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Legislative Assembly of Manitoba

STANDING COMMITTEE
on
STATUTORY REGULATIONS
and
ORDERS

33 Elizabeth II

Chairman
Ms. Myrna Phillips
Constituency of Wolseley

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Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Monday, 25 June, 1984

TIME — 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Ms. M. Phillips (Wolseley)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Bucklaschuk, Evans, Penner and Storie.

Messrs. Harper, Kovnats, Mercier, Nordman, Ms. Phillips and Mr. Steen

APPEARING: Mr. Rae Tallin, Legislative Counsel

WITNESSES: Representations were made to the Committee as follows:

Bill No. 8 - An Act to amend The Securities Act,

Mr. John Thresher, Association of Canadian Real Estate Syndicators Inc.

Mr. Sandy Riley, Manitoba Bar Association.

Bill No. 21 - An Act to amend The Law Society Act,

Mr. Edward Lipsett, Manitoba Association for Rights and Liberties.

Bill No. 28 - An Act to validate an Expropriation under The Expropriation Act; Loi validant une expropriation effectuée en vertu de la Loi sur l'expropriation,

Mr. Dave MacNeill, Russell L. Towle Enterprises.

WRITTEN SUBMISSION:

Bill No. 16 - An Act to amend The Child Welfare Act,

Manitoba Association for Rights and Liberties.

MATTERS UNDER DISCUSSION:

Bill No. 8 - An Act to amend The Securities Act, passed without amendment.

Bill No. 9 - An Act to amend The Liquor Control Act, passed with certain amendments.

Bill No. 11 - An Act to amend The Clean Environment Act, passed without amendment.

Bill No. 14 - The Jobs Fund Act; Loi sur le fonds de soutien à l'emploi, passed without amendment.

Bill No. 16 - An Act to amend The Child Welfare Act, passed with certain amendments.

Bill No. 21 - An Act to amend The Law Society Act, passed without amendment.

Bill No. 24 - An Act to amend The Civil Service Superannuation Act, passed with certain amendments.

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BILL NO. 8 - THE SECURITIES ACT

MADAM CHAIRMAN: Having a quorum, I will call the Committee to order. If it's agreeable with the committee, we will hear presentations first. The first presentation is on Bill No. 8, Mr. John Thresher of ACRES.

MR. J. THRESHER: Good evening, Madam Chairman, members of the committee. I am appearing before this committee this evening to express my concerns in respect of Bill No. 8, An Act to amend The Securities Act.

I represent and am President of the Association of Canadian Real Estate Syndicators, or ACRES for short.

Ladies and gentlemen, make no mistake about it, this is a major Manitoba industry. ACRES counts among its founding members major Winnipeg companies with household names, such as, Shelter Corporation of Canada, Qualico Developments Ltd., Imperial Group, Lakeview Development Ltd., Duraps Corporation, Penner Properties Western Ltd. and my own company, Equion Securities of Canada Ltd. It has been called Manitoba's sleeping giant. Not so; it is alive and well and fully awake.

I believe it is necessary to explain for a moment what this industry does, just how large this industry is, and what it represents to Manitoba in particular. Real estate syndication - a term you have all heard I'm sure - in its very simplest form is the breaking down into smaller parts for ownership purposes major real estate projects. For example, right next to our Legislative Building here, Towne Square on the corner of Assiniboine and Kennedy, is a syndicated real estate project; the Tuxedo Shopping Centre, a commercial complex in south Winnipeg, is a syndicated real estate project; both of those projects put out by member companies of this organization. These are but two examples of the thousands of projects developed, constructed and sold to Canadian investors right across Canada.

Manitoba and Winnipeg, in particular, is the clear and acknowledged leader of this industry in Canada. Over 50 percent of all the projects syndicated over the last 10 years in Canada have emanated from this city. In dollar terms, the industry has been responsible for between 15 and 20 billion, and I mean billion dollars of activity over those last 10 years, which means that the Winnipeg companies, as founder members of this industry association, have been responsible for over 50 percent of that total. That means nearly $1 billion per annum for each of those 10 years. So you may be tempted to ask, what does that mean for the less well-off people in our society? Quite literally, in each of those 10 years, it has meant thousands of jobs, pay packets and total industry construction activity which has resulted in, according to CMHC statistics, not my own, the provision of over 300,000 residential units,

apartments for people to live in. The consequent economic multiplier effect from this wave of activity helped to lessen the impact of the serious recession which gripped the whole of Canada in 1981 and 1982 and from which we are still feeling the after-effects.

This industry has been likened, I believe rightly, to what Great-West Life and the Investors Syndicate meant to Manitoba, when they first located here. Our financial expertise and asset base in Manitoba is considerable, and the manpower resources are available to continue to build this industry further.

Why are we here this evening? We are here because this is a necessarily complex and heavily regulated industry in which the ground rules are different in every province in Canada. Unfortunately, the ground rules in Manitoba are more antiquated than in any other major province in Canada today. It is necessary for me to take just a moment of your time to explain those rules as they are today.

Manitoba presently has two separate acts which have been enacted by the Legislature to govern the regulation of securities in this province: The Securities Act, 1970, which is a 1968 act; and The Securities, 1980. The 1980 act which is based upon and similar to the legislation now in effect in Ontario and Alberta, was enacted as a response to the recognition that Ontario, as the primary securities jurisdiction in this country, had changed the laws and procedures governing the sale of securities dramatically. However, the 1980 act, Bill 72, has never been proclaimed. As a result, securities transactions in Manitoba are still governed by the 1970 act, 10 years earlier. As a result, many principles contained in our 1980 act, which now govern the conduct in the securities industry in the primary securities jurisdiction in Canada - that's Ontario - are not applicable in Manitoba.

This obviously leads to inconsistencies between the policies that are in force in Manitoba and those that are in force in Ontario and most other jurisdictions. For example, there are a host of statutory exemptions in the Ontario legislation designed to facilitate transactions with the public that are not available in Manitoba. In Manitoba, under present legislation, discretionary exemption orders must be obtained from the Securities Commission to enable many offerings to be made available to the public which would be exempt under the 1980 act. Moreover, because many activities must be cleared by way of discretionary exemption orders as opposed to statutory exemptions, the possibility of internal inconsistencies arises.

The potential for these inconsistencies, both internal and with external jurisdictions, creates uncertainty and anxiety within the securities industry. It makes it difficult for securities participants to predict what documentation they may need, the costs of such documentation, and indeed the structure of offerings to be made in Manitoba. This results in time delays, time delays cost money, and ultimately the consumer pays.

Furthermore, they make it difficult for many offerings which may be cleared in other jurisdictions, most notably in Ontario and Alberta, from being cleared in Manitoba at the same time and in the same form. Over the last two years, many securities companies have chosen to avoid the clearance of offerings in Manitoba, rather than spend the time and effort involved. This has meant hardship for many of the developers concerned, and has excluded any Manitoba investors from participating in such projects. I would like to present you with two simple brief examples to illustrate my point:

1. An oil drilling project operation was planned to extract oil in Virden, Manitoba. It was proposed to raise the necessary capital by way of a private offering memorandum across Canada. However, because this will not be by way of public prospectus it cannot, under existing legislation, be cleared in Manitoba or offered to Manitobans for participation.

2. A refurbishment and renovation of a closed Safeway store in Winnipeg was planned which would have encouraged new tanants and businesses to occupy the renovated space. This would have filled the void created by the loss of the retail operations. However, the developer planned to solicit capital from a small number of business friends and aquaintances. However, since there are no small "seed-capital" provisions available in Manitoba, under current legislation he took legal advice which was that he should not proceed, and all plans were scrapped for a most worthwhile community project.

Bill No. 8, An Act to amend The Securities Act of 1970 has now passed for second reading. It has been represented and purports to bring our antiquated legislation into lockstep with the other major securities jurisdictions in Canada notably Ontario and Alberta. Ladies and gentlemen, I submit to you that it does not achieve this.

There are only two essentially relevant sub-sections, Subsections 19(3) and Subsection 20(1). The sophisticated investors exemption, as it's called, Sub-section 19(3) which is now extended to individuals and exempts trades where the aggregate acquisition cost to the purchaser is in excess of $250,000.00. The maximum amount by comparison of a comparable limit in other jurisdictions is $97,000 under current legislation. That is two-and-a-half times what is proposed.

The other relevant clause is Sub-section 20(1) which effectively gives the Securities Commission the ability to exercise its discretion and grant exemption where it considers this appropriate. I do not believe it is necessary to burden the Commission with such widespread discretionary powers.

Bill No. 72, The 1980 Act, if it were proclaimed today contains several statutory exemptions which require no discretion of the Securities Commission and which are allowable under that statute. Those statutory exemptions exist to facilitate the transaction of business in other provinces of Canada, and it is, to say the least, somewhat ironic that in Manitoba today, the heart and soul of this massive industry, that we have the most antiquated laws governing the sale of securities. Yet, at the same time we have on the statute books the yet unproclaimed Bill No. 72, The 1980 Act, which if proclaimed would enable this industry to maintain its present lead in Canada to move ahead and flourish for the better good of Manitoba industry.

Bill No. 8 simply will not do as it stands. I understand the Manitoba Bar have worked out an interim proposal which may suffice until Bill No. 72 can be proclaimed.

Give us the rules under which to operate, and we will do the job. Thank you, Madam Chairman.

MADAM CHAIRMAN: Thank you, Mr. Thresher. Are there questions? - Mr. Penner.

HON. R. PENNER: I just wanted to thank Mr. Thresher both for his presentation here this evening and for making his concerns known to me in a meeting a short time ago. I simply want to note, I think the overall objective shared I think on both sides of the table and with the industry of proclaiming Bill 72 in the near future is a shared objection.

Having said that, I realize that the Bar will be making a presentation shortly and indeed they've been in some discussions with the Securities Commission. I believe there's some interim understandings which can lessen some of Mr. Thresher's concern, and I will wait until I hear from the Manitoba Bar, before an overall response. But just to say that we certainly do recognize the importance of the industry and believe that it is a well-regulated industry, and there's no cause for concern, in terms of the way in which it deals with the public. We do want to move it forward and I think we do have that shared objective.

MADAM CHAIRMAN: Are there any further questions? Mr. McKenzie.

MR. W. McKENZIE: Just one question, Madam Chairman. I wonder if I can ask Mr. Thresher if he or any of his group had any discussions with the Minister of the department, or why they never proclaimed that 1980 bill?

MR. J. THRESHER: In previous periods - I should first of all say that while this industry has existed in somewhat fragmented form over the last few years, it's only this year really that it has formed a formalized industry association. I am not aware myself of any direct approaches to the Minister in the past.

More recently we have requested, informally, that Bill 72 be proclaimed and it was merely my intention to underscore that this evening.

MADAM CHAIRMAN: Are there any further questions? On behalf of the Committee, Mr. Thresher, I thank you for coming tonight.

MR. J. THRESHER: Thank you, Madam Chairman.

MADAM CHAIRMAN: Mr. Sandy Riley, Manitoba Bar Association.

MR. S. RILEY: Madam Chairman, members of the Committee.

The Manitoba Bar Association Securities Law Subsection was established some nine months ago, for the purpose of making comment from time to time, on matters affecting the Securities Industry in this province. The reason that the lawyers who practice in this area felt that the formation of such a committee was essential, is that in many ways the Securities Industry is a very misunderstood and highly technical industry to most people in the public. Yet, the Securities Industry and the regulation of Securities Industry is extremely important for the implementation of certain important public policies, for example, the mobilization of capital.

In this province of ours, it's extremely important that the legislation and regulatory policies of the Government of the Day facilitate the raising of capital, particularly for small business ventures, to go hand-in-glove with policies such as the Venture Capital policies.

We have, over the course of the past six to nine months, worked very closely with the Manitoba Securities Commission. We've received great co-operation. I'm pleased to see both Mr. Peden, the Chairman of the Securities Commission, and Mr. Jacksteit, the counsel, here because both of them have been extremely co-operative with us and I think the events of the last several weeks, since the implementation of Bill 8 continue, that policy of close co-operation between the Bar Association and its Subsection on the one hand, and the Commission on the other hand.

