claim.

MR. D. KESHEN: Treaty 3's claim to a right to wild rice. We think that that's absolutely crucial not only to protect our interests but to protect the interests of those people that may be subject to the legislation. However, if I could just perhaps put a little twist to that, I think it's only fair that - I think there are several sections of the legislation that would appear to give carte blanche to the people that have those licences, and Treaty 3 is claiming the right to harvest wild rice in the Treaty 3 area which includes those portions of southeastern Manitoba. So I don't know, Mr. Minister, if it would be sufficient at this time to proceed with legislation even if you were to put a clause in affirming that there is a treaty right to wild rice and that the licence-holders would be subject to the terms of the treaty, because there are certain sections of the legislation that would seem to abrogate, as Grand Chief Kelly indicated, the rights that Treaty 3 people have.

Again, there's that, in combination with what Grand Chief Kelly indicated was that there is no intent to, as you indicated as well, upset the regulatory intent of the legislation. So it's a matter of thoroughly analyzing what the ramifications of the rights are, and at that time sitting down with representatives of Grand Council Treaty 3 to hammer out a reasonable resolution and in a sense we certainly realize it's the 11th hour. However, because of the significance of the Treaty 3 right, we think it only proper that, again, as Grand Chief Kelly indicated, that the legislation be deferred until these discussions can take place.

MR. H. ENNS: Mr. Chairman, I just want to indicate, through you to the Minister and to the government, that we in the opposition have no difficulty in supporting Chief Kelly's request that further consideration be given. I say this advisedly, because as I'm sure Chief Kelly understands, many of those occupied and involved in the wild rice industry in Manitoba are looking forward to some of the hoped-for benefits of this new act, hopefully, that it would improve the capacity of Manitoba to reach its optimum in wild rice production. We certainly - and I state this for the public record, Mr. Chairman, that if the Minister wishes to have second thoughts about this bill, then by all means have those second thoughts. I suggest to the Minister, of course, there are different ways of making a bill effective. It can be made effective by Royal Assent at the end of the Session or upon proclamation at the choosing of the government's time further to such consultations that Grand Chief Kelly has suggested take place.

Having said that, Mr. Chairman, I thank the honourable members for their presentation.

MR. CHAIRMAN: Mr. Enns, was there a question in there somewhere?

Mr. Schroeder.

HON. V. SCHROEDER: Yes, I had a question for the witness. We have the Paypom Document before us. I'm just wondering whether the official document also includes the reference to the rice harvest.

MR. D. KESHEN: As is indicated in the brief, the government version of the treaty does not include the reference to wild rice and that's why it was astonishing, in a sense, to discover this document and to do the legal and historical and anthropological research and determine that it was, in fact, a promise and parallel treaty right to that signed on October 3, 1873.

HON. V. SCHROEDER: Yes, this document appears to have - I take it nobody knows exactly where it was for its first 33 years. When the official document was received, was there any indication from your research that there were protests because the wording wasn't in accordance with the understanding reached at the time?

MR. D. KESHEN: In 1873? Yes, there is very very much evidence that there was frustration and confusion at the time of the signing, because there were certain terms which were not included in the government version that the Chiefs argued were, in fact, negotiated and agreed to. In fact, just for point of interest, I was speaking to the Treaty 3 researcher today prior to this meeting and unfortunately he couldn't be present, but the Ontario Government has recognized two instances where there are matters that are not government version of the treaty which subsequently have been recognized as being terms of the treaty, and one of those is mineral rights. There is a precedent there which our legal researchers certainly took note of.

MR. C. SANTOS: Thank you, Mr. Chairman. Reading these treaties doesn't stop me from being fascinated upon the terms and conditions of the treaties as agreements. Clause 11 which talks about hunting and rice harvests as one of the many minor or trivial considerations being given in exchange for the land.

It seems to me that what was being given up are actually rice that have been enjoyed from time immemorial already by the Native people; is that correct?

MR. CHAIRMAN: Mr. Keshen.

MR. D. KESHEN: What was given?

MR. C. SANTOS: What is supposed to be a value being given up by the Indian or they're acquiring are in fact already a privilege or right that they had enjoyed already from time immemorial such as hunting and fishing rights.

MR. D. KESHEN: I'm not sure if I understand the question. I am sorry. Certainly paragraph 11 says the Indians will be free as by the past for their hunting and rice harvest. This has been interpreted by legal scholars, it's been interpreted by historians and researchers. We interpret that, we take it by its face value and we interpret it as directly as I think it can be interpreted. I am not sure - are you suggesting that - I am sorry if I misunderstood you.

MR. C. SANTOS: Let me clarify myself, please.

MR. D. KESHEN: Okay.

MR. C. SANTOS: It appears from Clause 11 of the treaty, that they're being given the freedom to do their hunting and their rice harvesting as one of the rights being granted to them in exchange for the land that they're giving up.

MR. D. KESHEN: That's correct.

MR. C. SANTOS: But in actual fact the right that they are being given is already theirs from time immemorial; is that not correct?

MR. D. KESHEN: Yes, the people of Treaty 3 certainly argue that it's an aboriginal right as well as a treaty right, if that's the question you're getting at.

MR. C. SANTOS: Yes, and if you consider while the gross inadequacy of consideration given may not by itself be a legal ground for invalidating the agreement, if coupled with the gross inequity . . .

MR. D. KESHEN: I'm sorry . . .

MR. C. SANTOS: . . . if coupled with the gross inequity that exists between the two contracting parties whereby the white negotiators are preying upon perhaps the lack of knowledge of the Chiefs would not be in legal grounds - also be not to dispute the treaty as such.

MR. D. KESHEN: Well, that's certainly raised in any litigation.

MR. C. SANTOS: Thank you.

MR. DEPUTY CHAIRMAN, D. Scott: Mr. Eyler.

MR. P. EYLER: Mr. Keshen, are you a lawyer?

MR. D. KESHEN: Yes, I am.

MR. P. EYLER: I understand that the outside promises which surrounded the treaties when they were signed whether it's 1, 2, 3, 4, whatever, have acquired the legal status of the treaties themselves in many cases; is that right?

MR. D. KESHEN: That's correct. There is a recent case, the Bullfrogs case that basically says that this sort of evidence is admissible in court and our legal people have determined that it certainly would be admissible as demonstrating that it is a parallel promise.

MR. P. EYLER: It's also my impression then that the treaties would take precedence over any provincial legislation. Is that right?

MR. D. KESHEN: That's correct and as indicated in the brief both The Constitution Act and Canadian case law is very clear. The case law goes into great detail and there's innumerable cases that say that treaty rights supercede provincial law.

MR. P. EYLER: Well if that's the case then, would it really make any legal difference vis-a-vis Treaty 3's Wild Rice Rights in Manitoba if they are there from the treaty

or the outside promises? Would it make any difference whether or not the province passes legislation governing the wild rice in this province. It would always be open to challenge on treaty rights in the courts.

MR. D. KESHEN: I think that's a very appropriate question and I think the response to that, we attempted to deal with that in the brief but perhaps a little elaboration is in order.

Yes, if the legislation proceeds without recognizing Treaty 3's right, it's our view that the treaty right would supercede the proposed legislation. However, Grand Chief Kelly has made it very clear to Minister Mackling and others have as well that we think in the spirit of co-operation and in order to avoid complications which inevitably would arise that it's better to deal with it now prior to the legislation being enacted because there could be all kinds of potential conflict which we think is unnecessary.

Grand Chief Kelly has made it very clear that he believes if it were possible to sit down and discuss this reasonably that we would come up with a very pragmatic resolution.

MR. DEPUTY CHAIRMAN: Mr. Harper.

MR. E. HARPER: One of the things I would like to ask is, the Wild Rice Act I understand, myself being a Treaty Indian one of the rights that we have is the right to harvest wild rice. What I want to ask is in relation to the Constitution, I realize it would be one of the items that would be discussed in the Constitution, how this act, or not being recognized, maybe not mentioned in the act, maybe you can describe to us how this relates to the act in terms of the aboriginal rights we'll be discussing?

MR. D. KESHEN: Again, I am not entirely sure of the question. Are you saying, how does this . . .

MR. E. HARPER: I wanted to ask you if you could explain briefly to the group here about the rights with relation to Constitution especially on wild rice.

MR. D. KESHEN: Okay. It is certainly the intention of the Grand Council Treaty 3 to have the whole wild rice issue and the Treaty 3 entitlement to wild rice raised at a future constitutional conference. However, I think as we're all aware they've been dealing with very much more preliminary matters and they haven't gotten into the nitty gritty. But this, along with hunting and fishing and trapping and other rights that the Treaty 3 and other treaties claim will certainly be an agenda item on a future constitutional conference.

MR. E. HARPER: Thank you.

MR. CHAIRMAN, P. Eyler: Mr. Scott.

MR. D. SCOTT: I would like to ask a couple of questions of clarification. On Clause 11 on the treaty that we have on the imitation parchment here, it states that Mr. Dawson said he would act as by the past about the Indians passage on the road. The Indians will be free as in the past for their hunting and wild rice harvest. In that each one of the other paragraphs deals with one item fairly specifically. I am wondering if an interpretation of this could not be that the Indians had the right of passage on Dawson Road and the right of access by the Dawson Road to their hunting and wild rice harvesting areas and not actually towards the wild rice or the hunting because the hunting rights had already been recognized previously in treaties.

MR. D. KESHEN: I am not sure if this is really the appropriate time to get into the technicalities of the interpretation of the Paypom Treaty. However in fairness and in response to your question there have been several lawyers that have looked at that and that, in combination with the historical analysis appears to confirm that that is not the interpretation. In other words, it was meant much more generally that it would apply to the whole area and did not refer to the Dawson Road. Again, as Grand Chief Kelly has indicated the legal research that has been done, we are very very anxious to share with you and within a reasonable time we think that you would be more than convinced.

MR. D. SCOTT: Just one final little point here. I'm wondering if under Section 15 if the treaty effectively gives a right of veto by the Native people in the area towards the sale of liquor in that part of the Canadian Territories whereas in Treaty 3 . . .

MR. D. KESHEN: Again, I don't know if that's the appropriate time to discuss an issue that really isn't relevant to our discussions.

MR. CHAIRMAN: Are there any further questions for Mr. Keshen. Seeing none, then I would like to thank you for coming here tonight, Mr. Keshen.

Mr. Herb Redsky.

Mr. Kelly.

MR. J. KELLY: With all due respect to the last speaker I thought the question a little bit unfair and not sensible at all.

I'd like to acknowledge, Mr. Chairman, some of the members of the - the people that came with us, Chief Herb Redsky from Shoal Lake 40 - I'm sure you've heard of a Herb Redsky - you haven't. We have Councillor Jim Grain (phonetic) from Shoal Lake 39 as well as Mr. Aisk (phonetic) from Islington and, of course, we have John Dennehy who works very closely with Herb Redsky.

Thank you, members of the committee.

MR. CHAIRMAN: Thank you, Mr. Kelly, does Mr. Redsky wish to make a presentation?

MR. H. REDSKY: I'm going to be very brief I think Mr. Kelly has outlined very eloquently our position and I just want to emphasize from one particular band's position and some of the concerns that we see emanating from this particular bill.

As has been already indicated to you this bill just came into our hands very recently so we haven't had time to actually study it in depth. Just looking at it very briefly, we're very concerned in some of the sections whereby we are straddling the Ontario-Manitoba

boundary and we are residents of Ontario and this bill specifically states that only the residents of Manitoba can participate. We are not residents of Manitoba but nevertheless our treaty covers part of Manitoba and it further concerns me when The Constitution Act of Canada states in one of its sections that every citizen of Canada and every person who has the status of a permanent residence of Canada has the right to pursue the gaining of a livelihood in any province. That concerns me when your act here states that I cannot come in here and develop wild rice within my own Treaty 3 area. That's one of the things that I wanted to bring up strictly from one band's particular interests.

