Fourth Session - Thirty-Sixth Legislature

of the

# Legislative Assembly of Manitoba

# Standing Committee on Law Amendments

*Chairperson*
*Mr. Jack Penner*
*Constituency of Emerson*

Vol. XLVIII No. 4 - 3 p.m., Tuesday, June 16, 1998

ISSN 0713-9586

**MANITOBA LEGISLATIVE ASSEMBLY**
**Thirty-Sixth Legislature**

| Member | Constituency | Political Affiliation |
|---|---|---|
| ASHTON, Steve | Thompson | N.D.P. |
| BARRETT, Becky | Wellington | N.D.P. |
| CERILLI, Marianne | Radisson | N.D.P. |
| CHOMIAK, Dave | Kildonan | N.D.P. |
| CUMMINGS, Glen, Hon. | Ste. Rose | P.C. |
| DACQUAY, Louise, Hon. | Seine River | P.C. |
| DERKACH, Leonard, Hon. | Roblin-Russell | P.C. |
| DEWAR, Gregory | Selkirk | N.D.P. |
| DOER, Gary | Concordia | N.D.P. |
| DOWNEY, James, Hon. | Arthur-Virden | P.C. |
| DRIEDGER, Albert | Steinbach | P.C. |
| DRIEDGER, Myrna | Charleswood | P.C. |
| DYCK, Peter | Pembina | P.C. |
| ENNS, Harry, Hon. | Lakeside | P.C. |
| EVANS, Clif | Interlake | N.D.P. |
| EVANS, Leonard S. | Brandon East | N.D.P. |
| FAURSCHOU, David | Portage la Prairie | P.C. |
| FILMON, Gary, Hon. | Tuxedo | P.C. |
| FINDLAY, Glen, Hon. | Springfield | P.C. |
| FRIESEN, Jean | Wolseley | N.D.P. |
| GAUDRY, Neil | St. Boniface | Lib. |
| GILLESHAMMER, Harold, Hon. | Minnedosa | P.C. |
| HELWER, Edward | Gimli | P.C. |
| HICKES, George | Point Douglas | N.D.P. |
| JENNISSEN, Gerard | Flin Flon | N.D.P. |
| KOWALSKI, Gary | The Maples | Lib. |
| LAMOUREUX, Kevin | Inkster | Lib. |
| LATHLIN, Oscar | The Pas | N.D.P. |
| LAURENDEAU, Marcel | St. Norbert | P.C. |
| MACKINTOSH, Gord | St. Johns | N.D.P. |
| MALOWAY, Jim | Elmwood | N.D.P. |
| MARTINDALE, Doug | Burrows | N.D.P. |
| McALPINE, Gerry | Sturgeon Creek | P.C. |
| McCRAE, James, Hon. | Brandon West | P.C. |
| McGIFFORD, Diane | Osborne | N.D.P. |
| McINTOSH, Linda, Hon. | Assiniboia | P.C. |
| MIHYCHUK, MaryAnn | St. James | N.D.P. |
| MITCHELSON, Bonnie, Hon. | River East | P.C. |
| NEWMAN, David, Hon. | Riel | P.C. |
| PENNER, Jack | Emerson | P.C. |
| PITURA, Frank, Hon. | Morris | P.C. |
| PRAZNIK, Darren, Hon. | Lac du Bonnet | P.C. |
| RADCLIFFE, Mike, Hon. | River Heights | P.C. |
| REID, Daryl | Transcona | N.D.P. |
| REIMER, Jack, Hon. | Niakwa | P.C. |
| RENDER, Shirley | St. Vital | P.C. |
| ROBINSON, Eric | Rupertsland | N.D.P. |
| ROCAN, Denis | Gladstone | P.C. |
| SALE, Tim | Crescentwood | N.D.P. |
| SANTOS, Conrad | Broadway | N.D.P. |
| STEFANSON, Eric, Hon. | Kirkfield Park | P.C. |
| STRUTHERS, Stan | Dauphin | N.D.P. |
| SVEINSON, Ben | La Verendrye | P.C. |
| TOEWS, Vic, Hon. | Rossmere | P.C. |
| TWEED, Mervin | Turtle Mountain | P.C. |
| VODREY, Rosemary, Hon. | Fort Garry | P.C. |
| WOWCHUK, Rosann | Swan River | N.D.P. |