When Bill 8 was originally introduced in the Legislature, many members of the Bar Association Subsection were concerned because there was a feeling that perhaps Bill 8 would be viewed as a panacea. Bill 72, as Mr. Thresher has mentioned, is on the books of the Legislature. It's never been proclaimed and it's been a great concern to many practitioners that that bill has not been proclaimed.

The legislation in that act basically mirrors, in large part, legislation in Ontario and Alberta, legislation which essentially affects the major securities jurisdiction in Canada. By having our legislation out of step, as it were, with legislation in the two major jurisdictions has caused a difficult time for lawyers who wish to advise their clients as to the regulations they must meet not only in this jurisdiction but also in the other jurisdictions, and also has made it somewhat awkward, as Mr. Thresher has pointed out, for an indigenous industry in this province, one which we believe should be encouraged to perhaps operate in the jurisdiction in Manitoba. We understand, though, from subsequent discussions, both with Mr. Penner which he's alluded to and also with the Commission, that the government is committed, as is the opposition, to the implementation of Bill 72 at the earliest feasible moment.

We're aware of two reasons that Bill 72 has not been proclaimed. The first reason relates to the fact that while there are some important aspects of Bill 72 that Mr. Thresher has touched on, which I would like to deal with shortly, there are a number of problem areas. We recognize that fact. The Ontario legislation was a rather significant move away from previously existing securities law principles. However, there is a present move afoot in Ontario, we understand fairly quickly, to amend the Ontario Act and to correct a lot of the problems. We're prepared, I guess as a profession, we would like to see Bill 72 proclaimed at the earliest feasible time, but we recognize the concerns of the Commission and of the Minister, that when the act is brought in, a lot of the problems that have cropped up in other jurisdictions be dealt with, particularly if Ontario is in fact planning major amendments.

The other reason we've had given to us from time-to-time as to not proclaiming Bill 72 is strictly a question of dollars and cents and we appreciate that the government is facing some financial constraint at this time, obviously. We would like the government and the opposition to recognize that the Securities Industry, while it is a highly esoteric area, is also extremely important for the purpose of developing industry in this province, and if the government wishes to see a strong

vibrant economy, one of the best ways that it can be done is to encourage the mobilization of capital.

So while we recognize and appreciate the difficulties that the government faces, we would like to urge the government and the opposition to support a move, to support properly in a financial sense, the Securities Commission so that it can do its job and proclaim the necessary regulations.

On the understanding then, as Mr. Penner has stated, that the government is committed to bringing in Bill 72 at the earliest feasible moment - and I use those words, he may wish to correct me at some stage - but at the earliest feasible moment - the Bar Association does endorse the enactment of Bill 8 with two, I would say, or three caveats, in a sense.

Firstly, Section 5 of the act presently, Section 5 of Bill 8, is designed to amend Section 19(3) of the act. Section 19(3) is one of the few statutory exemptions in our present legislation designed to encourage the mobilization of capital on a fairly low-cost basis. It's a so-called sophisticated investor exemption. It's designed, at the present point in time, only for corporations who wish to buy securities and those corporations, if the value of the security is more than $97,000, a security can be sold to those corporations without the need for a formal prospectus.

Now just to set it in context, the preparation in prospectus is a long, very time consuming, very costly procedure. It's something that is important for the protection of the public, but is deemed that if the value of the security - it is thought, I guess that if the value of security is large enough, there is no public policy reason, shall we say, for requiring the preparation of these extensive documents. An investor, who is prepared to put that kind of money into an investment, presumably has the resources and the intelligence and the wherewithal to do the proper investigation on his own.

Section 5 purports to increase the amount of the limit from $97,000 to $250,000, and also to extend the exemption from, not just corporations to individuals. The Bar Association supports the concept of extending the statutory exemption contained in Section 19(3) to individuals. In our view, there is no distinguishable difference between a corporation on the one hand and an individual on the other hand. Both of those organizations are sophisticated and presumably rely upon the judgment of individuals, whether they be a corporation or an individual, to make an investment decision.

We believe, and it has been recognized in fact to a certain extent in Policy 315 which was recently promulgated by the Commission, that it is desirable to make it more feasible for individuals to acquire investments of a higher cost with a lower time involvement and lower documentation requirement on the part of the person who is offering the security for sale.

However, the Bar Association does not support the raising of the limits from $97,000 to $250,000 at this time. At the present point in time in Ontario, the limit is $97,000, albeit in the Ontario act limited only to corporations. There is some suggestion that Ontario is considering raising the limits from 97,000 to 250,000.00.

The same suggestion applied in Alberta, but Alberta's recent amendments resulted in a proposed decrease from 97,000 to 25,000.00. Now whether that legislative amendment stands, it's indicative, I think, of the fact that there is no certainty that the $250,000 limit that's proposed in Ontario will, in fact, be adopted.

We would favour implementation of Section 5, but on the understanding that either the limit is established at the $97,000 limit that presently pertains and is then subject to amendment at a later point in time, or that the limit not be specified in the act but be dealt with by regulation.

Now there are, in our view, a couple of other important points as to why we don't believe that Section 5 at this stage should be implemented. There is, as I indicated, a debate in Ontario at the present time reviewing their legislation. One of the items under consideration is whether the limit would be 250,000, 100,000 - whatever. In our view, to establish a limit at this stage would, in effect, prejudge the debate that takes place in Ontario amongst a very sophisticated, very broadly-based community representing consumers, the securities industry and government authorities, not the least of which would be representation from the Ontario Bar.

So in that sense, we believe to enact a change at this stage when we're planning to implement Bill 72, which is the 1980 act, at its earliest possible convenience is, in effect, prejudging the debate that will take place in Ontario and is also, in our view, redundant in that when Bill 72 is proclaimed, presumably it will be proclaimed with the necessary legislated amendments that will bring our statutory limits into line with Ontario's.

The other point that we wish to draw to the attention of all members is the extension of discretion under Section 20(1) of the act. That's set out in Section 6 of Bill 8. We are in favour of that extension of the discretion of the Commission. We recognize there are always potential problems when discretion is granted out, but we are confident that the Commission will exercise that responsibility as it has in the past in a very responsible fashion.

Our concern really is that - our suggestion - and in fact we have had discussions with the Commission which indicates they are prepared to seriously consider these points - we understand that the intention of this section is to expand the seed capital provisions that Mr. Thresher referred to earlier, the provisions designed to encourage the raising of capital for small business ventures. So programs such as the Venture Capital program can succeed. We strongly recommend to the Commission that they seriously consider using Section 20 as it will now stand when it's an act under Bill 8 for the purpose of developing local policies and blanket exemption orders designed to facilitate the raising of capital for these smaller business ventures.

The Commission I know will consider this fact and we, in the Bar, look forward to working with the Commission as we have in the past on the development of these policies so that we can raise money for smaller business ventures.

I want to say one more thing, that the Commission, as I emphasized at the beginning, has been very very helpful to the Bar Association. We would like to think that the Bar Association has provided a useful function to the Commission, and we look forward, with the co-operation of the government, in terms of establishing as a priority the implementation of Bill 72 to working

on a regular ongoing basis with the members of the Commission and its staff so that we can be of assistance in the implementation of securities legislation that will be of real benefit to the province.

That's my presentation, Madam Chairman. Thank you for your attention.

MADAM CHAIRMAN: Questions? Mr. Penner.

HON. R. PENNER: Just very briefly again, I want to thank Mr. Riley with whom Mr. Anhang and Mr. Thresher had an amiable conversation about a week ago. I think that the two major concerns which have been raised with respect to 5 and 6 of the amending bill can be dealt with; 5, of course, doesn't come into force until proclaimed.

I can say here for the record that it will not be proclaimed until the situation sorts itself out with respect to Ontario primarily, Alberta to a lesser extent, or Bill 72 is proclaimed, whichever comes first, so that I can give the industry some assurance that we are not going to move unilaterally to a new threshold that will take us drastically out of step with Ontario. Indeed, as I stated in the House, the purpose here was to just have us in a state of readiness should we have to move to bring this into step with Ontario if we hadn't proclaimed Bill 72 by then.

Finally, with respect to Section 6, the discretionary section, I am heartened by the strong level of co-operation that exists between the industry and the Manitoba Bar, Security Subsection, and the Commission. Indeed, I have no doubt that will continue and I would urge the Bar subsection and the industry to meet with the Commission. The Commission, I am sure, is open to that. It's up to the Commission, of course; it's an arm's length Commission, but I am sure that some local policy or policies might be elaborated on a consensual basis as to a seed capital provision that can operate in the interim. It might be the same as the one that is in Bill 72, and that's to be worked out, I think, in the first instance between the Commission and the industry and the subsection, and anything else that might be suitable for a policy or policies so that it isn't purely discretionary in the sense of being ad hoc. It is discretionary but there are fairly clear guidelines on the major areas, the seed money area and the government securities area.

So just with those remarks, I welcome the contributions that have been made and you certainly can count upon the support of the industry from government and I am sure from opposition.

MR. S. RILEY: Thank you.

MADAM CHAIRMAN: Any further questions? Thank you very much.

BILL NO. 21 - THE LAW SOCIETY ACT

MADAM CHAIRMAN: We will move on to Bill 21. Mr. David Matas from Manitoba Association of Rights and Liberties.

MR. E. LIPSETT: Mr. Matas is not here to address them, so I was authorized to substitute for him.

MADAM CHAIRMAN: Very good, sir.

MR. E. LIPSETT: My name is Edward Lipsett. I am appearing on behalf of the Manitoba Association for Rights and Liberties. Unfortunately, my co-author of this brief, Mr. David Matas, who is also a co-convenor of the Legislative Review Committee of MARL is apparently unavoidably detained. So, if I may, could I proceed?

MADAM CHAIRMAN: Certainly. Go ahead, Mr. Lipsett.

MR. E. LIPSETT: The Manitoba Association for Rights and Liberties, MARL, is seriously concerned with some of the dangers that the proposed new Section 45.1 creates. It compromises the "solicitor-client privilege" as well as the "substantial right of confidentiality" a client enjoys concerning communications with his solicitor. Furthermore, it could imperil the appearance of confidentiality, the client's sense of security and his right to privacy. This proposed new section could adversely affect the judicial system and the administration of justice. Although not relying exclusively or primarily on constitutional issues, we must note that some "Charter of Rights" values are at least implicated.

We recognize that the bill's proponents wish to limit these intrusions to as great a degree as they can be minimized, and have attempted to create substantial safeguards to protect the rights and interests referred to. However, we respectfully suggest that the safeguards do not seem to go far enough, and if this section is to be enacted, further safeguards are needed. However, we doubt that any safeguards could adequately alleviate the problems referred to and we respectfully request that this section be withdrawn completely.

Regarding the proposed Section 45.1(1), what is the meaning and scope of this subsection? If by "any client files or records" is meant only those pertaining to a particular client who complained against the solicitor in question and that are necessary to the allegations in question, this would not unduly impair the "solicitor-client privilege" as, by complaining, a client would be deemed to have implicity waived the privilege to the extent necessary for the investigation. Indeed, this admendment would probably be unnecessary as the common law recognizes the implied waiver. In the case of other clients, anything less than express, voluntary waiver of their privilege would unduly impair the privilege.

As this proposed section probably intends to refer to clients other than complainants and irrespective of waiver, it leaves very serious questions unanswered: Who is to decide what files the governing body may "reasonably require"? The "governing body" itself? What does "reasonably require" mean? Is this an open-ended invitation to a fishing expedition? Fishing expeditions concerning private information are undesirable under any circumstances. Such fishing expeditions are especially intrusive in a relationship such as lawyer-client where the expectation and need for privacy are even more profound and, through the centuries, come to be expected as a matter of course. If it is decided to proceed with this amendment, we respectfully suggest that:

(i) the circumstances where such files can be obtained be more carefully defined in the legislation;
(ii) the governing body must apply to the Court of Queen's Bench for access to the files and the Court must decide if the criteria are met;
(iii) in such application, perhaps notice should be given to the client whose files are in issue, and he ought to be given opportunity to oppose each access before the Court.

Perhaps in such cases it would be fair to require the Law Society or the public to reimburse a client for the cost of retaining a new lawyer for this purpose? Since the Law Society takes this unusual action, it seems unfair to require the client to have to pay to defend what he ought to be entitled to take for granted, that is confidentiality.