We are by definition residents of Ontario but by federal definition we are residents of the Treaty 3 area and I hope that you take that into consideration. There are other areas of your document that I would like to have addressed but I think as has been already suggested we would like to see some ongoing type of a mechanism take place so that we can take part in your discussions. Most of your discussions, in fact, all of your discussions have been primarily centred around the residents of Manitoba and we, of course, being from Ontario and myself in particular don't like to involve myself in too great a detail as you can appreciate being from Ontario, let alone being Herb Redsky.

If you have any questions, fire away.

MR. CHAIRMAN: Are there any questions for Mr. Redsky? No questions? Accordingly, Mr. Redsky, I'd like to thank you on behalf of the committee for appearing here tonight.

MR. H. REDSKY: Thank you.

MR. CHAIRMAN: That completes the list of people I have who would like to make presentations.

Mr. Ken Courchene, did you wish to speak again?

MR. K. COURCHENE: Thank you, Mr. Chairman, members of the committee and the Minister. The last couple of days we sat as chiefs to discuss a number of issues and to come to terms with a number of the issues that directly relate to some of our general band membership and we sat as an Assembly of Manitoba Chiefs this morning and this afternoon as well and this was the first opportunity that we had as elected leaderships to be able to deal with the proposed Wild Rice Act and at this point in time to respond to a comment that was made by Mr. Enns that we really did not have a chance to fully digest and decipher some of the implications and some of the ramifications of the act but we did so somewhat superficially and there was a couple of items that we talked about.

I want to also share with the committee that the Asembly of Chiefs passed a resolution this afternoon and the resolution, if I may read it out and I want to apologize that I don't have documents to pass out but I will instruct the staff at First Nations Confederacy to pass out that information to the Minister as well as members of the committee.

WHEREAS the Indian people of Manitoba have always believe and considered the harvesting of wild rice to be a part of culture, heritage and aboriginal rights; and,

WHEREAS in order to protect these rights the Indian people of Manitoba who are directly concerned with the harvesting of wild rice must work together in unity and speak with one voice; and,

WHEREAS Indian Bands in the Interlake, Southeast Regions and the Fort Alexander Band are endeavouring to establish an organization to deal with the harvesting of wild rice whose mandate will be to protect and enhance the Indian people's right in this regard; and,

WHEREAS we made two citations to the present government's resolutions: One was the resolution dealing with the aboriginal rights and the support by the government of the aboriginal rights and the second one is the memorandum of agreement that was undertaken by this government and certainly with the Assembly of Manitoba Chiefs.

The reason why I make reference to that, Mr. Chairman, is we did not have direct consultation at this point in time although there was some on an ad hoc basis, some consultation but none as a matter of protocol and today, as again I must reiterate, was the first chance we had to react to the proposed bill.

From the resolution we also passed that the bill be held in abeyance until such time that we have a chance to really consult with our legal counsel and fully understand its implication and I'd like to add at this point in time that the Section 2.(1), "the act applies to and in respect of all rice, wild rice growing or grown proposed to be grown by natural means or methods on Crown land but does not apply, (a) to or in respect of any wild rice growing or grown proposed to be grown by domestic means or methods on Crown land; or (b) to or in respect of any wild rice growing or grown or proposed to be grown by natural or domestic means or methods on private land; or (c) subject to subsection (2) or in respect of any lease for the development of any area for wild rice production of the production of harvesting of wild rice issued under The Crown Lands Act before or after the coming into the force of this act.

"Subsection 2(3). In this section "domestic needs or methods" means means or methods consisting of or including or relying upon continuous artificial measures, such as cultivation or irrigation, and "natural means or methods" means means or methods not consisting of or including or relying upon any artificial measures."

These two provisions could conceivably result in the leaseholders referred to under Section 2(1)(c) obtaining absolute rights to that wild rice in the lakes for which they have leases under The Crown Lands Act, if they can prove they have domesticated the wild rice in the lakes for which they have leases.

If they are able to show this domestication of wild rice to the government, then the legislation will have no application to their activities of the harvesting of wild rice. This will result in the loss of this natural resource to Indian people, notwithstanding the guarantees which are entrenched in the new Canadian Constitution with respect to aboriginal rights. The thing I want to add at this point in time is that it is my belief, and it's a personal belief, that the committee is dealing with a red herring when they talk about Treaties. I think it has to be mentioned that it is an aboriginal right, and I think Mr. Santos was alluding to that.

I also want to make a recommendation that came from the Council of Chiefs or the Assembly of Chiefs, that again to hold off until such time that we have proper consultation, and certainly to be able to decipher

the ramification in legal terms, also the mandate that I have, and I have received this through the Assembly of Manitoba Chiefs.

Any questions?

MR. CHAIRMAN: Are there any questions for Chief Courchene?

Mr. Enns.

MR. H. ENNS: Mr. Chairman, not very often that I compliment the NDP Government for too many things, but I was led to believe that one of the things that they like to compliment themselves on is in talking with people and in consulting with people, and particularly I might say with our Indian cousins in this province. I find it a little disturbing that you again reiterate that this is among your first opportunities to really look at this bill and some of its ramifications.

Chief Courchene, I have a question for you, because I take seriously the comments that you made. Is there room in the harvest of wild rice for the present non-Indian leaseholders, most of whom are white?

MR. K. COURCHENE: Well, you know, my belief is that we as Indian people have an aboriginal right, and that the full maximum use and the harvesting of wild rice was certainly done by our counterparts, but right now we're in the midst of reanalyzing that and certainly looking at the production end of it as well as the marketing end of it. That's one of our aspirations, to fully utilize that resource, and if any resource we do own, that's the one that we do own.

MR. H. ENNS: Would you agree with me, Chief Courchene, that regrettably over the past decade - I may be out by a year or two - that the harvest of wild rice has not lived up to its potential in Manitoba, indeed, has declined?

MR. K. COURCHENE: If I could respond in this fashion, I think credit has to go to the present government inasmuch as that they have started the ball rolling inasmuch as there's got to be some regulation as well as the maximization of the resource. I think in order to comment, you're right in such that it was done on an ad hoc basis. It was done by people that at best of times were without scruples, and certainly at the best of times, there are people that have poached and from that end - for that reason, I think the resource itself was not maximized.

MR. H. ENNS: Chief Courchene, there have been several attempts to bring order, if you like, into the harvest of wild rice, particularly during the '70s under the then administration of Mr. Schreyer. Several substantial co-operative organizations were established, a substantial amount of public money was invested in assisting and trying to establish a viable wild rice industry both in the marketing end and the production end.

Would you care to offer this committee some advice as to why they went wrong or why they did not succeed?

MR. K. COURCHENE: I guess I don't have any immediate response to what had happened in the past 10 years. I was not involved, but what I would like to say is that I think there's got to be some direct consultation process that has to take place in order that both sides have some satisfaction with the proposed act.

MR. H. ENNS: One final question, Mr. Chairman. Do you wish the government, the Minister, to proceed with the bill as now written?

MR. K. COURCHENE: No. The mandate I received from the Chiefs of Manitoba is to hold in abeyance until such time that there is meaningful consultation take place, that we fully understand its ramification and certainly make amendments to the act, as well as to participate in the formation of the act.

MR. H. ENNS: Thank you, Chief Courchene.

MR. CHAIRMAN: Are there any further questions for Chief Courchene? Seeing none, I would like to thank you for appearing here tonight, Mr. Courchene.

MR. K. COURCHENE: Thank you.

MR. CHAIRMAN: That completes my list of people, I believe, who would like to make a presentation on this.

BILL 43 - TRANSPORTATION OF DANGEROUS GOODS

MR. CHAIRMAN: I have a list of bills which the Acting House Leader has given me in terms of his proposed priorization. The first bill which he suggests is Bill No. 43, Transportation of Dangerous Goods. Is that agreeable?

Hearing no dissent, then Bill No. 43. What is the will of the committee on how to proceed, page-by-page?

Page 1—pass - Mr. Orchard.

MR. D. ORCHARD: A couple of questions to the Minister if I may. In the drafting of Bill 43, there are certain areas in which the bill does not follow the same language and sometimes even definitions as the federal legislation, and it's my understanding this is to be parallel legislation to complement the federal act. I just want to ask the Minister if that slight change in wording is something of significance, in that it means a departure from the intent of the federal act and some special applications in Manitoba, or is it merely a convenience in drafting that has caused some of the slight variations from the federal act?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, the Member for Pembina, I believe, probably forgot the explanations that were given on second reading, it's been some time. The difference arises from the fact that we are only dealing with shipping and the transport end, whereas the Government of Canada is dealing with shipping and handling, so that, in essence, there are parts of their legislation and regulations that wouldn't apply under our provincial act.

MR. CHAIRMAN: Page 1—pass; Page 2—pass; Page 3 - the French version.

Mr. Mackling.

HON. A. MACKLING: I move

QUE le paragraphe 5(1) de la version française du Projet de loi 43 sont amendé par la suppression des mots "Nulle personne" et leur remplacement par le mot "Nul".

MR. CHAIRMAN: Is that agreed? (Agreed) Page 3, as amended, French version—pass

Page 4, French version amendment - Mr. Mackling.

HON. A. MACKLING: Et aussi, M. le Président, I move

QUE le paragraphe 5(2) de la version française du Projet de loi 43 sont amendé par la suppression des mots "Nulle personne" et leur remplacement par le mot "Nul".

MR. CHAIRMAN: Pass. Page 4, as amended, in French - Mr. Nordman.

MR. R. NORDMAN: Why don't we have Carmen read the French portion of it?

MR. CHAIRMAN: I believe only a member of the committee can read the motions.

Page 4, as amended, French version—pass; Page 4, English version—pass; Page 5 - Mr. Mackling.

HON. A. MACKLING: The French version, Mr. Chairman, I move

QUE l'alinéa 8(4)(d) du Projet de loi 43 soit amendé par la suppression des mots qui suivent le mot "quantité".

MR. CHAIRMAN: Is that agreed? (Agreed) Could I suggest Mr. Scott might like to read these?

HON. A. MACKLING: Oh he might; I don't know. English version, Page 5. Mr. Chairman, there's an amendment. You want to pass the French Page 5 first?

MR. CHAIRMAN: Page 5, French version—pass; Page 5, English version - Mr. Mackling.

HON. A. MACKLING: Page 5, English version, I move, Mr. Chairman

THAT Clause 8(4)(d) of Bill 43 be amended by striking out all the words of the clause immediately after the word "goods" in the 4th line thereof.

MR. CHAIRMAN: Any discussion? Pass. Page 5, as amended, English version—pass; Page 6—pass; Page 7—pass; Page 8—pass; Page 9 - Mr. Mackling.

HON. A. MACKLING: Page 9, Mr. Chairman, there's an amendment. The English and the French version. We'll start with the French.

I move

QUE le Projet de loi 43 soit amendé par la suppression de l'article 14 et son remplacement par ce qui suit:

"Réglements par les municipalités.

"14. Nonobstant toute disposition de la présente loi, une municipalité, y compris la Ville de Winnipeg, peut établir des réglements concernant le transport de merchandises dangereuses à l'intérieur de la municipalité ou de la Ville. Toutefois, les dispositions de la présente loi ou d'un réglement établi sous son autorité prévalent, lorsque les dispositions d'un réglement établi par une municipalité ou par la Ville de Winnipeg sont en conflit avec elles."

MR. CHAIRMAN: Pass. Mr. Mackling.

And on the English, Page 9, Mr. Chairman, I move

THAT Bill 43 be amended by striking out Section 14 thereof and substituting therefor the following section:

"Municipality may make by-laws.

"14. Notwithstanding any provision of this act, a municipality, including the City of Winnipeg may make by-laws respecting the transportation of dangerous goods within the municipality or city, but where there is a conflict between the provisions of a by-law made by a municipality or the City of Winnipeg, and any provision of this act or regulation made under this act, the provision of this act or the regulation, as the case may be, prevails."

MR. CHAIRMAN: Any discussion? Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, just a question. I take it that the original Section 14 may have been exclusive of the City of Winnipeg. Is that the only reason for this amendment?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, it applies to any municipality. If I may, Mr. Chairman, this arises from the fact that there appeared to be some ambiguity in interpretation and all this does is clarify the intent more fully. There is no change in substance.

MR. D. ORCHARD: In other words, the original section, as printed in the original bill, may have been deemed to have excluded the City of Winnipeg; that's what you're saying?

HON. S. USKIW: I don't believe that's the case, Mr. Chairman, but indeed we have clarified that particular possibility with the provision of the amendment, at the request of the City of Winnipeg.

MR. CHAIRMAN: Any further discussion?

Page 9, as amended, French and English—pass; Title—pass; Preamble—pass; Bill be Reported—pass.

BILL 85 - THE HIGHWAYS AND TRANSPORTATION CONSTRUCTION CONTRACTS DISBURSEMENT ACT

MR. CHAIRMAN: The Acting House Leader has suggested the second bill be No. 85. Is that agreeable? (Agreed) Page-by-page? Are there amendments for this?

Page 1—pass; Page 2 - Mr. Orchard.

MR. D. ORCHARD: A couple of points here and it involves, not only Page 2, but a later section, in fact, Section 9(3) as it appears on Page 5.

I appreciate why the Minister is bringing this bill in. I just want to clarify how he would deem to be implementing Clause 2(1)(c) where, in the event you've been notified of an unpaid account, that you would not release the holdback monies, and one of your courses of remedy would be to appoint a trustee. If a trustee was appointed, say, immediately, there are fees involved which would decrease the amount of the holdback that was available to the contractor, and sometimes claims can be settled very very efficiently, given a few weeks time.

My question to the Minister is, how does he envision the timing of implementing Section 2(1)(c), The appointment of a trustee? Would he give the two parties, the contractor and the subcontractor, if that were the case, a few weeks time to attempt to settle their debts without having to go the expensive route of the appointment of a trustee?

HON. S. USKIW: Normally, Mr. Chairman, we would give him much more time than that and that would continue.

MR. D. ORCHARD: So then it would be fair to assume that the Minister's intention under subsection (c) of 2(1) would be to have that in there as sort of a - let's call it a last resource court - you wouldn't want to be triggering that on every single claim because of the cost involved? Would that be a fair assumption?

HON. S. USKIW: Yes, that's correct, Mr. Chairman.

MR. CHAIRMAN: Page 2—pass; Page 3 - Mr. Mackling.

HON. A. MACKLING: Page 3, Mr. Chairman, amendment en francais and in English.

MR. CHAIRMAN: Perhaps we could pass the English first.

HON. A. MACKLING: I move

QUE l'alinéa 7(1)(a) du Projet de loi 85 soit modifé par la suppression des mots "avant l'entrée en vigeur de la présente loi".

MR. CHAIRMAN: Pass?

HON. A. MACKLING: In English

THAT Clause 7(1)(a) of Bill 85 be amended by striking out the words "prior to the coming into force of this act".

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: What's the reason for this amendment, Mr. Minister?

MR. CHAIRMAN: Mr. Tallin.

MR. R. TALLIN: You may remember that several years ago an act was passed dealing with specific contracts authorizing monies to be paid out under specific contracts to a trustee, to be dealt with by the trustee as though he were acting on behalf of the Crown, dealing with subcontractors.

This bill is based on that old act that was passed - I think two years ago or three years ago - and because it was based on it a lot of the wording was the same. This wording was in that old act, and it was in there because what they were dealing with were claims which had been made prior to the bill being introduced.

That no longer applies because this is a general act that's intended to apply from now until they find some other way of dealing with it in these claims. The words were, therefore, included by mistake and it's the mistake of the Legislative Counsel, for which I apologize.

MR. D. ORCHARD: Then I take it that this act has no intention of being retroactive as would indicate in it.

MR. CHAIRMAN: Page 3, as amended—pass; Page 4—pass; Page 5 - Mr. Orchard.

MR. D. ORCHARD: Under 9(3) is there a schedule of fees which are available as guidelines for maximum-minimum on trustees' fees as they have in settlement of wills and estates and things like that?

MR. CHAIRMAN: Mr. Uskiw. Would you like to repeat the question, Mr. Orchard?

MR. D. ORCHARD: I'm just wondering if there is a predetermined schedule of fees for the trustee to charge for his services.

MR. CHAIRMAN: Mr. Tallin.

MR. R. TALLIN: There is not a statutory or a regulated tariff of fees, but trustees who act in bankruptcy have certain standard types of fees that they do charge, and it's presumed that the trustee will be that type of trustee, and he will charge the same kind of fees for dealing with these as he would in a bankruptcy or a receiveship situation.

MR. D. ORCHARD: So basically, we're not leaving a contractor open to exorbitant fee structures. There is some semblance of a fee structure that would be referred to in this act?

MR. R. TALLIN: There's no specific reference to it in this act, but if a person questioned the amount of fees that the trustee was charging, I think that the responsibility would be on the government for having appointed a trustee without determining, prior to appointment, what those fees would be and that they were reasonable.

MR. D. ORCHARD: So, should there be some sort of safeguard to assure that in legislation, or do you think that governments will be responsible in this case?

MR. R. TALLIN: Well, if the governments aren't responsible, they'll be the ones who will be attacked, so I would think that they normally would be.

MR. D. ORCHARD: Well, seeing as this how this is Mr. Uskiw, I'll let this go.

HON. S. USKIW: Mr. Chairman, one clarification on that. The fees will vary depending on the nature of the case. It's usually based on the number of hours of work involved, time involved. So, you can never have a fee structure that is uniform on all cases it would appear. It'll be a rate per hour.

MR. D. ORCHARD: Just as long as we don't have it open-ended so a contractor can really get . . .

MR. CHAIRMAN: Page 5—pass; Page 6—pass; Title—pass; Preamble—pass; Bill be reported.

BILL 78 - THE MANITOBA TELEPHONE ACT

MR. CHAIRMAN: The third bill proposed is Bill No. 78, An Act to amend The Manitoba Telephone Act. Page-by-page?

MR. D. ORCHARD: I think maybe we better have the Minister, wherever he may be . . . oh, there he is.

MR. R. TALLIN: This is really a correction. Again, it's my fault, not the Minister's.

MR. CHAIRMAN: There is an amendment which will passed around.

MR. R. TALLIN: There's one little amendment, "connection" should be "conjunction".

MR. CHAIRMAN: Do you have an opening statement, Mr. Plohman?

HON. J. PLOHMAN: Mr. Chairman, first of all, I want to just make some brief comments on the presentation that was made by Mr. Moffat from Winnipeg Videon when this bill was first before this committee. I was, unfortunately, unable to be here, and I want to apologize to Mr. Moffat for that. I appreciate that Mr. Moffat did take the time to make a presentation. I feel that his contribution was worthwhile and worth some explanation as to some of the points that he raised. For that reason I would like to address some of the points that he brought forward.

He said, in his presentation, Mr. Chairman, that he's deeply concerned that Section 52.2 of the proposed legislation, Bill 78, does indeed contemplate MTS ownership of our head-end facilities. This concern expressed by Mr. Moffat is narrowly focused on the field of CATV equipment ownership. He requests that this concern be addressed by deleting certain key words from the proposed Section 52.2.

I should point out that Section 52.2 is intended to deal with the telecommunications network in its entirety. The words "transmitting, receiving, and emitting," were included in the draft primarily at the recommendation of the Legislative Counsel, Mr. Tallin, to coincide with the wording used in the definition of telecommunications that now appears in The Telephone Act, Section 2(1)(1).

The MTS, in fact, provides transmission services on elements of the electronic highway, above and beyond cable services, on a regular basis, and the wording is included to reflect that reality, which is consistent with the intent of the government to maintain MTS's role as a provincial common carrier.

Mr. Moffat suggests that he does not believe, in his presentation, that it is the intention of the government to own the head-end facilities that the cable companies currently own, and I want to emphasize that he is absolutely correct, it is not the intention of the Manitoba Telephone System, or this government, that cable operators would have to give up ownership of their head-end facilities.

This was recognized in 1967 agreements between them and the Manitoba Telephone System and we would insist that be maintained. Renegotiated contracts we would hope would confirm the cable operators ownership of head-end components not required for control - and this is a very key word "not required for control" - and maintenance of the system. Of course, if the MTS were to demand otherwise our government would pass regulations, and can under this act, pass regulations to reaffirm this ownership of the head-end facilities that are not required for the control and maintenence of the system to maintain that ownership in the hands of the cable operators.

I think it's important to mention that there are exceptions to that that can affect the control of the electronic highway. For example, the amplifiers and drops which are owned by the telephone system in rural Manitoba, and on which the telephone system has the option to acquire in the city - amplifiers and drops, as a matter of fact, which the previous government, evidenced by statements by the Minister responsible for the Telephone System at the time of the introduction of Bill 107 in 1980, the Member for Lakeside, emphasized that it was their intention that the MTS exercise this option to own the amplifiers and drops.

However, even with the ownership of amplifiers and drops, it's possible that control could still be rested in the hands of the private provider of services because of a device that is included in the head-end known as the pilot carrier generators and, as long as that is in the control of the private company, it's quite possible that they could vary the signal strength, vary the amplifiers which control the signal on the electronic highway and, therefore, could mess up all signals travelling on that highway. And that is a very important factor and we believe it is necessary that that ownership of such devices as the pilot carrier generators be retained, or be owned, by the Manitoba Telephone System in the public interest.

Another point that was mentioned by Mr. Moffat was the differences in opinion that exist between the CRTC and the Manitoba Government with regard to the issue of control, or ownership of control, security encoding-decoding devices. I should point out to the honourable members and for the record, because it was raised by Mr. Moffat as a concerned person, as a owner of a cable system in Winnipeg, that this is not the first time that the province has had disputes with the Federal Government, or disagreed with the policy that was laid down by the CRTC. It happened in 1976, certainly, when the province conferred with the Federal Government; the Government of the Day was able to overcome those differences through discussions. As a matter of fact, the CRTC decision was overturned and reversed with

regard to the amplifiers and drops in rural Manitoba and, of course, it was then determined by CRTC that amplifiers and drops should be owned by the provincial common carrier.

We are currently, as was mentioned by the Minister of Telecommunications in the House during discussion of second reading of this bill, we have met with the Minister of Telecommunications federally, Francis Fox; and we have staff meeting on a regular basis to discuss and come to a resolution on these very important issues, and we are hopeful that that can happen. So it does not mean that just because there is a difference of opinion, with regard to ownership at this present time, that that is going to continue.

In terms of the matter that was raised regarding MTS ownership inflating the price structure for services. There is no evidence of this at this time. Basic cable service in several provinces where cable operators have owned these facilities themselves is higher, the price to subscribers, than it is in Winnipeg for cable subscribers here.

In terms of expanding the facilities, new and expanding facilities, such as for Pay TV, it is clear that the cost of the attendant investment will have to be passed on to the subscriber in any event, whether it be owned by the private cable company, or the public telephone system. MTS ownership, in our view, ensures that the investment will be designed to serve a multiplicity of users or potential customers and uses, with the assurance that the facilities will be available and accessible to all who are licensed. I think that is a very important principle.

The last point that I wanted to mention with regard to PUB rate regulation for telecommunication services; it is the policy of this government that, in terms of cable services, that any disputes that result, if they are not able to negotiate successfully, reach agreement, with regard to those telecommunications services, that the disputes be referred to the Public Utilities Board. Provision has been made for that through passage of Order-in-Council 1470 which followed on a previous Order-in-Council that had been passed by the previous government that also made provision for disputes to be determined by the Public Utilities Board, upon request from the cable companies and the telephone system.

I would just, in closing, then say that we will assess this closely in regard to the Public Utilities Board, and note close out the options of having additional regulatory mechanisms. This bill is clearly, I think, in the public interest, and I believe that the members of the opposition who have, particularly the Member for Pembina who has spoken against it, should reflect that it certainly is in the public interest to provide access for all customers and all potential providers of service on the electronic highway, and I would hope that the member would see it from that point of view.