Going on to proposed Section 45.1(2) and 45.1(3). The "persons" referred to in these subsections could refer to a fairly large number of lawyers in private practice (e.g., inter alia members of "standard" judicial "committees") and that most members of these committees are primarily private practitioners - and it is conceivable that they could come across files of clients adverse in interest to their clients. Should it be required that such lawyers disqualify themselves from continuing to handle such cases on behalf of their former clients? Failure to require such disqualification could lead to conflict of interest, as well as apprehension on behalf of clients of "allegedly incompetent" lawyer, under investigation that is, that knowledge obtained from their files could be used against them. Yet requiring such disqualification by members of the judicial committees could cause considerable chaos, considering the number of lawyers involved on Law Society committees and the number of potential files involved. Such dilemma presents clear and eloquent testimony as to the undesirability of this proposed new section concerning Section 45.1(4).

Should it say that the courts not only may but shall exclude the public, or would this cause "freedom of expression" or "access to the courts" problems? In such cases, it should also be expressly provided that the relevant committee of the governing body should be required to exclude all members from the hearing, notwithstanding Section 42.(1), which gives members of the Law Society the right to be present.

Regarding Section 45.1(5). Though this subsection is necessary if this section is to be enacted, it is a further illustration of the danger this section could pose to the administration of justice itself. An appellate judgment which must omit information from its reasons is inherently unsatisfactory. First of all, it could render the job of the Supreme Court difficult in case of further appeal. Secondly, a reasoned decision with some of the relevant information missing could be defective or misleading as a precedent. Additionally, the omission of material facts could be unfair to the reputation of the lawyer considered if the disciplinary action against him is upheld, as it could leave him open to suspicions worse than the facts warrant. Again, this illustrates the untenable situation this section could cause.

Irrespective of the information included in or excluded from the reason of the Court of Appeal, this entire section creates a very serious problem for that court and for the administration of justice. What would happen if an appeal from a barrister's discipline came, and the otherwise "privileged" files included material concerning a former client's case still pending before the Court of Appeal? Is there a danger that such material could prejudice the Court of Appeal against the former client, or at least raise reasonable apprehension of such bias? Would the justices who heard a disciplinary appeal have to disqualify themselves from hearing an appeal concerning any case where they had access to files? If so, this could create a considerable amount of chaos. Undoubtedly, the appellate justices would be able to disregard such prejudicial material in most cases, but the danger would remain if they were not disqualified. Furthermore, the apprehension of bias would remain. This could impair the confidence in the courts and further deter members of the public from completely confiding in their lawyers.

The fundamental nature of the right to confidential communication with one's lawyer, and the necessity of evidentiary privilege concerning such communications have long been recognized. These are legacies of the Common Law which long preceded the Canadian Charter of Rights and Freedoms, but which may well have expanded relevancy in light of the Charter. This amendment, notwithstanding all its safeguards, does diminish these vital protections. This diminution would likely be greatly exaggerated in the minds of the lay public, whose confidence in the legal profession and legal system is more important now than ever. To impair these great legal concepts would, we respectfully submit, be wrong. To reduce the psychological benefit inherent in a citizen's knowledge that he has at least someone in whom he can confide his secrets with the virtual certainty that they will be out of the bureaucracy's reach, may well be unconscionable. MARL therefore respectfully requests that the proposed Section 45.1 not be enacted.

Mr. Matas isn't here, I'll be prepared to answer any questions.

MADAM CHAIRMAN: Fine. Mr. Penner.

HON. R. PENNER: Two questions, Mr. Lipsett. On your scale of values, how would you rate the protection of the client as compared to the protection of the lawyer?

MR. E. LIPSETT: Mr. Attorney-General, it is the client who we seek to protect here. It's always been recognized that it's the client who possesses the privilege, the solicitor-client privilege. It's for the client's basis, not for the lawyer's, and we recognize the need for a highly qualified Bar and there are certain cases. But by allowing the Law Society to see the files of the client, irrespective of his or her complaint, irrespective of her wishes, it is the client's rights that are impaired - maybe not so much the actual legal prejudice, although there would be some possible impairment, but the psychological prejudice. A client must know with virtual certainty that anything he or she says to his lawyer will remain virtually inviolable. We are not opposing high standards of legal practice, but this particular means, we respectfully submit, is inappropriate to the end . . . benefit.

HON. R. PENNER: So your short answer is that you think that protecting the client is more important than protecting the lawyer.

Following that . . .

MR. E. LIPSETT: I didn't say that one is more important than the other. Certainly a lawyer has to be protected, according to the rules of the fundamental justice, that's not an issue in this brief. We can't really rank one or the other; they're both fundamental values.

HON. R. PENNER: Yes, I asked you a question and you answered. The question I asked you is: which do you think to be most important? Perhaps a short answer will do, Mr. Lipsett.

MR. E. LIPSETT: I think that they would be both of equal value. You can't really rank them.

HON. R. PENNER: All right, I'll accept that.

MADAM CHAIRMAN: Excuse me. Could I have some order. First of all, Hansard will not be able to tell on their recording which of you is speaking.

HON. R. PENNER: Well, mine will be the shorter intervention.

MADAM CHAIRMAN: All right, Mr. Penner. Order please.

HON. R. PENNER: Well, I don't think I'll pursue this much further, but are you then saying that with respect to an investigation where there's been some prima facie evidence of breach of trust and criminal fraud, that you would make the same objections with respect to the seizure of the client's files, in order to investigate this crime?

MR. E. LIPSETT: Criminal fraud by whom? By the lawyer against the . . .

HON. R. PENNER: By the lawyer.

MR. E. LIPSETT: In a case like that it is highly unlikely that the client would object to his files being examined. Indeed, once it came to his attention, he'd certainly attempt to bring the matter to the Law Society. That wouldn't be the problem here. What we object to is the apparent wide wording which could enable the Law Society to go after files, irrespective of complaint.

HON. R. PENNER: Well, I think, Mr. Lipsett, with respect, you haven't read the legislation as closely as you might. Because clearly what we're talking about is a procedure where there has been a question of the competency of the lawyer, and acting under his jurisdiction to protect the public against incompetency as much as against fraud, the Law Society wants to conduct an investigation to protect the client.

MR. E. LIPSETT: On what basis would they have to have the grounds to believe that the lawyer has acted incompetently or fraudulently? If it was based on the client's complaint, state that. If it could be just based on suspicion, well, then at least notify the clients concerned that his lawyer's under suspicion and request consent. The wording of the statute is open to the interpretation at least that whenever the government body feels that there's reasonable cause.

MR. W. STEEN: Madam Chairman, on a point of order. I don't think the person making representations in committee should be interrogating the Attorney-General. I hate to see the Attorney-General put at such a selfless defensive position and so on, and the Attorney-General was asking the delegation questions and the delegation should answer them as such.

MADAM CHAIRMAN: Frankly your point of order is well taken. This is not a forum for debate, this is forum for members of the committee to question the delegate, and for the delegate to choose to answer the questions or not.

HON. R. PENNER: Eddy's my former student. I've got to support him.

MR. E. LIPSETT: It is a rhetorical question. I was certainly intending no disrespect of the Honourable Attorney-General or to this committee.

MADAM CHAIRMAN: Mr. Penner, a question?

HON. R. PENNER: Just one further question so that I understand the point that Mr. Lipsett is making. Are you then suggesting that where one client has complained to the Law Society alleging incompetence, then in that case because there's an implied consent, if not an expressed consent, from the client the Law Society can go in and seize that file and make a judgment as to competence based on that one file and not go any further?

MR. E. LIPSETT: I recognize there will be a problem finding evidence of competence on that one file alone. I'm not saying it will be an easy task. Perhaps if there are several such complaints though, a cumulative effect could lead to a proof of incompetence. If there is only one complaint perhaps it is an isolated incident and the ordinary law pertaining to either remedy for damages on behalf of the client, or if it's that severe to constitute maybe gross negligence that they could get him under conduct unbecoming. I must emphasize, we appreciate the problem that the Law Society and the Attorney-General is facing. It's just that some of the methods quite frankly frighten us a bit.

HON. R. PENNER: Thank you very much, Mr. Lipsett for your thoughtful presentation.

MADAM CHAIRMAN: Are there any further questions? I thank you very much, Mr. Lipsett. Are there any other delegations on Bill 21?

BILL 28 - THE EXPROPRIATION ACT

MADAM CHAIRMAN: We'll move to Bill 28 - Mr. Dave MacNeill, Russell L. Towle Enterprises.

MR. D. MacNEILL: Thank you Madam Chairman.

As the Chairman said, my name is Dave MacNeill. I'm President of Russell L. Towle Enterprises Limited.

I'm coming to talk to you tonight about the expropriation of Bill 28 because no one's ever come to me about it.

We've had our property at the corner of Portage and Vaughan Street for 45 years. We've owned that property, we have been very responsible landlords. We have a business in there we've had there for 45 years. The intent of the expropriation is absolute nonsense and I have a statement I would like to read to you tonight to get my view across as I said before because no one's asked us.

I'm appearing before you tonight to ask that some common sense be use in respect to the expropriation and that justice be done. If you have read the Tonn report and the Reader's Forum in the Winnipeg Free Press of June 2, 1984, you know my position against the expropriation. In addition, every columnist who has written an article about the expropriation for the press has been either against it or expressed grave doubts about its necessity, fairness, vagueness or viability, yet no one has answered these charges or spoken in favor of the project except to say that need for the land is crucial.

I say that common sense dictates that the expropriation be cancelled. It is nonsensical to destroy the sound business base in the area now - 50 viable and successful businesses - in order to implement such a nebulous plan as that put forth by North Portage Development Corporation. It is outrageous to spend $65-70 million of the taxpayers' money to facilitate this scheme - to seize private property to be turned over to private developers as an inducement to get the scheme under way at a time when the three levels of government are freezing or cutting back on financial support of various social programs and agencies due to lack of funds. The last thing this city needs is another large retail complex. It is overbuilt now due to the lack of foresight of the city administration in not gearing shopping centre growth to the city's slow population growth.

If the scheme proceeds and succeeds in its aim to draw business back to the downtown area from the suburban shopping malls, has any consideration been given to the effect that that would have on the merchants in the shopping centres? There is only so much business to be shared and any business drawn back to the downtown area must come from the presently established stores. How many of these merchants will be sacrificed for this scheme in addition to the 50 directly affected? The Tonn Report revealed grave weaknesses in the plan of the North Portage Development Corporation and possible weakness in the legality of the expropriation. The Tonn Report was ignored and the expropriation proceeded resulting in a grave injustice being perpetrated on the merchants and landowners in the area by the three levels of government, an injustice to be financed by the taxpayers of this province.

In order to ensure its legal position, the province introduced Bill 28. This act says in fact that no matter what the law is now, everything is valid, legal or not, and cannot be attacked by anyone in any way. What we have here is an unjust act being passed to try and validate an unjust expropration. For centuries, dictatorial governments have passed laws of this kind to exploit and suppress their citizens. The validity of the law does not make it right or just in the eyes of a democratic country. I fear that Bill 28 falls under that category and has no place in the laws of our land. Bill 28 is attempting to close the only avenue left open to individuals who are trying to protect their rights, businesses and livelihood. Where is the justice in that, I ask you?

I did this very quickly because I has short notice on this thing, but in tonight's Free Press they have an editorial entitled "Unleashing Urban Sprawl." I want to quote it and it refers to the city wanting to expand its developments south of Warde Road which you guys are fighting with them right now.

The press goes on and says this; "With one hand the city council is putting up one third of the money to make the inner-city a more attractive place for people to live, to work, to shop. With the other it is sending these people to live so far away that they cannot enjoy what they and other Winnipeggers are paying for. When the inner city continues to be less densely populated and used than its attractions would justify, those same councillors will scratch their heads wondering where all the people went. Others will find the results to be proof that core area renewal was a wasted effort.

"Core area renewal is not a wasted effort. But municipal insistence on continuing to depopulate inner Winnipeg can turn into a waste of effort, money, time and land. The Winnipeggers who are putting up the Core Area Program money through the three levels of government that tax them, should not stand for the sabotaging of the program by the city."