MR. D. ORCHARD: Mr. Chairman, the Minister almost understands what he's doing. Can the Minister indicate that currently, as is presently structured, MTS has ownership basically of the coaxial cable system? An expansion of that system would allow additional channels to be made available to new customers. Does the Minister have any problem with that?

HON. J. PLOHMAN: Expansion of that system would allow certainly for new customers and new services on the electronic highway, and I certainly feel that that is something that has to be addressed because of the increasing usage and potential for expansion of services, definitely.

MR. D. ORCHARD: Then, on the coaxial cable the telephone system would be, in effect, a common carrier, a provider of the electronic highway, it would allow access by other companies with rates set, theoretically, by the Public Utilities Board for the channel capacity granted there. That would, in effect, accomplish what the Minister wishes to do, would it not?

HON. J. PLOHMAN: The Public Utilities Board would not set those rates; they would be set through agreement between the Manitoba Telephone System and the customer.

MR. D. ORCHARD: But the Minister said that if there's a rate dispute it would go to the Public Utilities Board so unless the Minister was not indicating correctly, ultimately the Public Utilities Board would decide whether the rate was equitable and fair.

HON. J. PLOHMAN: Well, it's not a matter of indicating correctly. We would hope, as has been past practice, that agreements could be reached and that it would not necessarily be the Public Utilities Board that would have to even regulate with regard to disputes because they would be resolved thorough negotiations.

MR. D. ORCHARD: Is that the current circumstance without Bill 78? Are disputes on additional capacity on the coax cable being equitably settled for instance on the east side of the river mutual negotiation?

HON. J. PLOHMAN: Negotiations, Mr. Chairman, are ongoing.

MR. D. ORCHARD: Mr. Chairman, the Minister shouldn't try to be evasive. I asked him simply, is additional channel capacity available through mutual negotiation with reference to the Public Utilities Board on the east side of the river?

HON. J. PLOHMAN: I'm not being evasive. I am saying, Mr. Chairman, clearly, that negotiations with both Greater Winnipeg Cablevision and Winnipeg Videon are ongoing and there is no way of knowing at the present time whether they will be, in the member's words, equitably settled or not.

MR. D. ORCHARD: Could I ask the Minister if an attempt was made to refer late last year the rate issue of additional channel capacity east of the Red River, if an attempt was made to refer that to the Public Utilities Board?

HON. J. PLOHMAN: I believe that there was a request from the cable company to do that.

MR. D. ORCHARD: Was it proceeded with to the Public Utilities Board?

HON. J. PLOHMAN: I would ask the member to clarify. Is he referring to the application that was made under the Order-in-Council 841 put in place by the previous government?

MR. D. ORCHARD: That's correct.

HON. J. PLOHMAN: No, that was not proceeded with as a result of a court decision as well the fact that it was I think relevant that the Order-in-Council was withdrawn.

MR. D. ORCHARD: Oh, I see. We've got a scenario where the moment one of the people who are theoretically to be equitably served by the Public Utilities Board apply there, the government cancels the Order-in-Council. That's an interesting way of this arriving at a mutual agreement by negotiation. Now can the Minister indicate whether Order-in-Council 1470 which replaced 841-78 was essentially offering the same terms and conditions for the Public Utilities Board to adjudicate the rate structure?

HON. J. PLOHMAN: First of all, the government is not part of those negotiations. The Telephone System and the cable company are the people that would arrive at negotiated settlements. The Order-in-Council 1470 is one that has been passed by this government, reflects this government's policy and therefore is quite different than the limited Order-in-Council. It did give some direction to the Public Utilities Board pursuant to the agreement, the Canada-Manitoba Agreement of 1976. Consistent with that agreement, we feel Order-in-Council 1470 also gave some direction to the Public Utilities Board when dealing with disputes between cable companies and the Telephone System.

MR. D. ORCHARD: The Minister indicates there were some changes. What were thos changes in 1470 over the previous Order-in-Council?

HON. J. PLOHMAN: I believe the previous Order-in-Council only gave the Public Utilities Board the ability to adjudicate with regard to the rates for additional services. It did not allow for the Public Utilities Board to consider the broader questions. The value of service principle as a component in setting rates was one that this government felt was important; the financial requirements of all parties to meet the needs of the customers; the requirement of the Manitoba Telephone System to renew and upgrade its capital facilities to meet the technological demand of the future, as well, that rates be sufficient to contribute to a reasonable, financial basis for those other telecommunication services that Manitoba Telephone System currently provides and that are regulated by the Public Utilities Board in Manitoba, in other words, cross-subsidization; and that in any of these decisions consistent with this bill, Bill 78, parts of this bill that are being proposed, that the telephone system would have to own or control their security devices for pay television.

MR. D. ORCHARD: Mr. Chairman, the Minister obviously is not too familiar with the cable system on the east side of the river, when he says that his new Order-in-Council was necessary because it had to give the Public Utilities Board the ability to consider the cost of upgrading the system to provide extra channel capacity. It is my understanding there is no additional cost. The extra channel capacity is there. It's a matter of granting use of that channel capacity. So that's one argument that the Minister is using that isn't quite factual.

The second point that I would like to make with the Minister and get him to comment on is, how can a licensed carrier of cable or pay television, whose federal licence requirement is that they own and control their security devices, that they the licensee must own them; how can they possibly go to the Public Utility Board for rate adjudication when you say that Manitoba Telephone System must own them and in doing so would invalidate their licence and put them out of business. How in the world can they go to the Public Utilities Board for reference under those circumstances when you in effect force them to break the law?

MR. CHAIRMAN: Order please. The hour is 10 o'clock. What's the will of the committee? Proceed.

Mr. Plohman.

HON. J. PLOHMAN: Well, Mr Chairman, there's a point that the honourable member is either missing intentionally or otherwise and that is that at the time the application was made to the Public Utilities Board the potential customer or provider of service for pay television was not licensed and that was the basis for the dispute or for the request for regulation or determination of that dispute being struck down by the courts, because of the fact that they were not a licensed carrier at that particular time.

MR. D. ORCHARD: Mr. Chairman, would the Minister care to tell the committee whether there was any other application before the CRTC for the delivery of pay television east of the Red River?

HON. J. PLOHMAN: Mr. Chairman, it is actually irrelevant whether there was or there was not. There was no one licensed at that particular time.

MR. D. ORCHARD: Mr. Chairman, I want to tell the Minister and the committee that there was only one application for licence of Pay Television east of the Red River, therefore there could only be one licence granted. It was the intention of the Federal Government to bring licensed Pay Television operators into business. There was a group application before the CRTC from all over Canada. There was no other person that could have been granted the licence to deliver Pay Television east of the river other than the only applicant, there was no opposition to that application by anyone. The granting of the licence was de facto assumed; they had to go the Public Utilities Board to get spectrum allocation and rates on it or else they couldn't deliver the signal when their licence did come through and the Minister's argument that they weren't licensed is phony; and they cancelled 841 to deprive an equitable settlement through an impartial third body of the allocation of spectrum capacity in the rate structure. For what reasons it is becoming more and more

apparent as we deal with Bill 78, so the Minister is using phony arguments and he knows it. He knows there was only one applicant and only would be one applicant and licensee for the deliverer of Pay Television east of the Red River. That argument's phony, Mr. Chairman.

HON. J. PLOHMAN: It's quite evident, Mr. Chairman, that the CRTC could have turned down any applicant and the honourable member should be aware that you can never - and I think he is aware - predict exactly what the CRTC is going to do; we certainly know that from previous experience. I don't know that the honourable member is attempting, I think he should know that he's reflecting on the decision. It was Judge Scollin who decided that was a significant factor and therefore the application was not legitimate. It's not me saying that only; it is the courts that have said that.

MR. D. ORCHARD: Who brought the argument before the judge?

HON. A. MACKLING: On a point of order, I would like the honourable member to indicate the relevance to the piece of legislation for us.

MR. D. ORCHARD: Mr. Chairman, if the Minister of Natural Resources cares to read — (Interjection) — in Section 52.2(1), it says that the commission - meaning the Manitoba Telephone System - shall own encoding and decoding devices. The federal licensee says that the cable company must own them. This act contravenes the terms of the licence. Furthermore, Order-in-Council 1470, passed by your government, also said that the telephone company should own them, in contravention of the federal licence. That's why it's relevant to this discussion.

HON. A. MACKLING: Mr. Chairman, I was asking the relevance of the question in respect to the judgment.

MR. D. ORCHARD: Mr. Chairman, it's relevant because the Minister is using the fact that they're not licensed as a reason why they weren't given spectrum; and I'd like to know who put that argument before the courts.

HON. J. PLOHMAN: First of all, I can indicate that the matter of Order-in-Council 1470 is not relevant on the argument that was presented by the honourable member because at the time that the Order-in-Council was passed, the CRTC had not passed judgment or given public notice 83-82, with reference to ownership and controlled devices; so certainly that would not hold true in reference to the Order-in-Council that was passed previous to that. Secondly, the Public Utilities Board was represented and made the arguments with regard to that.

MR. D. ORCHARD: The Public Utilities Board made that argument?

HON. J. PLOHMAN: Clearly the Public Utilities Board argued that it was not a proper application and therefore turned it down and then were upheld in court. Their arguments, in other words, were substantiated and agreed to by the judge.

MR. D. ORCHARD: The Minister indicates that CRTC decision 83-82 was not made at the time. Is the Minister aware that the traditional condition of granting of licence has been, since approximately 1968, possibly before, that the cable companies own certain portions of equipment which his Order-in-Council 1470 said the Telephone System must own?

HON. J. PLOHMAN: Mr. Chairman, if the honourable member would reflect he would know - and I referred to that in my opening statement in regard to the remarks made by Mr. Moffat - that the CRTC, in the past, has taken into consideration the unique circumstances in Manitoba and has indeed had a reversal, has changed its decision as a matter of fact, at the request, I guess, of the Federal Government as well, but has taken into consideration the unique situation in Manitoba and the requirements that Manitoba Telephone System own and control the electronic highway as has been substantiated and certainly advocated by the previous government under, at least one Minister.

MR. D. ORCHARD: Mr. Chairman, I wish the Minister would answer the question. We weren't talking about the electronic highway; we were talking about encoding, decoding devices.

HON. J. PLOHMAN: Those words and those terms have certainly come to light in the very recent past. Certainly within even a few years ago, there was no need for the terms encoding, decoding and so on. It did not exist in the telecommunications world and that is, of course, developing very fast and that is why we're attempting, in this bill, to address the emerging electronic highway; it's always developing, as the honourable member knows.

MR. H. ENNS: Mr. Chairman, through you to the Minister, is Manitoba Telephone System actively soliciting Pay Television services to commercial outlets, such as hotels, in the City of Winnipeg?

HON. J. PLOHMAN: Mr. Chairman, I'd just like clarification as to what portion of the bill that the member is referring to.

MR. D. ORCHARD: Section 52.2(1).

MR. H. ENNS: Mr. Chairman, allow me to expand on the concerns that my colleague, the Member for Pembina, has been raising, not only at this committee, but earlier on in the House at second reading of the bill. Mr. Chairman, I have every appreciation and concern for some of the difficulties that a Crown corporation has in its long-term planning that we expect the Crown corporation to undertake, particulary when there is a serious lack of consensus within the lawmakers as to what direction a Crown corporation ought to take. I believe, Mr. Chairman, and I say this to you, to the Minister and to senior management in MTS that they should take account of that fact, that there is a very serious lack of consensus among the lawmakers as to the future of MTS in this particular field.

Mr. Chairman, I say that from a point of view that I personally and I can speak for the party and the

opposition that is now in opposition that strongly supports the concept of MTS being the common carrier, the electronic highway and the need for MTS to have its fair share of revenues that will be generated, are being generated and will be generated as new technologies come on stream; but, Mr. Chairman, the point that my colleague, the Member for Pembina, is making over and over again, and rightfully so, is that the Conservative Party, the now opposition, is firmly opposed to MTS being a supplier of some of those services, who honestly believe that is a role for the private sector.