My point is, all the problems of the inner city have been caused by our city council, by expanding the shopping centres, hook, line and sinker all around the city. You cannot keep building more stores and more stores and putting up free parking and protecting environments without drawing it away from downtown. There's no rhyme nor reason for spending all this money when everything is so nebulous. That's what I want to get across.

Thank you very much. I'll take any questions you want.

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. MacNeill, first of all, when did you receive notice of the committee meeting?

MR. D. MacNEILL: I received notice at five o'clock tonight.

MR. G. MERCIER: Second question, Mr. MacNeill. Where is your place of business?

MR. D. MacNEILL: At Portage and Vaughan Street. The Scientific Building where Shaino's used to be. It's empty now and it has been empty for the past year because no one will rent it with the indecision going on in the area.

MR. G. MERCIER: How long have you been in business there?

MR. D. MacNEILL: 45 years.

MR. G. MERCIER: You're the owner of your . .

MR. D. MacNEILL: We're the owner of the building. We have our own beauty school - the Scientific Beauty school - we have 6,000 square feet on the second floor. Our corporate head office is on the second floor as well. We have 13 beauty schools across Canada as one part of our organization.

MR. G. MERCIER: Mr. MacNeill, I think it's related to your problem, but we have heard from time to time of the assessment problem north of Portage Avenue.

MR. D. MacNEILL: That's correct. That was another obstacle placed by the city, freezing the taxes on that part of the city. The taxes on our building are $60,000 a year. The gross rental is not even that now. That's forced merchants away from the north side.

Now that the expropriation has come through, the Supreme Court has disallowed that freeze. Now appeals are allowed, but why should I appeal now? I don't have a building anymore.

MR. G. MERCIER: Mr. MacNeill, what are you going to do if you have to move?

MR. D. MacNEILL: Well, I've been looking right now. I can't find 6,000 sq. ft. of space at a reasonable rate in the downtown area. Half of the spots are being taken away that I could have moved to. The rents on the south side of Portage Avenue have doubled in the last year because the people over there, they know what these people on the north side are being faced with. I feel like a voice in the wilderness here. I talked to all the merchants, I talked to Henny Penny right next door to me. That guy's been expropriated twice now. The poor immigrant, he came over from Greece 16 years ago. At the Tonn Commission he was crying - what's he going do? He hasn't been paid off for the first expropriation yet. It's sad!

MR. G. MERCIER: Mr. MacNeill, are you saying that you can't find rent that is viable enough for you to continue to operate your business?

MR. D. MacNEILL: At the present time, I can't find anything. No, I haven't looked that hard because it's our building. We don't know when we're going to have to move, but I've had my eye open. I know there are one or two spaces I can go to. We have to be downtown. We have 13 schools in Canada, they're all right downtown.

MR. G. MERCIER: How many tenants do you have in your building did you say?

MR. D. MacNEILL: We have approximately five besides ourselves.

MR. G. MERCIER: Have you discussed their having to move with them and what their plans are?

MR. D. MacNEILL: I have discussed it with one tenant. They don't know what they're going to do either. Everybody else is afraid. They know it's hopeless, but I'll stick up for my democratic rights and I'll fight for them too.

MR. G. MERCIER: These tenants in your building, are these successful business operations?

MR. D. MacNEILL: Yes, they are, except one. Our own school has been there for 45 years. We have 100 students in that school. We have hundreds of people coming to the north side of Portage Avenue every day. They want to kick us out. No, I'm not against the development. I've lived in Manitoba all my life. I've worked on downtown Portage Avenue for 25 years. I've seen what's happened to that place. I've seen it go down hill. Everybody's going out to the shopping centres to shop. The city has done nothing except block it. Any merchant that went in there had a hard time, but the ones who are there now are good and they stayed there. They stayed there despite everything the city has done and now they're going to continue with it.

MR. G. MERCIER: Mr. MacNeill, the suggestion will be made to you that somehow there will be some accommodation attempted whereby you can fit into the overall development.

MR. D. MacNEILL: In the letter I wrote to the forum of the press, I put explained that. That's impossible! They tear down the person's building, where does he go for the two years between the time it starts construction and the time it's finished? It's impossible! Even in that it's not necessarily right. The shopping centre or the mall environment is not the type of environment they want. Their business is not conducive to it. No one has come in the last year since this thing was first announced - that's when it started - a little over a year ago. No one has come to us, to any of the merchants in the area, and asked us our concerns or even took an inventory of our premises as to what's there now. How will it fit in? They don't care. They want to take everything down at our cost when our sewers are all backing up. Put the $22 million into a proper sewage system in the city. The province is going to put up $22 or $23 million. Put that and put floodways for the farmers so their fields don't get flooded. Don't go and wreck half a city and rip out 50 good businesses.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. MacNeill, if you had some of this money to spend that's available to this North of Portage Development Corporation, what would you do on the north side of Portage Avenue? Would you favour a parking . . . ?

MR. D. MacNEILL: I don't need that money to do it. We can do it on our own and we're prepared to, but we're not going to do anything now. We're a wealthy company. We can afford to improve our own premises and I know we can rent if that burden, that cloud was not hanging over our head. Bill 28 is cutting our throat. They're trying to prevent us taking legal action to protect our rights.

MR. G. MERCIER: Mr. MacNeill, do you think a public parking structure north of Portage Avenue would assist the viability of the businesses on that side?

MR. D. MacNEILL: Really I don't and I don't think it will because there's no way people will drive into a

multi-storey parking lot when it takes 10 minutes to get in it and an hour to get out at rush hour. That's one of the problems with North Portage Development Corporation's plan. They can put all the stores they want downtown, but unless they give the people free parking, which they can get at the shopping centres, it won't work; and I know, I've worked in that area for 25 years and the people that make these decisions have no idea the problems that we have running a successful business. They just say, let's spend all this money. Come hell or high water or hook or by crook, they're going to spend that money.

MR. G. MERCIER: Thank you, sir.

MADAM CHAIRMAN: Are there any other question?

MR. D. MacNEILL: I want to thank you very much for letting me get it off my chest.

MADAM CHAIRMAN: Thank you, Mr. MacNeill. Are there any other delegations to speak on Bill 28? Are there any other delegations to speak on any of the other bills that we're dealing with tonight?

We have a written submission on Bill 16 which will be passed out.

Mr. Mercier.

MR. G. MERCIER: Madam Chairman, I wanted to make a comment with respect to a number of bills that are before the committee, 11, 14, 21, 24 and 28, were only passed this afternoon and I don't expect that perhaps even on those first four that I've mentioned that there would, in any event, be any public representation; but with respect to Bill No. 28, Mr. MacNeill indicated he just received notice of the committee meeting at 5:00 o'clock this afternoon and I wonder if the Clerk's Office could indicate whether or not there are more people who had indicated they wanted to be notified because obviously — (Interjection) — we can put it over until tomorrow night? That would be fine.

MADAM CHAIRMAN: The House Leader announced that we would hold Bill 28 until tomorrow night, Mr. Mercier, and everyone else on the list for the other ones have been contacted and have come.

Shall we proceed then? Bill No. 6, Mr. Lecuyer.

HON. G. LECUYER: Madam Chairman, the members from the opposition have asked if we could delay that bill until some of the colleagues who wish to speak on this bill are present.

MADAM CHAIRMAN: You mean delay it for some time later this evening?

Mr. Penner.

HON. R. PENNER: I would agree to, obviously, why not, to let it go to the bottom of the list but we're working, all of us, against an uncertain timetable. Why don't we just leave it to the bottom of the list? I understand there's one particular member who would like to be here when 6 is called and dealt with on a clause-by-clause. Is that person not available at all tonight?

HON. G. LECUYER: No.

MADAM CHAIRMAN: We held this from Thursday night till tonight.

MR. G. MERCIER: Madam Chairman, the Member for Pembina is unable to be here this evening and is the critic involved in this matter. We would ask that it be deferred until tomorrow evening. I'm not particularly aware of any great problems with the bill itself. I think there are a few comments . . .

MADAM CHAIRMAN: What is the will of the committee? We can hold it until tomorrow night if necessary.

Mr. Lecuyer.

HON. G. LECUYER: Madam Chairman, I move then that we deal with this particular bill at our next sitting.

BILL NO. 8 - AN ACT TO AMEND THE SECURITIES ACT

MADAM CHAIRMAN: Okay, we'll move on to Bill No. 8. Shall we deal with it clause-by-clause or page-by-page?

A MEMBER: Page-by-page.

MADAM CHAIRMAN: Page-by-page, okay.

Page 1—pass.

Page 2 - Mr. Mercier.

MR. G. MERCIER: I wonder, Madam Chairman, whether or not there are any amendments, particularly I think the two delegations indicated concern about Section 5 - at least the Bar Association subcommittee is prepared to accept Subsection 6 - but I wonder if the Attorney-General could indicate whether he is interested in amending Section 5, and particularly the amount of the exemption, so that it could be established by regulation?

It would seem to me, Madam Chairman, that would be a way in which the Commission could deal with the situation as it develops in other jurisdictions. I'm certainly prepared to support giving them and the government that discretion, so that the amount could be fixed by regulation.

HON. R. PENNER: Just to reiterate, Section 4 will not come into force until a day fixed by proclamation. I have given the assurances on the record, that indeed there will be no proclamation of the section until Ontario has, in fact, moved on its possible change in the threshold from $97,000 to $250,000.00

I thank the Member for St. Norbert very much for the confidence he has in this government, being willing to give us the discretion to do this kind of thing by regulation. But it's too important, I think, to be done by regulation. I would rather have it fixed.

MADAM CHAIRMAN: Page 2—pass; Page 3—pass; Preamble—pass; Title—pass.

Bill be reported.

BILL NO. 9 - THE LIQUOR CONTROL ACT

MADAM CHAIRMAN: Page-by-page?

HON. R. PENNER: Clause-by-clause.

MADAM CHAIRMAN: Clause-by-clause?

Clause 1—pass; Clause 2—pass; Clause 3—pass; Clause 4—pass.

Clause 5 - Mr. Mercier.

MR. G. MERCIER: Madam Chairman, just very briefly, the report of the Minister of the Advisory Committee on Liquor Control, completed in the spring of 1981 with respect to the supper-hour closing on Page 106, I think pointed out that the supper-hour closing is discriminatory. It does not apply to other licensed premises, including cocktail lounges. It is discriminatory against the users of beverage rooms, as compared to cocktail lounges. It is out-of-date, in that it does not exist in any other Canadian jurisdiction.

So, Madam Chairman, I would move:

THAT Section 5 of Bill 9 be amended, by adding thereto at the end thereof the following words and figures, and by repealing Clause (b) thereof, and substituting therefor the following clause:

(b) in a licensed beverage room

(i) from 1:00 in the morning on a Sunday until 9:00 in the morning on the Monday next following;

(ii) on other days of the week from 1:00 in the morning until 9:00 in the morning; and

(iii) on a holiday.

The effect is to remove the supper hour closing prohibition.

HON. R. PENNER: I suppose anything that's discriminatory and prefers one class of people over another is something which, on principle, we would oppose. Since there appears to be consensus on this, I have indicated that we will not oppose this amendment.

MADAM CHAIRMAN: Clause 5, as amended—pass.

Mr. Mercier.

MR. G. MERCIER: Madam Chairman, if I could raise another matter, the Michener Report also points out that Section 102 should be amended, because Section 102 refers to beer parlours. I believe there are only three or four beer parlours in existence in the province, one in the rural area and two in the city.

HON. R. PENNER: That's the old all-male pubs you mean?

MR. G. MERCIER: Yes.

HON. R. PENNER: And what are you proposing to do?

MR. G. MERCIER: I would propose an amendment, by leave of the committee, to Section 102 which would read as follows:

THAT Bill 9 be amended by adding thereto, immediately after Section 4 thereof, the following section:

Clause 102(1)(c), 4.1, Clause 102(1)(c) of the act is repealed.

That would delete the supper hour closing in beer parlours, of which there are only three or four according to . . .

HON. R. PENNER: Pass.

MADAM CHAIRMAN: Could we have that in writing, please? Now you've got me totally confused. That was Section 4, right? 4.1, that's a new section and that passed? Okay. Now do we move down to Section 6?

HON. R. PENNER: Yes.

MADAM CHAIRMAN: Okay, Section 6—pass; Section 7—pass; Section 8—pass.

Section 9 - an amendment?

HON. R. PENNER: Yes. I move

THAT the proposed Subsection 163(1) of The Liquor Control Act, as set out in Section 9 of Bill 9, be amended

(a) by striking out the words "such percentage" where they occur in the 3rd line of Clause (a) thereof and again in the 5th line of Clause (b) thereof, and substituting therefor, in each case, the figures and symbol "60%"; and

(b) by striking out the words "as the commission may prescribe" where they occur in the last line of Clause (a) thereof and again in the last line of Clause (b) thereof.

This is the point that was raised in discussion with the representatives of the Manitoba Hotel Association last day, in which they raised some concerns about a wide open food-liquor ratio, and this fixes it at 60-40.

MR. G. MERCIER: Madam Chairman, I raise a question. The 50-50 split has been in effect for many many years. I'm wondering whether, by going 60-40, that appears to be a very significant change. I wonder if the Attorney-General can indicate whether he and the Commission have considered perhaps a 55-45 split, which still is a significant change from 50-50.

I think it's conceded by people in the hospitality industry that the 50-50 split has caused to emerge in Manitoba some very fine restaurant and dining facilities. Certainly there would be concern among those people who have invested in those facilities pursuant to the rules and regulations of the Liquor Control Commission over the years if there's to be a large change in the basis of operation. I would ask the Attorney-General whether he's given consideration to perhaps going to a 55/45 split rather than 60/40.

HON. R. PENNER: As everyone knows, I'm generally the soul of moderation and incremental change, but rather than come back year in and year out, given some consideration and I thought with all interest now being appropriately balanced, I'm sure the hotel association will be rather more smiling than not when they leave here this evening, 60/40 or fight.

MADAM CHAIRMAN: Mr. Steen.

MR. W. STEEN: Madam Chairman, when the hotel association made their representation the other night,

they were concerned about keeping a high class and a good standard of service among licensees and they made reference to the fact that there were a small number of persons who had difficulty meeting the formula that was in place. The Attorney-General at that time asked them if a change would make a difference.

Actually the hotel industry wants to see good competent operators stay in business and that the public of Manitoba will be well served. I think that if the Attorney-General is prepared to make this change, that for some 39 or a modest number of operators, I'm sure that with the protective personnel that he has within hand at the Liquor Control Commission that they can look after those 39 people.

I would personally support the Attorney-General on this one.

MADAM CHAIRMAN: Amendment—pass. Section 9 as amended—pass; Section 10—pass; Section 11—pass; Section 12—pass; Preamble—pass; Title—pass.

Bill be reported.

Mr. Tallin.

MR. R. TALLIN: Would it be satisfactory to the committee if we renumber the bill to avoid having the decimal number in it? (Agreed)

BILL NO. 11
THE CLEAN ENVIRONMENT ACT

MADAM CHAIRMAN: Bill No. 11. Clause-by-clause. Clause 1—pass; Clause 2—pass.

Clause 3 - Mr. Kovnats.

MR. A. KOVNATS: Madam Chairman, I don't know whether to apologize or just withdraw - is it Madam Chairperson - yes.

MADAM CHAIRMAN: Thank you.

MR. A. KOVNATS: Concerning Clause 3, I've made some remarks when we were in second reading in the Chamber and the Honourable Minister said that he would respond during committee. Would the Honourable Minister advise whether the fine in Clause 3 is punitive, whether it will correct the situation by increasing in Clause (a) from "hundred" to "thousand" and Clause (b) from "five" to "fifty" thousand?

MADAM CHAIRMAN: Mr. Lecuyer.

HON. G. LECUYER: Thank you, Madam Chairperson. These changes are simply in conformity and parallel with the changes that were already adopted last year as part of The Transportation of Dangerous Goods Act. They would also conform with the Federal Transporation of Dangerous Goods Act which in fact increases or doubles on the second offence.

This particular section of the act has not been changed since it was originally implemented in 1972, so the change is simply bringing it in accordance with current times for compliance with the environmental standards.

MR. A. KOVNATS: May I suggest, Madam Chairman, it's an incentive also to not comply but to be more careful and not get caught.

MADAM CHAIRMAN: Clauses 3 to 9 were each read and passed.

Clause 10 - Mr. Driedger.

MR. A. DRIEDGER: Thank you.

I just want to express some concerns. I mentioned this in the debate on second reading in the House, that this section can give the Minister an awful lot of clout. It is my opinion, Madam Chairman, that this section gives the Minister way too much authority and this is the area where I understand that the Minister sent out certain regulations for perusal, proposed regulations for perusal, to municipal people and weed districts, etc., and there was a very concerned reaction to the proposed regulations.

I just want to question the Minister to see whether he is planning to implement the proposed regulations that he forwarded to municipalities as well as to weed districts because there is major concern that if that is what the case is going to be that there's going to be much more reaction than we have at the present time. I would just like to see whether the Minister - I missed his remarks when he closed the debate the other day in second reading - could maybe clarify whether he is planning to proceed with those proposed regulations regarding the use of herbicides and pesticides especially where they affect public grounds, for example, weed districts, roadside sprayings, etc.

HON. G. LECUYER: The member is referring to Section 14 or Clause 14.1 of the act, is that correct?

MR. A. DRIEDGER: I thought I was referring to Section 16 where "Actions by Minister in cases of danger to health." Now, I'm not quite sure under which section the Minister was sending out the proposed regulations.

HON. G. LECUYER: Okay, that is not under Section 3 but under Section 14.1 which is being repealed in the act. Under that section, so far the municipal, by repealing this section indeed, would enable us to eventually pass or put in its place a permit system which, that section or the act in itself, would be proclaimed when the proposed regulation was to be adopted, if it were to be adopted. It is currently out there to be reviewed. We're asking for consultation and when we did send out - before doing that, I have to remind the member that the various departments of government were involved on a committee. As well, we had consultations with the Union of Manitoba Municipalities and the Manitoba Association of Urban Municipalities, both bodies were invited to sit on a body to review this. Only the Union of Manitoba Municipalities had a representative in the person of Mr. Pitura, I believe that's what he's called, Carl Pitura, sitting on the committee. The proposed regulation is just that, a proposed draft regulation and we are inviting municipalities to have an input in terms of comments. I believe that is what the member is referring to and that the repeal of this section would eventually allow for the passage or the adoption of a permit system.

With the section in existence as it is now, it can be argued that Section 14(1) of the act takes precedence over the regulation and thus the City of Winnipeg and other municipalities who chose to do so could

circumvent the requirements for a permit following the provisions of 14(1). Therefore, if there is to be a permit system, as was recommended by the Clean Environment Commission in 1982, then the section would have to be repealed.

MADAM CHAIRMAN: Mr. Driedger, could I remind the committee, we did pass Section 9. Are you speaking to Section 10?

MR. A. DRIEDGER: Madam Chairman, if I might, I was not sure exactly under which section that portion which gave the Minister the authority to bring forward these regulations was under, if it was inadvertently passed, I wonder if we could maybe just have a discussion on that aspect of it because we raised the concerns during the debate in the House on it. I wasn't sure, I thought it was under the section on Page 3, where it says 16(3) the actions by the Minister in case of danger to health. I thought it was that area where this came under. If it came under a section previously, I wonder whether we could still have some discussion on that aspect of it because I certainly want to raise some concerns that were raised, as I indicated to some degree on second reading on it with your permission, Madam Chairman. With the Minister's consent, I'd like to pursue that a little further.

MADAM CHAIRMAN: What is the will of the committee? I don't mind going back. I wonder about getting into a long detailed discussion about proposed regulations.

MR. A. KOVNATS: On a point of order.

MADAM CHAIRMAN: What is your point point of order?

MR. A. KOVNATS: On a point of order, Madam Chairman, we can either do it now or we can do it when we get down to Title. Title is like Minister's Salary, like the whole world is open. So I think he should have the privilege while it's still fresh in the Minister's mind to ask him the question so he can give him the answers.

MADAM CHAIRMAN: On your point of order, Mr. Kovnats, I wasn't saying that we couldn't have the discussion. I said, "what is the will of the committee?"

MR. A. KOVNATS: Well, that's why I brought it up as a point of order, to probably influence the will of the committee.

HON. G. LECUYER: Madam Chairperson, I was just going to say, I have no objection that we revert back to Section 9. I was also going to add that under Section 12, there is an amendment or change to the regulations which would accommodate a discussion as well. So either way, it can still be discussed.

MR. A. DRIEDGER: Further to that, Madam Chairman, can the Minister indicate whether he plans to institute the permit system as it was proposed, where there was a 90-day waiting period after a permit was applied for until the permit was issued and then another 45 days of advertising until chemicals could be applied in public places, for example, golf courses, roadsides, parks, etc., is that the intention to proceed along those lines?

HON. G. LECUYER: There are, as I say, currently some discrepancies in the Clean Environment Act presently allowing some municipalities to circumvent the intent of the act currently, and we want to repeal that section of the act in order to implement the permit system as was announced more than a year ago and as was recommended by the Clean Environment Commission. But I don't want to say to the member across that we are going to pass or that it is the intent to pass the regulation as it went out, because as I've said a number of times before, this is the first draft and I will definitely want to hear what those bodies, and we're talking here of Crown corporations, government agencies and municipal corporations, I would want to know what they have to say about the regulations as they're being presented to them.

As I indicated before, there was an interdepartmental committee that drafted that regulation and I will want to hear from all of those interested parties what they have to say about the regulation. It's not our intent to pass a regulation that nobody wants. It's our intention to pass a regulation that is practical, that makes, indeed, some good sense, that will provide some protection of the environment and to the health of people, and as well, that is enforceable.

I think that is the logistics on which we are operating. The process by which the regulation is dealt with is a fairly lengthy one, purposely so that we will allow all the interested public full involvement and an opportunity to make their comments fully heard. On that basis I am awaiting their comments.

Indeed, Madam Chairperson, currently the municipalities are meeting as districts and I have staff that is taking part in these meetings. I do believe that they are initially at a first meeting. There was some reaction to that particular proposed regulation which was to a large extent based on a misunderstanding. A lot of people assumed that was the regulation. Indeed, some members of the opposition thought that was the regulation that we were intending to pass, whereas, I keep repeating, this is a draft regulation.

MR. A. DRIEDGER: Madam Chairperson, that is where the concern comes in. The proposed draft that was sent out, and I'm sure the Minister has had all kinds of correspondence because I have carbon copies of a bunch of the stuff that has been sent to the Minister expressing concern about the permit system. The fact that in the proposal that 90-day period and the 45-day advertising program, and there the Minister, I'm sure, must be aware that in many many cases in the rural areas where you have a grasshopper infestation, for example, or you have canker worms, whatever the case may be. There are situations where the 90 days and the 45 days, it would virtually wipe out the ability to spray properly, for example, the municipalities and the weed districts. The weed districts are the ones that have been very concerned. They said they'd be virtually put out of business and these are the people, the weed districts, that have been doing a good promotional program in terms of telling the people, the farmers,

how to use the chemicals, how to go about handling of the containers, etc. They have been doing a tremendous job in terms of the use of chemicals and they are the ones that nearly went up a wall when they saw the proposals.

You know, the Minister in good faith says, we want to bring in something that's reasonable. I could buy that except for the initial proposal that came out just scared the dickens out of everybody and I don't know whether we have some kind of assurance from this Minister aside from he says, well, I want to bring in something that's fair. But the fact that he came out with those proposals initially already has everybody really concerned and perturbed, even half of what he's proposing at this stage of the game in terms of the time limit could already create a big difficulty for many other rural areas. I'm talking of municipalities and weed districts and their spraying programs. That is why I raise this. Because right now there are major concerns out there, Madam Chairman, to the Minister, they are concerned because of the proposed regulations that were forwarded for comment and the Minister, if we pass this bill, gives him total authority to pass those regulations.