We don't believe that that in any way impacts from MTS in carrying out their role as the common carrier and so the legislation that's before us that will enable MTS to not only become the common carrier but indeed become the end supplier of services and in that way neatly wrap up a monopolistic position that I am quite prepared to support and indeed strenghten for MTS in the role as common carrier, but not as a supplier of a multitude of services, some of which we can only speculate on today.

Mr. Chairman, it was under that context that I asked whether or not MTS is actively soliciting hotels in the City of Winnipeg to provide Pay Television services.

HON. J. PLOHMAN: Mr. Chairman, I cannot give an opinion one way or another whether MTS is - I don't know if they are asking anyone to provide services from hotels and so on, are soliciting for that at this particular time. The answer that I've received, Mr. Chairman, is that the answer is definitely not.

I should point out as well that we don't disagree substantially with what the honourable member is saying in terms of the ownership and control of the electronic highway. We have that same view that is in the public intest, that the telephone system be indeed the owner and controller of that electronic highway, but that electronic highway is constantly developing and emerging. There are new requirements for security and control, or else we will no longer be the common carrier, the Manitoba Telephone System will not be, if it is not able to control and have some say in what takes place in terms of the customers.

Certainly they are licensed by the CRTC, however, it is important that all potential customers have equal access to that electronic highway, and if that control is in any way vested in the hands of one of those customers, that can, for all intents and purposes, eliminate the control of that highway by the telephone system, and put in the hands of that individual customer.

I gave an example earlier where the pilot carrier generators could in the hands of an individual customer, provide our services, such as a cable company, could be used to frustrate the whole highway if that was indeed their intent. We're not saying it is their intent or that they would attempt to do that, but I'm saying that the control is then not in the hands of the provincial common carrier, and the provincial common carrier then has lost control of the gateways to that highway, and therefore, does not control the highway.

MR. H. ENNS: Mr. Chairman, we, of course, establish regulatory bodies to make sure that doesn't happen. In other instances where you have a common carrier, when the Motor Vehicle Branch decides who and what price tag somebody uses the concrete highways, the transportation highways of this province, it was, of course, my hope and my wish that the Public Utilities Board could, in a similar way, adjudicate and decide and establish at what price, what constitutes a fair revenue for MTS, in the event of a dispute that that should be the method of making sure that access to the electronic highway is indeed, as the Minister says, available to legitimate potential users.

I don't see the mechanism that's contained in this bill anything but an encouragement, indeed an inducement to MTS to forge ahead to in fact become, not only the common carrier, but the supplier of services in the future. In that case, you, of course, have a very tidy monopolistic situation to contend with.

Mr. Chairman, I'm not supporting this bill because I see that as a danger from my point of view. I perceive that as a danger even if I don't necessarily accrue to present MTS management, the kind of evolution of a system that I foresee, but I can see a government that would press upon the Crown utility, a direction that I and my colleagues in the opposition are violently opposed to.

We see the distinct possibility of an intrusion by government, admittedly via a Crown corporation, but nonetheless, room for very extensive intrusion of government agencies that will, to a large extent dictate the various telecommunications services that we refer to as the common carrier, the electronic highway. I don't think this bill is necessary in its present form. I think the bill discourages the kind of innovative development of the private sector that could well usher in high-tech industries into the province, industries that some say Manitoba is suited for and should be developing, indeed, some of the kind of industries that were contemplated under the IDA Program.

I believe that MTS could well usher in an era of some of these services, but none of these will happen, none of these will take place in Manitoba unless by special invitation. Certainly, none will happen because of the clauses contained in this bill that leave so much leverage, so much power in the hands of the common carrier, in this case MTS, to determine who, how and when and under what circumstances use of that common carrier, that electronic highway will be made.

I see it as a bill that will negatively impact on the development of electronic communication services in the Province of Manitoba and for that reason, I'm not supporing it.

HON. J. PLOHMAN: Certainly the member has expressed, I think some views that were actually translated into legislation during the time that he was Minister responsible for the Telephone System, however, I guess it should be pointed out to everyone that bill was never proclaimed, even though after it was passed, the previous government was in government for quite some time. So, there must have been obvious second guessing and exchanges of feelings by the Minister at that particular time. However, the PUB as the regulatory mechanism is certainly an alternative to consider with regard to telecommunication services.

I believe that this system that is being proposed here is better, is one that has worked in the past, and that

is it encourages agreement through negotiation. If there are disputes, provisions are made for it. I believe that contrary to what the honourable member said, this system encourages the private sector to get involved, encourages competition, because the Manitoba Telephone System will treat all of its customers equally. Instead of having the control in the hands of one of the customers, all the potential providers of service have equal access without being burdened by some unfair disadvantage.

I think that's the beauty of this particular proposal, and certainly is the positive points about it. It does encourage competition as opposed to discouraging it. I think that the honourable members opposite are losing sight of that fact or aren't able for some reason, be it ideologically or philosophically or whatever you might say, able to comprehend it. They can see that it is in the best interests of the people of Manitoba and in the best interests of the private sector to have equal access. The Telephone System's policy has been and will be that it will not become a provider of the services that go on that particular highway.

MR. H. ENNS: Mr. Chairman, the Minister has on several occasions alluded to actions taken by Ministers of previous administrations. Let me put on the record, I make absolute no apology for the thoughtful caution that was expressed after a bill was introduced and passed in the House that expressed the policy of the Government of the Day. We recognize, certainly I recognize, that in dealing with the telecommunications industry, it happens to be one of the most important businesses of government and its agencies that we are dealing with, and one that should not be tampered with lightly by politicians. I only would add this comment, that I would hope the present government might give other resolutions currently before the House dealing with other major changes, indeed, social changes in this province, similar kind of consideration and caution before they rushed into passing them and proclaiming them into law.

I'll leave unsaid the particular resolution that I'm referring to, but I understand some of the members were discussing that at another meeting tonight in a downtown hotel. But, Mr. Chairman, the point was that, yes, it is an area that requires very careful and reflective thinking about how to bring about the kind of climate that will maximize the opportunities; how to also recognize and honour contractual obligations that were entered into in good faith by people that are currently providing some services; and to recognize their interest and their investment in these services, not to the detriment of other users. The bill that the Minister referred to tried to recognize some of those situations. There were some outstanding matters that needed further negotiations and those negotiations were proceeding at the time the government changed.

Mr. Chairman, I make no apology at all for taking a bit of time in considering how the telecommunications industry in the Province of Manitoba will be shaped or should be shaped because, after all, what we decide upon will have ramifications for a considerable period of time. Thank you, Mr. Chairman.

MR. D. ORCHARD: Mr. Chairman, a question to the Minister. Under Section 52.2, would inside wiring be considered part of the list of components that are contained within Section 52.2?

HON. J. PLOHMAN: The inside wiring could be interpreted to be.

MR. D. ORCHARD: The Minister says "could be interpreted," is it his interpretation that inside wiring is part of that?

HON. J. PLOHMAN: Again, it does mention, Mr. Chairman, that wiring, and it refers to wiring, of course, that can be interpreted as inside wiring. However, the previous agreements and intention of future agreements, as well as the policy of this government of course, is that no such ability to provide services would be taken away from anyone that is providing those services now; and also ownership of that particular element that the honourable member is talking about, the inside wiring would stay in the hands of the operators, the customers, the cable operators. I know the Manitoba Telephone System throught previous agreements has no wish to own that particualar element and I think the honourable member again should reflect that there is provision for agreement that would circumvent any direct provisions that are in here if agreement is reached with regard to any particular services or parts of equipment of the electronic highway. The provision is there and the provision is also there for regulation by Lieutenant-Government-in-Council to provide for exceptions to what is contained.

MR. D. ORCHARD: Do I interpret from what the Minister just said that it's not the government's intention by policy that MTS shall own the inside wiring, as would be provided by Section 52.2?

HON. J. PLOHMAN: Yes, that is correct.

MR. D. ORCHARD: Then can I ask the Minister a question and, no doubt, the Minister of Natural Resources will jump in halfway through and say it's hypothetical and not pertinent, so I'll put him on notice that this is a hypothetical question. Currently the licences to the two Winnipeg cable operators are cancelled, as of May 8, 1983, they were cancelled. There is a year in which the cable companies and the Manitoba Telephone System are going to renegotiate a new 15-year whatever lease for the spectrum to provide cable television. The negotiations are ongoing. A situation develops where the Manitoba Telephone System comes to the Minister and says we are unable to reach an agreement with the cable companies. Our only solution to reaching an agreement with the cable companies is that we must own the inside wiring. Would the Minister's last answer still stand?

HON. J. PLOHMAN: Again, it's very difficult to answer what might be required in the future in terms of the kinds of wiring. Just as I mentioned earlier, certain parts of that emerging electronic highway are developing with each passing year; and as technology develops it's certainly very difficult to comprehend what might be the situation in the future. I just want to point out to the member that the licences have not been cancelled.

That is not for the Manitoba Telephone System to make a decision with regard to the licences of the current cable operators.

The agreement is reaching its conclusion after 15 years and negotiations, as the member has said, are ongoing, as I've said previously. They will continue. There's another year yet, until such time as the agreement actually runs out. Hopefully, it is my hope, and I know that the honourable member shares that, then an agreement will be reached in this next year.

MR. D. ORCHARD: Two points for the Minister. Was the agreement for the provision of spectrum cancelled in May of this year? Secondly, the Minister must surely be aware that his clause says the commission shall own and control all apparatus, equipment, contrivances, devices, wires. It's pretty specific there is an opt out which allows you to negotiate an ownership agreement but I, once again, put the scenario to the Minister. You are negotiating a further 15-year extension as to the use by the two cable companies of spectrum to deliver cable television. If MTS comes to you and says we cannot come to an agreement, we wish to exercise the legislation that you have passed contained in Section 52.2 and we wish to own the inside wiring, the Minister has said earlier that, no, they have no intention of allowing MTS to do that. Would that still be his intention?

HON. J. PLOHMAN: That is a very simple description, a scenario of a very complicated situation, and I think it's very difficult to comprehend those being the exact set of circumstances with which I would be asked, or this government would be asked, to make a decision. There are many variables and many outstanding issues, and many issues that have been settled. I don't think the ownership of wires is one that's not settled. I think that as I've mentioned earlier, there is the provision for agreement notwithstanding the ownership that is stated, and there is provision also for the government to make regulations with regard to certain aspects.

I can't comment on that scenario because I don't believe that that kind of simple scenario of this situation could indeed actually take place.

MR. D. ORCHARD: I thank the Minister for that non-assurance. Can the Minister indicate to me why, in conjunction with Section 52.2, there is no grandfather clause which exempts existing installations?

HON. J. PLOHMAN: Yes, well, Mr. Chairman, again that is unnecessary to grandfather those particular aspects because it is the intent of the Manitoba Telephone System to renew along the lines of current equipment that has been used in the last number of years if it is needed in new agreements that the same provisions would apply. Of course, if there are disputes with regard to that, the cable company then can apply to the Public Utilities Board to adjudicate those disputes or ask the government to intervene and set certain regulations with regard to this. So there are many contingencies that could take place to cover that kind of concern or problem that the member is referring to.

MR. D. ORCHARD: Mr. Chairman, I just want to point out to the Minister that his last answer just eliminated the need for this bill. If it isn't the government's intention for MTS to own the inside wiring because they are going to get an agreement with the cable companies which is much similar to the agreement they've had for the past 15 years, why are we passing Bill 78 which in effect gives control of the entire cable television system from the head-end rate to the television set to the Manitoba Telephone System? Why would you legislate something that you've just said you don't intend to ever use?

HON. J. PLOHMAN: Well, again, the member is making a very simple analogy of the situation. There is much more than just wiring. I think the member should realize that it is much more than just inside wiring that we're talking about. We're talking about an emerging electronic highway that is very complicated and there are many more components to the highway than the simple example that the honourable member referred to of wiring.