He says, yes, I'm going to listen to the people and get a reaction but the passing of this bill will give him the total authority to pass any regulations as he wants to; and if he follows some bad advice and doesn't follow the advice of the municipalities and the weed districts, then we have major problems. I'm not quite sure; I'd very much like to accept the assurance of the Minister that it's going to be A-okay. I personally have some reservations about that and would like to have a little bit more assurance than just that he wants to be fair, which I think he probably does, but depending who he's going to listen to.

If he's going to make a point to listen to the people that are affected, as I indicated, very strongly, the municipalities and the weed districts, and then comes to a reasonable compromise so that they're satisfied, then I could go along with it; but the way it is right now, I have some reservations in spite of the assurance of this Minister.

HON. G. LECUYER: Madam Chairperson, the provisions or the amount of time that was proposed in the regulation as it went out, after, as I stated before, a good deal of consultation, maybe these figures would have been different if the representatives from the municipalities, the different organizations, the municipal organizations had sat on the preparation of the regulation. They could have given us that input at that time but they didn't so we worked it out as best we thought would meet their purposes.

Obviously, when we put 90 days in there it was to try and get everything out of the way before the actual spraying started, so we had to have some kind of lead time there in case there were going to be some appeals so we put in there 90 days. I also have to advise the member that there is a provision in the regulation that allows for any emergency situation and a permit under an emergency situation circumstances such as, all of a sudden, let's say, an infestation of grasshoppers came along; they weren't anticipating that and couldn't do it or apply for it with that lead amount of time, there is that provision made in there.

As well, Madam Chairperson, I want to indicate that if the feeling is, among the municipalities, that 90 days is too lengthy a period of time before the start of the spray season, we're not going to be unduly unreasonable on this regard. I want to assure the member of that. We want to make it a workable regulation, one that is practical, one that is going to be also provided with some uniform method of pesticide control. That's what we want to do and I think that when we receive their comments and redraft the regulation, the members will see that it's going to - I don't know that I can say in advance that it's going to find the approval of all the individual municipalities but I think it will be something that they can live with.

MR. A. DREIDGER: I have one further question, Madam Chairman. Could the Minister properly clarify a statement that he made that under emergency situations, there were ways the municipalities could get around the waiting period and, did I understand correctly, that it would be under this bill, the Minister has the authority to make provision and issue an emergency spraying order or . . .

HON. G. LECUYER: Under the regulation, Madam Chairperson, there is that provision.

MADAM CHAIRMAN: Mr. Downey.

MR. J. DOWNEY: Thank you, Madam Chairman. I have a couple of questions dealing with this particular proposal by the Minister. One of the comments I would like to make first of all and it's in a recent press release of the Minister that the main thrust behind the need for this legislation and regulation really as pointed out by the Minister, is to have some licensing or direct control over the mosquito control programs that are introduced. Is that correct?

HON. G. LECUYER: When this was proposed by the Clean Environment Commission, yes indeed, it was primarily to address, among those concerns or issues, that was the first, yes.

MR. J. DOWNEY: Who at this point would be spraying mosquitoes, other than the government, the province and the City of Winnipeg? What other jurisdictions would there be, municipal jurisdictions? Have there been any others that have applied mosquito control programs?

HON. G. LECUYER: The member is right. Primarily, those are the two, yes.

MR. J. DOWNEY: That being the primary need, it would appear as if they're using a fairly massive blanket to control the one problem they're trying to get at. It would appear as if they could use a little less regulation or proposed regulation to accommodate what they're after. Is that not correct?

HON. G. LECUYER: The permit system that we are suggesting, Madam Chairman, is to establish a province-wide uniform system of pesticide control; and if, in effect, there are those two bodies who are primarily involved in mosquito control programs and those are

the primary two, I suppose, that this will address, the fact remains that it is to solve or deal with a wider and larger problem.

MR. J. DOWNEY: Is the Minister not aware that we currently have, under the Department of Agriculture, the people who are handling it, there are organized pesticide programs within each municipality in conjunction with the control districts and they're fully qualified weed supervisors, licensed by the Department of Agriculture, fully trained to carry out their duties under the kinds of regulations that he's preparing? They're trained and licensed in handling, spraying and storing of pesticides and it would appear as if we're seeing a duplication of licensing and I really would question the need for a dual system within the Department of the Environment.

HON. G. LECUYER: I appreciate what the member says and that's so much the better, but those are two different situations all together. If those who are involved in doing these activities have the proper training - and I hope they do, such much the better - but we're not dealing about the same thing. If the municipality here wants to carry on currently a program of pesticide control, he'd need only, currently, under the existing situation, need only file a project description and then proceed to carry on its program. The purpose of the permit program would indeed exercise a greater amount of control in terms of what, how much, is going into the environment and would be, as well, in conformity with Bill 6 which we will be dealing with later in terms of the handling and transportation of materials that could be considered if some of those were chemicals or were considered dangerous, then they would also come under that.

MR. J. DOWNEY: Madam Chairman, I think it's important that the Minister do his homework on this. I think that if he were to check into it he'd know that each municipality now, and any operator or applicator, operates under the supervision of a government licensed organization that I don't think the Department of Agriculture have been allowing the carrying on of irresponsible activities. If it's the mosquito program that he wants to control, then he could work out with the Department of Agriculture the inclusion of mosquito control programs and possibly an amendment there, if necessary, would do it.

I see nothing more than a duplication. In fact, if one looks at some of the proposals that the Minister is presenting, that under his new proposal that a chemical under the Clean Environment Commission regulation wouldn't be able to be applied at 15 kilometres an hour wind or more, but under the Department of Agriculture it's 20 kilometres an hour. It's the same government; it's two Ministers working for, hopefully, the same common cause and they would get their acts together. I would hope that before he would proceed with this kind of regulation that, yes, No. 1, he would listen to the Rural Union of Municipalities and take into consideration all their input and not get aggresive about having a dual system; No. 2, working out with the Department of Agriculture changes to the control system within the Department of Agriculture, so we don't have a dual level of bureaucracy and dual set of standards for the communities to march to.

I would request the Minister, as I've done before, back off. There's one other point I would like to make. He's also mentioned in his press announcement that one of the areas of concern, and maybe I'm not in the right department or right part of it, we could do it under Title if he so wishes, but the act would also allow for any future decision regarding bringing the City of Winnipeg water discharges under the control of The Clean Environment Act.

Is this his direct intention? It's kind of an indirect way of saying it; it says, "to allow for any future decision regarding bringing the City of Winnipeg water discharges . . . "As I say, if this is an inappropriate place to ask it, I will do it under the Title or wherever you give me the direction to do so, but I don't totally disagree with it, but I would like the Minister to clearly state, is his intention to bring the City of Winnipeg water discharge under The Clean Environment Act and under their control? Is that basically what his intentions are? I would hope the Minister at an appropriate time would answer that question.

In concluding on the first part, I would hope that he would reconsider and back off and work out the Department of Agriculture before he puts the municipalities and public through the kind of concern he has.

One of the points I should raise that was brought out at last Thursday's meeting at Melita in dealing with the muncipalities, and it seems strange that one level of government's objective was strictly to control the next level of government, which is the municipalities. There was a lot of concern that it's a thin edge of the wedge as soon as they get that control of the municipalities; the next one is the farm community and then it's a total tie up for use of the pesticides and it has to be a well-handled and reasonable kind of approach I think.

I would hope that he would back down to a large degree, but I want him to take note of the question dealing with the City of Winnipeg Water Discharge Control.

HON. G. LECUYER: First of all, I want to remind the member that when he's talking about the Winnipeg water quality control, he's dealing with Section 6 which we passed some fair bit of time ago, so I will not go back to that section.

I now come back to Section 9, which is currently what we are discussing. First of all, all the comments the member makes are comments we are prepared to listen to when they come from the municipalities. I have to remind the members these comments that he's making have to do with the permit system; therefore they're not part of what is incorporated on these alleged date of change, although the legislative change will allow for eventually the implementation of such a permit system.

Therefore, we are prepared to listen to some of these comments and even though the Department of Agriculture, which I remind the member, along with other departments, including the Department of Health, were part of the committee that sat and reviewed the draft regulations, so they were part of that.

The Department of Agriculture which will register a pesticide and licences an individual to make use of it - we have no qualms with that. This legislation does not impede that in any way. In fact, it clearly states that in the intent of the act it will not interfere with that.

So, for the member to say that eventually this is the thin edge of the wedge which introduces or allows you to spread this further - the intent of the act or the clause which talks about the intent of this act, clearly states that it has nothing to do with that.

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Madam Chairman, I would like to ask the Minister what the effect will be on the City of Winnipeg Mosquito Fogging Program if this section and these regulations come into effect.

HON. G. LECUYER: It simply asks or requires of the city to provide a little more information than they do now. In effect, the City of Winnipeg currently applies and submits an environmental impact and is the only one, in fact, of the municipal bodies that has the capacity to do so, because they have the expertise to do so.

So, the City of Winnipeg will obtain a permit just like the other municipalities. This in no way prevents them from carrying on the program, but requires them to get a permit and requires them to fill out an application form which asks them for specific information such as what they intend to use it for, what is the chemical they intend to apply and the purpose and when they intend to apply or use it.

MR. G. MERCIER: Madam Chairman, let me put a situation to the Minister that has occurred over the past few weeks. We have had above average rainfall for the past two or three weeks. Up until that point in time, it was very dry. With this type of situation occurring, all of a sudden we're now going to have a real mosquito problem in the City of Winnipeg. The citizens of the city, the vast majority of them, are going to demand that the city embark upon a mosquito fogging campaign and program.

How would the city be effected by the Minister's proposed regulations in combatting that mosquito onslaught?

HON. G. LECUYER: First of all, the application form is not that specific, Madam Chairperson, that it would not allow for that still to occur. What the member is saying is that the city may all of a sudden find itself in a position where it has to apply more of the chemical than it had anticipated to apply because of the weather circumstances. When I commented across awhile ago, I stated that there is another clause in the regulation which allows for emergency situations arising exactly as the example the member has just raised.

MR. G. MERCIER: Who determines whether it's an emergency? The Minister, the Clean Environment Commission or the City of Winnipeg?

HON. G. LECUYER: If the municipality or the city in this particular instance were to apply for additional spraying because of the circumstances the member raises, then they would simply be filling an application under that provision of the regulation.

MR. G. MERCIER: How long would it take for the City of Winnipeg to have approval to embark upon their program?

HON. G. LECUYER: I'm sorry, but I didn't hear you.

MADAM CHAIRMAN: Order please.

MR. G. MERCIER: How long would it take for the City of Winnipeg to obtain approval to embark upon a Mosquito Fogging Program?

HON. G. LECUYER: I haven't got the draft regulation in front of me, nor is that draft regulation a final regulation. I think these are the comments we'll have to look at when we're considering the regulation. That is exactly why it is sent out there for municipal bodies to provide us with their input and situation as the member raises. But, Madam Chairperson, again I raise the point I made awhile ago. This is the permit system which is not what's in front of us now.

MADAM CHAIRMAN: Yes, I thank you for bringing that to my attention. I raised that at the beginning. We have spent a lot of time on regulations on a clause that we've already passed. I think I've given a lot of leeway.

Mr. Mercier.

MR. G. MERCIER: Madam Chairman, I simply want to conclude by telling the Minister that a former Minister in a former NDP Government tried to stop the City of Winnipeg from fogging for mosquitoes back in the mid 1970's when Mr. Green, I believe, was the Minister, when former Mayor Stephen Juba left the fogging equipment on the doorsteps of the Legislature and told the province that if they want to control the Mosquito Fogging Program they can take over the trucks and equipment and everything and handle it.

I just want to tell the Minister, if he wants to get himself involved in some difficult problems, the fact is that in the City of Winnipeg when the mosquitos become abundant, the citizens of this city want to have them fogged and he'd better not develop any regulations that in any way unduly restrict the ability of the city to do that.

MADAM CHAIRMAN: Mr. Kovnats.

MR. A. KOVNATS: Just to add to what my colleague said concerning the mosquito spraying, we seem to be trying to regulate the City of Winnipeg and their responsibilities right out of existence. I would like to get back to the water quality of the Red River and particularly the dumping, and I'm not sure of the terminology, but it's the effluent that comes from the City of Winnipeg into the Red River, which is acceptable somewhat now, but not further downstream where the people in Selkirk, Manitoba, have to drink that water. What is the Minister's intention, at this point, to regulate the effluent coming into the water? Is it to have an

acceptable level or is it to bring the level up to drinking quality for the people downstream?