I should point out clearly that the section, for the honourable member, refers to the whole telecommunications system electronic highway; it does not refer just to the cable services, and that is why we have made the wording consistent with The Telephone Act with the wording that is used in describing, and definitions describing telecommunications, because it refers to all services and all aspects of the telecommunications highway.

MR. D. ORCHARD: I thank the Minister for not answering the question. He didn't explain why he's passing legislation that he doesn't intend to use.

Another question I'd like to ask the Minister is why is he passing legislation which contains in Clause 52.2 a requirement for ownership of encoding and decoding devices for receiving telecommunications when it is in direct contravention to the conditions of licence of the cable operators for both Pay Television and ordinary cable television? Why is he passing a law in direct contravention with federal policy?

HON. J. PLOHMAN: First of all, I've answered that and I'll answer it again briefly though. It's clearly the scenario drawn by the honourable member in which I said that we would not intend to have MTS get involved in ownership of the inside wiring, as it is known today, is not the only scenario. There are many situations and, therefore, it is not correct to say that this is a bill that's being passed that we don't intend to use if it has no purpose.

It is clear that, as well, although the CRTC has recently given notice that this ownership should be vested in the hands of the private cable companies, it certainly does not recognize the Manitoba scene and we are, therefore, entering into discussions with the Federal Government, the Minister of Telecommunications, his staff and myself, to try to reach agreement on this so that the Federal Government and the CRTC would be able to reflect on the unique situation in Manitoba as they have in the past under previous agreements, the 1976 agreement, and under changes in orders by CRTC that recognize the unique situation in Manitoba and that indeed will be changed.

That is our wish and we cannot backtrack simply because there's a disagreement with the Federal

Government at this point in time with regard to our policy. We believe that this is in the public interest in Manitoba and we intend to proceed with it, and we want to work out an agreement with the Federal Government that would meet their needs and would meet the needs of the Government of Manitoba and the people of Manitoba.

MR. D. ORCHARD: Mr. Chairman, once again the Minister's answer lacks a little clarity, because he is saying that we're going to negotiate with the Federal Government on the ownership of security in encoding and decoding devices for the delivery of Pay Television.

What kind of negotiations can the Minister undertake with the Federal Government when he's asking the Legislature to pass an act that says the commission shall own and control all encoding, decoding, emitting and modifying devices? That's not negotiation; there's no negotiation there. The Minister is simply drawing the province into a legal battle with the Federal Government that with a $600 million deficit we can ill afford. There's no negotiation here, Mr. Chairman. This is the same kind of negotiation that they're doing with the private sector cable companies right now. They're passing a law that says we shall do this, even though he says we're not going to use it; it's written in law and they, I submit, will be using it.

Once again, they're negotiating with the Federal Government but they're writing, in law the exact opposite to the federal policy.

HON. J. PLOHMAN: I don't see why the honourable member, Mr. Chairman, would give more credence to the CRTC jumping in and attempting to pre-empt what we believe is correct here in Manitoba. If the honourable member is siding with the CRTC in that regard, he should say so in regard to all decisions that they make, and the Federal Government makes as well, with regard to telecommunications. He may recall that Bill 107, the section dealing with interconnection, was passed by the previous government even though it flew in the face of federal policy with regard to interconnection. He's aware of that, I'm sure.

There have been many cases where there have been differences in opinion. There's a multitude of issues to be examined between the Federal and Provincial Government with regard to jurisdiction in this area; so there's much more to negotiation than simply dealing with the one issue that the member says we cannot negotiate. There are many issues involved.

MR. D. ORCHARD: Mr. Chairman, I just want to finish with a few comments that the Minister is, in forcing this bill through, giving substantial powers to the Manitoba Telephone System. He says, on the one hand, there's no intention of exercising them. That begs the simple question which he has not answered: Why is the act there; why are the provisions there if there's no intention of exercising them? This bill is, as I've said in earlier remarks, contravening in certain sections federal regulations, which is not just federal regulations for the Province of Manitoba but federal regulations that apply across this nation; and in the interest of this co-operative federalism I believe that the Premier talked about earlier on, this is quite an exercise in co-operating with the Federal Government, when you're going to take the taxpayers of Manitoba into a legal battle with the Federal Government, with CRTC.

The Minister claims to understand what he is doing and what the government's policy is in bringing out this bill. I suggest, Mr. Chairman, that this Minister doesn't understand what he's doing here; he doesn't understand the implications of the amendments in Bill 78. The losers will not only be himself personally, and the government; it's going to be the customers of Telephone System and the cable companies because they're going to be paying additional costs for the present services they receive. This is bad legislation; it is based on a bad concept. It diverges from the common carrier aspect of Manitoba Telephone System and gets them into potential monopoly control of the telecommunications system; something they don't have now but certainly will have conferred on them with the passage of Section 52.2, and all of this said when the Minister is saying, well, we have no intention whatsoever of exercising ownership and control by MTS over the inside wiring.

The Minister's answers don't really mean a great deal when you read the act he's asking us to pass and that's why, unfortunately, I have to suggest the Minister doesn't understand what he's doing and the government doesn't understand what they're doing and the consequences will be unfortunate.

HON. J. PLOHMAN: I don't know where the honourable member feels that we've invented the word "monopoly" here with this particular bill. He should go back to 1908 and reflect on one of his predecessors, Sir Rodmond Roblin, and I guess the honourable member is disagreeing with what he did at that time. If he had been in government, there's obviously no doubt that would never have happened. We would have had 15 or 20 different wires running along each street in Manitoba, or a thousand, and providing telephone services and competing to provide 25 telephones to each individual if they could sell them to them.

I think the honourable member is very confused about what has been in the best interests of Manitobans for the last 75 years, and he should be aware that what we are proposing, what this government is proposing, is entering into the 21st century with regard to telecommunications, an extension of what was started in 1908. It's an insult to Sir Rodmond Roblin that this Honourable Member for Pembina, he would be very very insulted if he knew at this particular time that his policies and advocates at that particular time were being distorted, and actually more than distorted, totally downgraded and degraded by this honourable member, if he can follow that.

I can't believe it, Mr. Chairman. I think it's incredulous, and I find that he should have more respect for his predecessors, especially within his own party. I don't expect that he would necessarily have those same feelings toward some of the great founders of our party, Mr. Chairman, because he's not able to recognize those qualities in anyone but within a Conservative mould. But he is now forfeiting that, forgetting that and throwing away all all of those principles. I think the honourable member should take him to task in caucus, maybe perhaps have an emergency meeting right after this

meeting and discuss it, and pull him into line and discuss with him that he should not be insulting. It's just not good for the party, it's not good for any of the honourable members.

MR. D. ORCHARD: Mr. Chairman, the only insult to the great work of Rodmond Roblin as Premier when he created the public utility in the Telephone System is the damage that an incompetent gang of socialists are going to do with it with the passing of this bill. It's unfortunate that through rationale approach we can't get it through the Minister's head what he's doing. You know, when the telephone system . . .

SOME HONOURABLE MEMBERS: Oh, oh!

MR. D. ORCHARD: Mr. Chairman, would you quiet the red-faced kook over here?

MR. CHAIRMAN: Order please. Mr. Ashton on a point of order.

MR. S. ASHTON: Yes, I just heard the Member for Pembina make a rather nasty remark to another member at this side.

MR. CHAIRMAN: Would you speak up, Mr. Ashton.

MR. S. ASHTON: I said, I just heard the Member for Pembina make a rather unparliamentary comment to one of the members on this side. I think he should withdraw that.

MR. D. ORCHARD: What was it?

MR. S. ASHTON: About kook. I don't think that's . . .

MR. D. ORCHARD: What was it?

MR. S. ASHTON: The member knows which comment I'm referring to. I could also call him to order, I think in regards to his reference to members on this side being a gang . . .

MR. D. ORCHARD: That's an apt description.

MR. S. ASHTON: That's in the list of unparliamentary expressions, Mr. Chairman, however, I'll let that go, but if it's going to get into name calling and insults, I would hope that you would call the Member for Pembina to order.

MR. CHAIRMAN: The word "kook" does not appear in the list of unparliamentary expressions. It may be not polite, it may be unpolite, but it is not unparliamentary.

Mr. Ashton.

MR. S. ASHTON: Point of order then, Mr. Chairman, I would ask you to rule whether the term "gang" is an unparliamentary expression. I believe that is in the list of unparliamentary words.

MR. D. ORCHARD: I don't know why everybody is so anxious to — (Interjection) — ram through this bill. I mean you're ramming through a bilingual policy, why do you want to ram through this? Let's be patient, and let's make some reasonable laws for the province, and not ram things through.

Mr. Chairman . . .

MR. CHAIRMAN: Order please, order please.

Mr. Plohman on a point of order.

HON. J. PLOHMAN: Mr. Chairman, I resent that statement by the honourable member saying that we're ramming this through. I believe I've been very patient with the honourable member. I've attempted not to raise my voice, to be very calm about answering his many detailed questions, and he still has the nerve to accuse us, and I would believe that he's reflecting on myself as well the Minister, that I am attempting to ram this through.

I'm prepared to stay here as long as is required to have all of the questions and comments that the honourable member wants to put on the record however redundant they may be, to put them forward and put them forward here as many times as he wishes, and in any way he wants to. I hope he would do that in a polite way though, Mr. Chairman.

MR. D. ORCHARD: To the same point of order, Mr. Chairman, I didn't hear the Minister indicate pass. It was indeed the Minister of Community Services that was yelling pass, pass. It was to him that I was referring the government's desire to ram legislation through. I apologize to the Minister for including him amongst those gang of incompetents that were calling "pass".

Mr. Chairman, I might draw to the Minister's attention that when the public utility was created, the telephone system, to provide telephone services — (Interjection) — the rate approval was done by the Public Utilities Board, and it was regulated. Can the Minister indicate to me where in The Manitoba Telephone System Act there is provision for rate regulation for telecommunication services to be put before the Public Utility Board? Could the Minister show me what section of The Manitoba Telephone Act such reference is made for telecommunication services?

HON. J. PLOHMAN: Mr. Chairman, the history has shown as well with regard to regulation it has usually been and it has always been that it occurred in the situation where there was a monopoly situation with regard to a provider of services. We are not dealing with the monopoly situation with regard to the providing of services with regard to telecommunications. As the honourable member knows there is something near to a monopology I guess he could say in certain areas of the province, but there is the provisions for additional services in the future that will not necessarily be provided by the same providers of service that exist at the present time. There's no way of knowing that, but it is not a monopoly situation, and therefore it is quite different than the telephone service situation here in Manitoba.

In addition to that, he should remember as well that when the telephone system was formed, it was 15 years before the Public Utilities Board as a regulatory agency with regard to the telephone services actually came into effect.

As new services develop and we're dealing with a new area, as they were in 1908, it took some time before that process came into being, and it came into being as the result of a monopoly situation. So it is not quite correct to compare the two, one for the other at face value without looking behind a little bit and looking at the situation with regard to those services.

MR. D. ORCHARD: Well, Mr. Chairman, I'll only make this point once, and I'll try to make it very briefly. The Minister should know that through Section 52.2, he is conferring upon The Manitoba Telephone System, the ability to become a monopoly in telecommunication services because the wording in the first five lines of Section 52.2 essentially cover every aspect of telecommunication service delivery. It says "It shall be owned and controlled by MTS." This bill can confer de facto monopoly on the Manitoba Telephone System for telecommunication services, and to my knowledge there is no place in the present Manitoba Telephone System Act which requires reference to the Public Utility Board for the adjudication and setting of rates for telecommunication services.

If the Minister does not see that is what he is conferring in 52.2, and he does not recognize the absence of rate setting for telecommunication services in the act, then I reiterate my point that the Minister doesn't understand what he's got here.

MR. CHAIRMAN: Mr. Mackling on a point of order.

HON. A. MACKLING: I would like the Honourable Member for Pembina to indicate to me how his remarks are appropriate to a particular section in this bill. Which section are we dealing with, to Mr. Orchard?

MR. D. ORCHARD: Mr. Chairman — (Interjection) — who has the floor right now, Mr. Chairman?

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Thank you, Mr. Chairman. If the Minister of Natural Resources had been listening, he would have realized that Section 52.2 confers monopoly power on telecommunications services. This act contains no amendments . . .

HON. J. PLOHMAN: On a point of order, Mr. Chairman, that is incorrect. It does not provide for a monopoly for telecommunications services. It provides for a monopoly as a carrier for the MTS, but not for the provider of services. That is wrong, it is completely incorrect. This does not provide for a monoply in the case of services provided.

MR. D. ORCHARD: Mr. Chairman, the Minister doesn't understand what he's doing. This confers monopoly ownership with the telephone system of telecommunications services so that anyone wishing to provide a service can only go one place, to one person, and they must accept the rate demanded by MTS and there is no reference to the Public Utilities Board.

If the Minister doesn't understand that that's the prime provision of 52.2 then the Minister is incompetent because that is what is written in black and white in the bill he's introducing. It is the same thing that the telephone system currently has in the telephone service. They own everything from one telephone to another telephone, they own everything in here according to this act from - and including a head end if they so interpret, to the television set and if you want to go into contrivances, they may well have monopoly ownership of television sets conferred on them by this particular act. It is an identical monopoly system that they are setting up in telecommunications.

The point I'm making is there is no reference by legislation to the Public Utilities Board for rates. I'm asking the Minister if he realizes that?

HON. J. PLOHMAN: A point that the honourable member should realize is that 52.1 that was passed by the previous government which designates the MTS as the provincial common carrier, indeed, did exactly what he's saying right now. It resulted in the Manitoba Telephone System being the provider, the provincial common carrier, in a monopoly position. That was confirmed in the bill introduced by his colleague and passed by the previous government and proclaimed by this government. So 52.1 is where he should be making his reference and, again, I will reiterate and I won't do this again, I will let the honourable member make his points, I don't think that it serves any purpose for me to go over and over but I will point out that Order-in-Council 1470 provides for the resolution of disputes by the Public Utilities Board and what has been provided for as well, there is the provision, of course, in the act with regard to regulations that can provide for certain situations that would therefore not have to be applied in this particular way.

MR. D. ORCHARD: What did you say, there was reference to the Public Utilities Board?

HON. J. PLOHMAN: The honourable member did not hear that I was referring to the Order-in-Council 1470 which makes provision for the disputes to be adjudicated by the Public Utilities Board.

MR. D. ORCHARD: A question to Mr. Tallin. If there's no specific reference in Section 39.1 or .2 of The Telephone Act on rates for telecommunication services would an Order-in-Council be subject to a court challenge that it could not set the rates?

MR. R. TALLIN: It's not a question of the act saying that they can set the rates, the question is that under The Public Utilities Board Act the Lieutenant-Governor has given certain duties to the Public Utilities Board if parties through disputes choose to go before it. It has nothing to do with Section 39 which deals with, as I recall, telephone service rates, not telecommunication general rates other than telephones.

MR. D. ORCHARD: Mr. Chairman, we can start to pass the sections of this bill if you wish.

MR. CHAIRMAN: Page 1—pass; Page 2 - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, I would like to just point out to the Minister since this bill is involved with

legalizing current operations of telephone system that it would seem as if this Section 21.2 is being brought in to give legal status to the creation of MTX by Order-in-Council in January 6, 1982. Would the Minister agree?

HON. J. PLOHMAN: Mr. Chairman, quite clearly The MTS Act provides for the creation of subsidiary by the Manitoba Telephone System. It is included in The Manitoba Telephone System Act and what this does is satisfies the questions that were raised by the Provincial Auditor, whether we agree or disagree that they were needed and we felt, the telephone system felt, the government felt that the creation of subsidiary under the section of the act that exists and the telephone system gave sufficient powers. However, there was a difference of opinion and this certainly deals with those concerns that were raised and it goes further and limits the creation and makes it subject to Lieutenant-Governor-in-Council. So it goes further, in limiting than the previous provision did rather than extending powers.

MR. D. ORCHARD: Then, simply the Minister has made my point. This is required to effectively legalize the creation of a company by the government some 15, 16, 17 months ago.

HON. J. PLOHMAN: Mr. Chairman, in reply. The phrase that the honourable member used in which he said this would legalize is false, is incorrect at best. The opinion that has been given by the Attorney-General's Department was clearly that the MTS had the power and the authority and the jurisdiction to create a subsidiary for those puposes and that was done on that advice.

MR. D. ORCHARD: The Minister indicates partial truth, the problem being that the extra companies had to operate within Manitoba. MTX operates in Saudi Arabia and that's why this amendment's in there. We can pass the page, Mr. Chairman.

MR. CHAIRMAN: Page 2 - Mr. Plohman.

HON. J. PLOHMAN: Mr. Chairman, I'd just like to ask the honourable member where he gets the feeling that corporations are restricted to acting within the province and is this something that he is assuming. It is not something that is, in fact, there in law.

MR. D. ORCHARD: Mr. Chairman, Section 21.2(a) says "its powers beyond the boundaries of the province" - can operate in Saudi Arabia now.

HON. J. PLOHMAN: Mr. Chairman, what this does is it specifically spells that out, however, that provision or that authority was there although there wasn't specific mention to it. I don't know if the honourable member feels that if it's silent on that they then could not leave the Province of Manitoba. I guess that's what he's suggesting but it's certainly not a suggestion that is concurred with by the Attorney-General's Department.

MR. CHAIRMAN: Page 2—pass; Page 3 - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, on Section 43(3), this is a new provision in the last line where the commission may disconnect providing telephone services to the premises. Why is this deemed necessary?

HON. J. PLOHMAN: What the 43(3) does is allow the Telephone System to remove unauthorized terminal attachments, and in the event that the terminal attachments are improperly reconnected to discontinue provisioning of telephone service to those individuals who so reconnect in the incorrect way.

MR. D. ORCHARD: I don't want to put words in the Minister's mouth because I know he'll correct me. Is this simply a bigger hammer for MTS?

HON. J. PLOHMAN: Over the years there's been all kinds of hammers and powers, if you want to use the word "hammer," that have been provided to the Telephone System in its role as the provider of services as the MTS common carrier. You could refer to many situations where the Telephone System has been given special powers, and this is one that will facilitate an orderly enforcement of a section that I believe is necessary.

MR. D. ORCHARD: Mr. Chairman, we can pass up to Section 6 of the bill and I would move, seconded by the MLA for Tuxedo, that all of Section 6 be deleted from the bill.

MR. CHAIRMAN: Does the member have that written down?

MR. D. ORCHARD: Did you want it written down?

MR. CHAIRMAN: All right, very well, you've heard the motion. Is it agreed? All those in favour, please say aye? All those opposed, say nay.

In my opinion the nays have it. I declare the motion lost.

MR. D. ORCHARD: Let's have a count, Mr. Chairman.

A COUNTED VOTE was taken, the result being as follows:

Yeas, 5; Nays 11.

MR. D. ORCHARD: A blow to freedom, another blow to freedom.

MR. CHAIRMAN: Page 3—pass; Page 4 - Mr. Mackling.

HON. A. MACKLING: Section 52.2(2) of The Manitoba Telephone Act, as set out in Section 6 of Bill 78, be amended by striking out the word "connection" in the 6th line thereof and substituting therefor the word "conjunction."

MR. CHAIRMAN: Any discussion on the proposed motion? Pass. Page 4, as amended—pass; Page 5—pass; Title—pass; Preamble—pass. Preamble, all those in favour, please say aye. Those opposed say nay. In my opinion the ayes have it.

Bill be reported. Nayes, all those in favour? All those opposed? In my opinion the ayes have it.

BILL NO. 86 - THE CIVIL SERVICE SPECIAL SUPPLEMENTARY SEVERENCE BENEFIT ACT

MR. CHAIRMAN: Bill No. 86, The Civil Service Special Supplementary Severence Benefit Act. Does the Minister for Labour have any opening comments? No comments. Page-by-page?

The Member for Tuxedo.

MR. G. FILMON: Mr. Chairman, I have one question for the Minister of Labour. I believe it was asked of her both during her Estimates and perhaps it was mentioned again in second reading that the only request the opposition has with respect to this bill is that we be provided with a list of all the people with their positions and status and so on who qualify under this act.

MR. SPEAKER: The Minister of Labour, Ms. Dolin.

HON. M.B. DOLIN: I believe such a list is being prepared, as I have requested it myself, and in fact I understand that the names of all the retirees are to be published in Inside Outlook, the newsletter of the Civil Service. — (Interjection) — Yes, that's correct, the next issue.

MR. G. FILMON: All retirees who come under this Act, that is, who choose to . . .

HON. M.B. DOLIN: All 400-and-some of them.

MR. G. FILMON: . . . go out this window, so to speak.

HON. M.B. DOLIN: Who have gone, in fact, out this window.

MR. G. FILMON: Or who have gone, right, at this point in time. Fine, that's the only concern we wish to raise.

MR. CHAIRMAN: Page-by-page. Page 1—pass; Page 2 - Mr. Mackling.

HON. A. MACKLING: I move

THAT the definition of "employee" in Section 1 of Bill 86 be amended by adding thereto, at the end thereof, the words and figures, "or by Locals 2034 or 435 of the International Brotherhood of Electrical Workers."

MR. CHAIRMAN: Any discussion on that motion? Agreed. Pass.

Page 2, as amended—pass - Mr. Mackling:

HON. A. MACKLING: Mr. Chairman, by leave, we don't have a written French version for that amendment. By leave, I move the same amendment en français. (Agreed)

MR. CHAIRMAN: Pages 3 to 10 were each read and passed. Title—pass; Preamble—pass. Bill be reported.

BILL NO. 89 THE LANDLORD AND TENANT ACT

MR. CHAIRMAN: Bill No. 89, An Act to Amend The Landlord and Tenant Act.

Mr. Storie.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Mr. Chairman, I would just like to place on the record my appreciation to the Minister for reviewing the amendments with me earlier today. I would like to congratulate the Minister on bringing forth these amendments. I regret sincerely that we had a five-page bill and we have three pages of amendments now to virtually totally redraft and redo the bill. As I pointed out in second reading, as all of the delegates pointed out to the Minister here, this was a terribly haphazardly prepared bill. I think that we could agree with the principle of wanting to ensure that people who were dislodged from their accommodation under certain circumstances could have recourse to compensation and so on, but the bill just went terribly beyond that basic premise and concept and the excesses of the application as it would have applied to so many other areas of arrangements between landlord and tenants was just impractical, excessive and very very poorly thought out.

So having now learned from the Minister, by virtue of these amendments, that he is prepared to just boil it down to trying to achieve his basic tenets without such a poorly contemplated bill, I am prepared now to accept it as we go through it with one question; that is, my understanding is that representatives attended a meeting with the Minister, representatives of the Manitoba Landlords Association, representatives of the Manitoba Real Estate Association, and of the property managers group - whatever they're called and whatever their official title is - and I want to know if they were in accord with all of these amendments?

MR. CHAIRMAN: Mr. Storie.

HON. J. STORIE: Thank you, Mr. Chairman. First, dealing with some of the comments made by the Member for Tuxedo with respect to the changes, the changes flow basically from a reworking of the specifics of the bill. I acknowledged; in fact I suggested at committee stage that I would meet with the representatives from the Landlords Association, property managers and Real Estate Board and others who were interested to work out the details. Because of the short time frame, I did not have an opportunity in the first instance to sit down with those groups and work out some of the details.

Having given the commitment, I am satisfied that the amendments reflect the concerns expressed by representatives of those groups in our meetings, and I must say that I commend them for their contribution in establishing what I think is an important principle.

While the Member for Tuxedo and I may agree that it was an important principle and one which we agreed on, there was some difference of opinion with respect to the codifying of those principles. I think that the amendments that you see before us are simply the specifics of a very important principle.