MADAM CHAIRMAN: Order please. Could the Minister please indicate whether this section that is being repealed deals at all with water effluent?

HON. G. LECUYER: The member is raising question under Section 6, which deals with the . . .

MADAM CHAIRMAN: Clause 6?

HON. G. LECUYER: Clause 6.

A MEMBER: I'm going to rule that out of order. We passed Clause 6 about an hour-and-a-half ago.

Mr. Kovnats.

MR. A. KOVNATS: Madam Chairperson . . .

MADAM CHAIRMAN: I think it would be wise to ask general questions again under Title.

MR. A. KOVNATS: Madam Chairperson, I think that there has to be some understanding to my lack of ability. What I would like to do . . .

SOME HONOURABLE MEMBERS: Oh, oh!

MADAM CHAIRMAN: Order please.

MR. A. KOVNATS: What I would like to do, Madam Chairperson, is read Clause 6 and I would like you to rule at that point to tell me whether in fact that is where I should have asked the question, because when Clause 6 came up it went right by, because I didn't quite understand it. I think that I'd be prepared to wait if you so rule, because I'm not going to pass it until I get an answer, Madam.

MADAM CHAIRMAN: Mr. Kovnats, I would susggest that you raise that issue when when we get to Title and that we proceed clause-by-clause.

MR. A. KOVNATS: Fair enough. I'll be happy to do so.

MADAM CHAIRMAN: Clause 10—pass; Clause 11—pass; Clause 12—pass.

Clause 13 - Mr. Kovnats.

MR. A. KOVNATS: I just happened to be reading the Manitoba Gazette; as a matter of fact it was today, Madam Chairperson. I think it was dated June the 6th, I'm not positive, but somewhere around that area. I noticed where there were some areas in the province that were listed as sensitive or critical areas. Are these being listed as sensitive or critical areas for the purposes of this bill, which was probably three weeks before the bill is being passed or is there some regulation that covers sensitive and critical areas prior to this bill being passed?

HON. G. LECUYER: There is, I understand, a provision for that under existing regulations under The Clean Environment Act and there is provision for it under the regulation as it stands now, but insufficient substantiation in the act to allow it, so in effect what the member is saying is that it is questionable whether the Minister or any of the Ministers before, when they've designated sensitive areas, have the legislative authority to do so. So, this clause will, in legislation, back up the provision which already exists in regulation.

MR. A. KOVNATS: Well, it's just another instance where we're taking authority away from other areas. In fact, things that are already in place and some of these restrictions and regulations are not necessary, Madam Chairman. I think this just proves another one because there is a regulation in place now that does cover it. If you're trying to dot all the "i's" and cross all of those little lines that go up and down, I think they're called "t's," this is what seems to be happening, but we're trying to overregulate, Madam Chairman.

MADAM CHAIRMAN: Clause 13 - Mr. Lecuyer.

HON. G. LECUYER: Thank you.

This is a change, it is not a regulation. It is an increased protection for environment's sensitive areas and has been brought about because of pressure in this particular instance. For instance,m where the member refers to a news release that he's seen earlier, a news release by municipalities for us to do exactly that in this particular case. I think what we've done is not interferred in another jurisdiction, but actually provided them with the increased protection which they were asking for it.

MR. A. KOVNATS: I've got to correct the Minister. It was in the Manitoba Gazette. It had nothing to do with a news release and it was just a matter of listing designated sensitive and critical areas, Madam Chairman. Exactly the same wording as what's in Section 13. I just couldn't see any reason why we have to overregulate to accommodate, but for whatever reason - I'm not going to suggest that the Minister has any reason because I know that would be ruled out of order - but I just think that there's already ways of regulating and covering a lot of these things before we even bring it into a bill.

MADAM CHAIRMAN: Clause 13—pass; Clause 14—pass.

Preamble - Mr. Kovnats.

MR. A. KOVNATS: I'd like to speak on the quality of the water in the Red River, which the Minister made some reference to . Earlier today when we passed for Second Reading, this bill, and referred it to committee, the Minister said that he would speak on it when we came into committee. I've been waiting and waiting and maybe that's why I missed it in Section 6 because I was waiting for the Minister to speak up and not have to be dragged out to give us all these answers.

Let's talk about the quality of the water into the Red River. I know that the City of Winnipeg has the control of the water that's being dumped into the Red River after it has been purified or cleansed or whatever.

A MEMBER: Treated.

MR. A. KOVNATS: Treated. It's an acceptable level now. Why is the Minister getting involved to change the regulations so that he is in control of the effluent being passed into the Red River? It has been acceptable up until now? — (Interjection) — I believe so, otherwise it wouldn't have been dumped into the river, because if it had been dumped into the river I would think that there would have been some regulations to stop it and fines and I don't think the City of Winnipeg are irresponsible. Why is the Minister taking over this responsibility?

HON. G. LECUYER: The water quality of the City of Winnipeg - the quality of the Red River water is acceptable until it reaches the City of Winnipeg, and this has been verified by intensive testing that's been carried on over a period of time. But when we get beyond or downstream from Winnipeg, then it is definitely not acceptable and the member should know that any one of municipal council or on the staff of the City of Winnipeg would readily admit that it's not acceptable downstream from the City of Winnipeg.

What we want to do exactly is to bring the City of Winnipeg water quality under The Clean Environment Act; there's no reason why it shouldn't be. The City of Winnipeg itself currently is undergoing some difficulty because the City of Selkirk is having some disagreement with the City of Winnipeg and is pursuing legal action in this regard - and I don't want to comment on that.

The quality of the Red River, when we are spending currently under the ARC Progam some $13 million or $14 million in a federal-provincial cost- shared agreement for improving the quality of the river not only for drinking purposes downstream but also for recreational purposes is definitely not at the level where it can be used even for such purposes; therefore, some major improvements have to be brought to the quality of the Red River, and the province of course will likely be approached.

In fact, the province, at the meetings that were called last fall following the interventions by the City of Selkirk, met with the two levels of government and the province at that time committed itself to assisting in providing some remedial measures to the sewage treatment plants or to some other, whether it's the storm drain, which is a costlier alternative, but there are various methods that can be adopted to improve the quality of the water of the Red River. We have committed ourselves and we are seeking the commitment from the City of Winnipeg to do likewise and we will also be seeking the commitment of the Federal Government to improve the quality of the Red River.

MR. A. KOVNATS: Not to prolong the debate on this, Madam Chairperson, but it seems to me that we're trying to be big brother and take away the authority of mosquito spraying, water quality in the Red River. It appears to me that this water quality in the Red River was initiated because of what's happening downstream, particularly at Selkirk and I can understand their position in wanting pure water. Is there any way that the water, after it's been put into the Red River, can be purified and used as drinking water, even though it is not up at that level as it leaves Winnipeg?

Have we looked at the cost of putting in a purifying plant prior to it reaching the drinking-water stage at Selkirk, Manitoba, at least assisting the town so that they have pure drinking water? I'm all in favour in seeing that they have the drinking water, but is it being prohibitive? Are we taking away the control from the City of Winnipeg just so that we can purify the water at Selkirk, Manitoba, and what is the cost element? That's all I would like to know at this point and I'd be prepared to pass if the Minister comes up with a satisfactory answer.

HON. G. LECUYER: Obviously, it doesn't matter how badly contaminated the water is, if you spend enough to treat it, you can bring it up to drinking standards.

The City of Selkirk doesn't at all times use the water from the Red River. They use groundwater in most instances, but that is also to a large extent due to the poor quality of the Red River water. You have to understand that if the water, which it is currently, the Red River water downstream of Winnipeg, is contaminated 100 times above the acceptable levels for drinking purposes; that when you treat water for drinking purposes there's always the risk that these systems are not going to operate to maximum efficiency and are going to fail, and in which case, therefore, the people who depend upon such water for drinking purposes, you leave them at the mercy of the contaminated water. So instead of spending the money to treat the water that you've contaminated, I would assume that it makes eminent sense to treat the water in the first place so that it doesn't go into the Red River contaminated to that degree in the first instance, and that is exactly what we would try to do under this change to The Clean Environment Act.

I would like to remind the member across that the only municipal body who has that exemption in terms of waste water right now is the City of Winnipeg; all other municipal bodies come under The Clean Environment Act.

MR. A. KOVNATS: Another question comes to mind concerning some of the sewage that the City of Winnipeg is putting into - after it's treated - the Red River. I know that there are chemicals that go through the sewage system into the water that there's just no way of getting them out of the water.

I think I remember something about detergent eight years back. What's the Honourable Minister going to do about that? Is he going to allow it? But it's still going to contaminate the water and how is he going to correct a situation that almost seems to be uncorrectable?

HON. G. LECUYER: I fail to see the point that the member wished to make. I think, if I understood correctly, the member was reinforcing the amendment or is . . .

MADAM CHAIRMAN: Order, order. Order.

HON. G. LECUYER: I think that the member is saying that there are things in the water now that shouldn't be there, and what are we going to do to make sure that they aren't? I think that is exactly what we're, by bringing the City of Winnipeg under The Clean Environment Act, then they are subject to the Clean

Environment hearings just like any other municipal body and would have to meet the standards just like the other municipal bodies. That may indeed eventually also mean that we're going to have to assist the City of Winnipeg to bring about some improvements in the waste disposal centre at the south end or the north end of the City of Winnipeg.

MR. A. KOVNATS: Madam Chairperson . . .

MADAM CHAIRMAN: Thank you.

MR. A. KOVNATS: I have to think about it.

I can see that there are big problems coming and it's a matter of controlling the effluent that's being put into the sewage system, into the City of Winnipeg, and that's really the cause of it right from that point. The Minister is taking on a big job and I can just see the consequences of allowing the manufacturing companies and even people who flush their toilets, they're all contaminating the system that's going to be going into the Red River.

But not to dwell on it, what's the Minister going to be doing now in controlling acid rain coming up from the United States?

MADAM CHAIRMAN: Title. Bill be reported. No? — (Interjection) —

All those in favour, say aye. All those opposed? That's five to three. Thank goodness, there have been five mosquitoes bit me since we started this bill.

BILL NO. 14 - THE JOBS FUND ACT

MADAM CHAIRMAN: Bill 14, page-by-page. Pages 1 to 8 were each read and passed; Preamble—pass; Title—pass.

Bill be reported.

BILL NO. 16 - THE CHILD WELFARE ACT

MADAM CHAIRMAN: Bill 16, page-by-page.

Page 1 - Mr. Mercier.

MR. G. MERCIER: Madam Chairperson, we're in receipt of a brief from the Manitoba Association for Rights and Liberties. Particularly, on Page 1, in Section 1, raises some reasonable questions with respect to the definition of child abuse and I wonder if the Minister could just briefly advise us of her position with respect to this brief.

MADAM CHAIRMAN: Mrs. Smith.

HON. M. SMITH: Madam Chairperson, the definition we're using is the one that was worked out by the Committee on Child Abuse that worked for some time to come up with an acceptable definition. We also have in Section 16 of the act a child in need of protection is defined quite broadly and could be used in cases where apprehended danger existed. So we feel that there is enough capacity in the act to deal with the probability suggested in the brief.

MR. G. MERCIER: Just a technical question, in Section 1, at the end of 1(a)(i) it says, "physical injury to the child." Should the word "or" be there at the end of that sentence?

HON. M. SMITH: If you're thinking of Sections (i), (ii) and (iii), the and/or would apply, except that . . . when the amendment . . . that's technical.

MADAM CHAIRMAN: Clause 1, as amended—pass; Clause 2—pass; Clause 3—pass.

Clause 4 - Mrs. Smith.

HON. M. SMITH: Motion:

THAT Clause 4(5)(c) of the Act as proposed by Section 4 of Bill 16 be amended by striking out the word "agency" and substituting therefor the word "society."

MADAM CHAIRMAN: Agreed? Pass.

Clause 4, as amended.

HON. R. PENNER: Balance of page.

MADAM CHAIRMAN: Balance of page—pass.