When I undertook to meet with them and seriously consider their input, I took that as a very serious undertaking. I believe that they had some legitimate concerns, concerns that I wanted them to flesh out for me and they did.

I would say, to answer the specific question the member posed in his conclusion, that, yes, they do reflect the general concerns of the groups, and I think that there was a consensus that the groups affected could live with the changes as proposed.

MR. G. FILMON: Mr. Chairman, I just wanted to make one final point hopefully on the matter, and that is that - as long as I'm not held to it, I will assume it's a final point - this today though is a perfect example, and we had it as well earlier, that this government that prides itself in consultation ought to learn that the consultation takes place before you draft the bill, not after. Well, indeed, sometimes after legitimate errors, but in both cases what we found in The Wild Rice Act earlier and in this one, the consultation did not take place with the relevant groups beforehand and that's why we have so many amendments to deal with.

HON. J. STORIE: Mr. Chairman, I acknowledge what the member is saying is correct, but there was not a good deal of time before the bill was introduced, and I believe that it was appropriate to introduce it and discuss the principles before bringing it forward for consideration by the interested groups. I did indicate that I would be bringing forth these amendments. I accept the fact that this is also a forum for amending the bills, and I chose to use this form.

MR. CHAIRMAN: Page 1 - Mr. Mackling.

HON. A. MACKLING: Mr. Chairman, I move

THAT the figures "12" in the 3rd line of Section 1 of Bill 89 be struck out and the figures "18" substituted therefor.

MR. CHAIRMAN: Any discussion on that motion? (Agreed) Pass.

HON. A. MACKLING: Page 2, Mr. Chairman.

MR. CHAIRMAN: Page 1 as amended—pass; Page 2 - Mr. Mackling.

HON. A. MACKLING: On Page 2, I move

THAT Section 2 of Bill 89 be amended

(a) by striking out the word "and" at the end of clause (c) thereof;

(b) by adding thereto, at the end of clause (d) thereof, the word "and";

and

(c) by adding thereto, immediately after clause (d) thereof, the following clause:

(e) by striking out the letters and word "(e), (f) or (g)" in the 24th line thereof and substituting therefor the word and letter "or (e)."

MR. CHAIRMAN: Any discussion? (Agreed) Pass.

HON. A. MACKLING: And on that same page and going over to Page 3, Mr. Chairman, a very long substitution of the whole Section 103(4.1) through to (4.5). It's entitled:

THAT proposed new subsections 103(4.1) to (4.5) to The Landlord and Tenant Act as set out in Section 3 of Bill 89 be struck out and the following subsections be substituted therefor:

Notice of termination by landlord.

103(4.1) Where the tenant's right to continued occupancy is terminated by a landlord for any of the reasons set out in clause (4)(c), (d) or (e), the landlord shall, except in a case to which subsection 113(6) applies

(a) in accordance with Section 101, give to the tenant not less than 3 months written notice of the termination; and

(b) forthwith provide the Rentalsman with a copy of the notice.

Informal resolution of matter.

103(4.2) Upon the receipt of a copy of the notice under subsection (4.1), the Rentalsman shall, in writing, advise the landlord and the tenant that they may, to their mutual satisfaction, informally resolve the matter of the termination of the tenancy agreement, including the payment of compensation, if any, by the landlord to the tenant, not later than 45 days immediately preceding the date of the termination of the tenancy agreement as set out in the notice.

Notification of failure to Rentalsman.

103(4.3) Where the landlord and tenant fail or refuse to resolve the matter of the termination of the tenancy agreement, the payment of compensation by the landlord, and any other matter that may be relevant, within the time mentioned under subsection (4.2), either the landlord or the tenant may in writing so notify the Rentalsman.

Rentalsman to fix amount, if any, of compensation.

103(4.4) Upon being notified of the failure or refusal of the landlord and tenant to arrive at a satisfactory agreement as mentioned in subsection (4.3), the Rentalsman shall, after consultation with both parties, determine what, if any, compensation, not exceeding $250, should be paid by the landlord to the tenant for the purpose of assisting the tenant in paying his cost of moving.

Termination where premises administered for government.

103(4.5) Where premises are administered by or for the Government of Canada or Manitoba, or any agency thereof, or any municipality, or are otherwise administered under The National Housing Act, 1953-54 (Canada), the landlord may, subject to Section 101 and for any of the reasons set out in subsection (4) or by virtue of any provision relating to or arising out of the requirements or program described under The National Housing Act, 1953-54, terminate the tenancy

(a) where the tenancy agreement has no predetermined expiry date or

where the tenancy agreement is not in writing, by giving the notice in accordance with subsection (3); or

(b) where there is a written tenancy agreement with a predetermined expiry date, by giving the notice to the tenant at least 3 months prior to the expiry date of the existing tenancy agreement.

Non-application of certain provisions.

103(4.6) Subsections (4.1), (4.2), (4.3) and (4.4) do not apply

(a) to the owner or occupant of a residential dwelling unit who uses or occupies the unit as his primary residence and who rents that unit to a tenant for a temporary period, and on the understanding that the tenant shall give up vacant possession of the unit to and for the use of the owner or occupant at the end of that temporary period; but in every such case, the owner or occupant shall give to the tenant at least one month's notice to vacate the dwelling unit; or

(b) to building premises that contains not more than 6 residential units and the termination of any of the residential tenancies therein is required for the purposes mentioned in clause 103(4)(d); but in every such case the landlord shall give to the tenant at least 3 months' notice to vacate the premises; or

(c) to residential premises administered as mentioned in subsection (4.5).

Now, Page 3. Do you want to finish Page 2, Mr. Chairman?

MR. CHAIRMAN: Let's do this motion first.

HON. A. MACKLING: And that will cover Page 2.

MR. CHAIRMAN: Is that agreed? (Agreed) Page 2, as amended—pass.

Page 3 - Mr. Mackling.

HON. A. MACKLING: Continuing on Page 3, there's a further amendment, Mr. Chairman.

I move

THAT proposed new Subsection 103(5) to The Landlord and Tenant Act as set out in Section 4 of Bill 89 be struck out and the following subsection be substituted therefor:

Offences and penalties.

103(5) A landlord who terminates a tenancy

(a) for the reason mentioned in clause (4)(c) but who before demolition rents the premises to another tenant; or

(b) for the reasons mentioned in clause (4)(d), but who before carrying out the alleged repairs or renovations, rents the premises to another tenant; or

(c) for the reasons mentioned in clause (4)(e), but who fails to occupy the premises in accordance with the provisions of that clause within 1 month from the date of the termination of the tenancy and for a period of at least 1 year thereafter; or

(d) who fails or refuses to pay to the tenant the amount of money he is required to pay under subsection (4.4);

is guilty of an offence and on summary conviction is liable to a fine of not more than $1,000, and the court may, in addition to the fine, order the landlord to pay to the tenant an amount not exceeding $500.00.

MR. G. FILMON: Mr. Chairman, I, in discussion with the Minister earlier today, brought the concern to his attention that this still did not cover what I consider to be a need for a review process. As I understand it, this fine becomes automatic if someone does not fulfill the intention to go forward with a renovation or a demolition or something, and I proposed to the Minister, as I did in committee earlier, that there might be extenuating circumstances such as through the appeal process of a rezoning or something in City Council; that the person who was asked to vacate the suite and then the suite was not able to be carried forward with for demolition or for renovation because of something falling through, either financial support or rezoning application or something like that, that there might be extenuating circumstances.

As I see it, there's no provision for somebody making a judgment on extenuating circumstances. It's just very simple that if you have the suite vacated and then you rent it out again because you were unable to carry out the plans, you are automatically subject to a fine. I believe that there is need for some provision that allows somebody, whether that be the Rentalsman or somebody, to review the circumstances.

HON. J. STORIE: Mr. Chairman, I thanked the member for raising that to me previously, and I would indicate that it's my impression that, under normal circumstances, it would be the Rentalsman who would be laying the charges because he would be aware that a demolition was in fact to occur because he would have been notified; and that the Rentalsman, before proceeding, would in fact have an opportunity to review the extenuating circumstances and be aware of the inability of the landlord to receive zoning changes or whatever, so that those extenuating circumstances would be reviewed prior to charges being laid.

MR. G. FILMON: I would be accepting of that if I felt there was any discretion allowed here but, as I read it, in summary, it says a landlord who terminates a tenancy, and it gives the reasons, is guilty of an offence. It doesn't say that if in the opinion of the Rentalsman, or if in the opinion of the court, or anything like that; it just says a landlord who terminates a tenancy is guilty of an offence and on summary conviction is liable, etc.

The part that I left out is that he doesn't carry through with the plans, so I just don't see how there is any room for discretion in here.

HON. J. STORIE: The discretion, Mr. Chairman, lies with the Rentalsman's office to proceed with the charges and that it would be irresponsible and expensive to

proceed with charges where there were, in fact, extenuating circumstances because, clearly, the landlord could demonstrate those extenuating circumstances. I think it's fairly certain that the Rentalsman would be in a position to understand the circumstances of the case and to be aware of any extenuating circumstances that would warrant the foregoing of prosecution.

MR. G. FILMON: Mr. Chairman, I agree with the Minister that it would be irresponsible to lay the charge if there were extenuating circumstances, but I don't see that there is any room for discretion in it, nor do I see that the court could even take extenuating circumstances into account, so I'm just a little nervous about passing something like this.

HON. J. STORIE: Well, I can only say that by virtue of the fact that the Rentalsman is aware of the order in the first place, the request for demolition by the fact that he's notified, by virtue of the fact that, in effect, he would be recommending the prosecution, that it is extremely unlikely that he would not be aware of any extenuating circumstances. Certainly, he would be in contact with the landlord, the property manager, who would make him aware, I would assume, of those extenuating circumstances and in those instances he would not be proceeding with prosecution because, in all likelihood, they would fail and success would be unlikely.

I think that there are sufficient safeguards. I must admit, when the member first raised it with me, I was not as certain that those safeguards in fact existed, but I'm relatively certain that they do exist at this point.

MR. G. FILMON: I don't like to belabour the point. I know that we're very late, but I see no safeguards here and I'm just wondering what safeguards the Minister sees within this legislation. It seems to me that there is a requirement for the Rentalsman to proceed in a certain way and for the courts to proceed in a certain way with no opportunity for them to exercise any discretion.

HON. J. STORIE: I don't know what further guarantees that I can provide. I suppose the bottom line is in the event that for some reason a charge was laid, that it would be thrown out of court, given that there were extenuating circumstances. I think the rule of law allows for those circumstances regardless of what may appear to be quite straightforward requirements.

I'll indicate again that the Rentalsman, in choosing to recommend or not recommend prosecution, would take those and other factors into consideration, and I think that there's as much security in this particular piece of legislation as we can in fact provide, other than through the courts, which is the ultimate decision regardless of whether the Rentalsman may or may not be involved.

MR. G. FILMON: Then why couldn't we have just a very simple line at the end of this clause that says the Rentalsman may take extenuating circumstances into account?

HON. J. STORIE: Mr. Chairman, the Section 103(5), as currently written, has no such provisions. It is understood that the Rentalsman and, in fact, the courts regularly refer matters relating to tenancy to the Rentalsman. So, in fact, it is common practice and I believe would be the matter of practice that the Rentalsman be informed and make decisions with respect to the advisability of proceeding with prosecution.

MR. CHAIRMAN: You've heard the motion. Any further discussion? Pass. Page 3, as amended—pass; Page 4—pass; Page 5 - Mr. Balkaran.

MR. A. BALKARAN: Mr. Chairman, I wonder if the committee would give me permission to make a couple of technical changes. In Section 10 there is 119(b) which is a typographical error; it should be 119. (Agreed) Subsection 120(2), in the second line, the word "has" should be "his." (Agreed) 121.l(1) Second line, o-u- should be "out" and that's all. Thank you very much. (Agreed)

MR. CHAIRMAN: Page 5, as amended—pass; Title—pass; Preamble—pass. Bill be reported.

Committee rise.