Page 4—pass. Clause 9—pass; Clause 10—pass.

Clause 11 - Mrs. Smith.

HON. M. SMITH: Motion:

THAT Section 11 of Bill 16 be amended

(a) by re-lettering Clauses (a), (b), (c) and (d), as Clauses (b), (c), (d) and (e) respectively; and

(b) by adding thereto, immediately after the 2nd line thereof, the following clause:

(a) the 1st, 2nd and 4th lines of Subsection 18.1.

This gives the Master of the Court of Queen's Bench, when hearing child protection matters, the power to issue a warrant authorizing the director, the child care worker, an officer of the Family Court or a peace officer to enter premises to search for a child in need of protection and to take the child to a place of safety. Presently only a judge or justice of the peace can issue such a warrant. Other amendments in the bill have given the Master the power to deal with preliminary matters such as this to expedite child protection proceedings. This proposed amendment is consistent with such provisions and has been requested by the associate chief justice of the Court of Queen's Bench Family Division.

MADAM CHAIRMAN: Amendment—pass.

Clause 11, as amended—pass.

Clause 12 - Mrs. Smith.

HON. M. SMITH: Motion:

THAT Section 12 of Bill 16 be amended

(a) by re-lettering Clauses (a), (b), (c), (d) and (e) as Clauses (b), (c), (d), (e) and (f) respectively;

(b) by adding thereto, immediately after line three thereof, the following clause: (a) the 5th line of Section 19; and

(c) by striking out the word "and" where it appears at the end of re-lettered Clause (e); and

(d) by adding thereto, immediately after re-lettered Clause (f) thereof, the following clauses:

(g) the 3rd line of Subsection 26(1); and
(h) the 3rd line of Subsection 26(2).

MADAM CHAIRMAN: Amendment.

HON. M. SMITH: The first amendment also confers on the Master power to deal with a preliminary matter in child protection proceedings by allowing the Master to extend the time within which a protection hearing is to be heard. The amendments also empower the Master to make orders of temporary guardianship and orders the supervision in child protection proceedings where the parties consent to such an order. Presently only a judge may make consent orders. Once again, the Associate Chief Justice of the Court of Queen's Bench Family Division has requested these amendments.

MADAM CHAIRMAN: Amendment—pass; Section 12—pass. Section 13—pass.
Section 14.

HON. M. SMITH: Motion:
THAT Bill 16 be amended by:
(a) re-numbering Sections 14 to 21 thereof as Sections 15 to 22 respectively; and
(b) adding thereto, immediately after Section 13 thereof, the following section:
Subsec. 25(10.1) added.
14 The Act is further amended by adding thereto, immediately after Subsection 25(10) thereof, the following subsection:
Queen's Bench rules re. discovery not to apply.
25(10.1) The rules of the Court of Queen's Bench regarding examination for discovery and examination of documents do not apply to a hearing under this Part.

MADAM CHAIRMAN: Amendment—pass.
Mrs. Smith.

HON. M. SMITH: This is a provision to be added to the act, required in the light of the fact that the Court of Queen's Bench will now be sitting on child protection matters in the Winnipeg and Selkirk areas, previously only the Provincial Judges' Court Family Division sat on child protection hearings throughout the province.

The effect of the provision is to make the Court of Queen's Bench rules, dealing with examination for discovery and discovery of documents, inapplicable to child protection proceedings. In an ordinary civil trial, these key trial proceedings are used to assist parties in discovering the case of the opposing side.

In The Child Welfare Act, there is a requirement that full particulars of the case to be met by the other party, be provided, therefore the provisions of The Child Welfare Act already recognized the rights of all parties involved. Unless this provision is added, there will be potential for serious delays in child protection matters in the Winnipeg and Selkirk areas.

In addition, this amendment is consistent with an amendment to The Child Welfare Act in 1983, at which time a provision allowing for examinations for discovery in child protection matters was deleted. The reason for deleting this procedure was the recognition of the fact that such a procedure would result in significant delays in bringing child protection matters before the courts quickly, to the detriment of both children and their families.

It was also recognized, at that time, that in light of the requirement to provide full particulars to the other parties involved, this provision was unnecessary.

MADAM CHAIRMAN: Amendment—pass; Section 14, as amended—pass; Balance of page—pass.
Page 7 - Mr. Harper.

MR. E. HARPER: Yes, Madam Chairperson, I have a question for clarification. In Subsection 96(3) on Page 7, Restored rights unaffected. Those restored rights - does that include treaty and aboriginal rights that are recognized and confirmed in the Constitution?

HON. M. SMITH: No, it specifically refers to rights that are granted under 96(1), rights under The Devolution of Estates Act. It refers to whether they're to be carried on or not. It's a technical amendment recommended by the public trustee to keep us in line with The Devolution of Estates Act.

MR. E. HARPER: Yes, I just wanted to get that on the record, because some treaty rights that we have, like for instance today I got my $5 from the government for being a Treaty Indian, but there are other . . .

A MEMBER: Where are we going?

MR. E. HARPER: Not very far. That's the reason why I asked that, just for clarification. Thank you.

MADAM CHAIRMAN: Page 7—pass; Preamble—pass; Title—pass.
Bill be reported.

BILL NO. 21 - THE LAW SOCIETY ACT

MADAM CHAIRMAN: Bill 21, page-by-page. Page 1—pass; Page 2—pass; Page 3—pass; Page 4—pass.
Page 5 - Mr. Tallin.

MR. R. TALLIN: Clause (vii) at the top of the Page 5 talks about "in any proceeding before an administration or public tribunal . . . "- it should be "administrative or public tribunal." That's just a correction I thought I should bring to your attention.

MADAM CHAIRMAN: Administrative or public tribunal?

MR. R. TALLIN: Yes, administrative or public tribunal. It's just correcting the spelling.

HON. R. PENNER: Yes.

MADAM CHAIRMAN: Page 5, as amended—pass; Page 6—pass; Page 7—pass; Preamble—pass; Title—pass.
Bill be reported.

MR. A. KOVNATS: Madam Chairman, I don't think we received an amendment on that - it was just a correction.

MADAM CHAIRMAN: Yes, it was a correction. I asked, whatever, Page 5, as amended. Oh, I'm sorry, as corrected. Thank you. Keep me on my toes.

BILL 24 - THE CIVIL SERVICE SUPERANNUATION ACT

MADAM CHAIRMAN: Bill 24, Page-by-page.
Mr. Schroeder.

HON. V. SCHROEDER: Thank you, Madam Chairperson.

I understand there were a few questions asked this afternoon, I wasn't present. Mr. Banman and Mr. Enns - Mr. Enns is here - Mr. Enns had asked several questions; No. 1, he wanted to know who determined the amount or how the $27 million surplus is calculated. The answer is that it is determined by the funds actuary and John Turnbull is the actuary. I'm told that is the amount left over after the dollar is set aside to pay for benefits - would have paid for the benefits that are currently provided for in the plan. It is unallocated money. There is no call on it.

There was another question: what is the additional cost to the government of these proposals? Actually, there was an agreement with the people from the employee's side with respect to how the payments would be made. From 1984-85, if we had made no changes, the cash-flow requirements would have been $11.5 million. With the changes, there's a drop to $8.2 million, because the fund itself is paying for a chunk of the changes. From that point on, 1985-86, 1986-87, 1987-88 and 1988-89, there is a $300,000 addition in each year to what there would have been without. So for instance, in 1985-86, without the proposal, the cost would be $10.8 million; with the proposals, $11.1 million. In 1988-89, without the proposals, the cost would be $16 million; with the proposals, it's $16.3 million.

The third question is therefore answered by that and it shows you where the additional revenue comes from.

MADAM CHAIRMAN: Page 1 through Page 7 were each read and passed.

Page 8 - Mr. Schroeder.

HON. V. SCHROEDER: I move:

THAT Bill 24 be amended by striking out the word "subsection" in the first line following Clause 17(d) thereof and substituting therefor the figures and word "18 subsection." It's a typographical error.

MADAM CHAIRMAN: Amendment—pass; Page 8, as amended—pass; Page 9 through 14 were each read and passed.

Page 15 - Mr. Schroeder.

HON. V. SCHROEDER: I move:

THAT the proposed Clause 40(1.1)(b) of The Civil Service Act, as set out in section 41 of Bill 24 be amended by striking out the figure "3" on the 8th line thereof and substituting therefor the figures "3.1," which again amends a typographical error.

MADAM CHAIRMAN: Amendment—pass. Page 15 as amended—pass. Pages 16 to 30 were each read and passed.

Page 31 - Mr. Schroeder.

HON. V. SCHROEDER: I move:

THAT section 67 of Bill 24 be amended

(a) by striking out the figures "20" in the 1st line thereof;
(b) by striking out the figures"41" in the 2nd line thereof;
(c) by adding thereto, immediately after the figures "21," in the 1st line of clause (b) thereof, the figures "20";
(d) by adding thereto, immediately after the figures "40" in the 2nd line of clause (b) thereof, the figures "41;" and
(e) by striking out the figures "20, 41" in the 4th last line thereof.

MADAM CHAIRMAN: Amendment—pass.

HON. V. SCHROEDER: I can explain that. This motion corrects the coming into force section of the act.

It was originally thought that section 20 and 41 could come into force on January 1, 1985, but the people from the Civil Service Commission have informed us that they should both come into force on Royal Assent and be retroactive to January 1, 1984.

The effect of the motion therefore is to carry out that change. There are two sections, Sections 20 and 41 are required to come into force on January 1st, because they deal with compliance with provisions of The Pension Benefits Act, which came into force on January 1, 1984.

MADAM CHAIRMAN: Amendment—pass; Page 31 as amended—pass; Preamble—pass; Title—pass.

Bill be reported.

Before committee rises, we only have two bills left referred to the committee. It's been suggested that instead of meeting tomorrow morning at 10, we meet again tomorrow night. (Agreed)

COMMITTEE ROSE AT: 10:35 P.M.

WRITTEN SUBMISSION:

Manitoba Association for Rights and Liberties
425 Elgin Avenue, Winnipeg, Manitoba R3A 1P2

COMMENTS ON BILL 16 - AN ACT TO AMEND THE CHILD WELFARE ACT

The proposed amendments to The Child Welfare Act in Bill 16 have been examined and MARL wishes to express concern about some of the definitions, limitations and exclusions included in these amendments.

1. In particular we are concerned about the definition of "abuse" in S.1(a)(i) which read in part "act or omission . . . which results in physical injury to child"

This means that the section requires that the abuse has gone so far as to cause physical injury.

It seems preferable to label "abuse" as acts or omissions that may result in physical injury. This would allow acts that fall short of physical injury but are still dangerous to be defined as "abuse."

Subsection (ii) deals with emotional disability and to qualify as "abuse" it must be of a permanent nature "or likely to result in such disability."

Does this mean a child must be emotionally scarred for life before we consider it abuse? It should be sufficient that a child suffer emotional disability of a temporary nature in order to qualify as "abuse."

Furthermore, when acts or omissions that may result in emotional disability of a temporary nature are abusive in nature, it should not be necessary that an actual injury result.

The previous section S.1(a) included, "and failure to provide reasonable protection for the child from physical harm."

This is being deleted without anything similar put in place that would ensure that parents who place their children in situations of risk can be held liable for abuse.

We recommend this clause be reinstated and expanded to cover "physical or emotional harm."

2. Section 4(6.1) Directors

- directors are not to be held personally liable for (a) acts, errors or omissions of staff employees or officers that results in debt, liability or obligation.

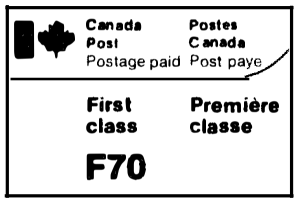
This section would cover a broad set of circumstances and could absolve directors from situations where their employees acting on their instructions create financial obligations that exceed their budgets or their insurance. This may not always be fair.

S.41.3 added

- allows agency to glve support for a transitional period up to three years to age 21.
- for the purpose of completing transition to not being a ward.

Does this mean the agency would continue to exercise "control" as guardian over an adult?

Prepared by Lisa Fainstein, co-convener MARL Children's Concern Group
June, 1984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