# LEGISLATIVE ASSEMBLY OF MANITOBA

## THE STANDING COMMITTEE ON LAW AMENDMENTS

**Tuesday, June 16, 1998**

**TIME – 3 p.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mr. Jack Penner (Emerson)**

**VICE-CHAIRPERSON – Mr. Peter Dyck (Pembina)**

**ATTENDANCE - 11 – QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Enns, Radcliffe, Toews

Ms. Cerilli, Mrs. Driedger, Messrs. Dyck, Helwer, Martindale, Penner, Struthers, Ms. Wowchuk

**APPEARING:**

Mr. Gord Mackintosh, MLA for St. Johns

**MATTERS UNDER DISCUSSION:**

Bill 22–The Veterinary Services Amendment Act
Bill 24–The Crop Insurance Amendment Act

Bill 37–The Farm Machinery and Equipment and Consequential Amendments Act
Bill 19–The Public Trustee Amendment and Consequential Amendments Act
Bill 44–The Statute Law Amendment Act, 1998

Bill 41–The Life Leases and Consequential Amendments Act

***

**Mr. Chairperson:** Will the Standing Committee on Law Amendments please come to order.

Today the Standing Committee on Law Amendments will be conducting clause-by-clause consideration of the following bills: Bill 19, The Public Trustee Amendment and Consequential Amendments Act; Bill 22, The Veterinary Services Amendment Act; Bill 24, The Crop Insurance Amendment Act; Bill 37, The Farm Machinery and Equipment and Consequential Amendments Act; Bill 41, The Life Leases and Consequential Amendments Act; and Bill 44, The Statute Law Amendment Act, 1998.

Previously, the committee had met on Thursday, June 11, 1998, at 10 a.m. to hear public presentations, and at the end of the meeting, the committee agreed to proceed to clause-by-clause consideration at the next meeting of the committee, and that is what we are currently doing. Which order did we want to do the bills? It has been recommended that we do Public Trustee and Statute Law first. Can we agree to that?

**An Honourable Member:** I agree to that.

**Ms. Rosann Wowchuk (Swan River):** Mr. Chairperson, given that our Justice critic is not here, would it be possible that we move to the Agriculture bills first? I see the Minister of Justice (Mr. Toews) does not agree with that, but if we–

**Hon. Vic Toews (Minister of Justice and Attorney General):** Well, I am not going to give you a hard time.

**Mr. Chairperson:** What is the will of the committee? Do you want to move to Agriculture first?

**Mr. Toews:** It does not matter to me.

**Mr. Chairperson:** The minister is here. I mean, instead of sitting here waiting, we might as well do that. Agreed? [agreed] Then we will move to the Agriculture ones first. Mr. Minister, will you come forward.

Can we reach agreement also that we can do the clauses on a block-by-block basis? [agreed]

Is there agreement that we can pass all the clauses in both languages and amendments, as well, if there are any? [agreed] Thank you.

**Bill 22–The Veterinary Services Amendment Act**

**Mr. Chairperson:** We are going to then proceed with Bill 22, The Veterinary Services Amendment Act, if that is agreeable. As normal, we will set aside the title and the preamble until the last, and we will deal with the clauses first.

Clauses 1 and 2–by the way, does the minister have a statement?

**Hon. Harry Enns (Minister of Agriculture):** Mr. Chairman, I simply want to indicate that I have with me the director of the Veterinary Services Branch, Dr. Jim Neufeld, and my two other senior managers, Assistant Deputy Minister Dave Donaghy and Deputy Minister Don Zasada. If there are questions that honourable members of the committee have, I would welcome the opportunity of having these officials present to make any questions that they may feel they want to direct.

**Mr. Chairperson:** Thank you, Minister. Would the opposition critic have an opening statement?

**Ms. Rosann Wowchuk (Swan River):** On this particular bill, no. We are prepared to–I am sorry, I did not quite hear the minister. Was he saying that we are dealing with the Vet Services bill right now? No comments on it from us.

**Mr. Chairperson:** Thank you, Ms. Wowchuk. We will then proceed to clause-by-clause consideration, as indicated.

Clauses 1 and 2–pass; Clauses 3 to 4(2)–pass; Clause 5–pass; Clauses 6 and 7–pass; preamble–pass; title–pass. Bill be reported.

* (1510)

**Bill 24–The Crop Insurance Amendment Act**

**Mr. Chairperson:** Bill 24, The Crop Insurance Amendment Act, and the same will apply. The title and the preamble will be set aside until clause-by-clause consideration. Minister, do you have an opening statement?

**Hon. Harry Enns (Minister of Agriculture):** No, Mr. Chairman, other than that the general manager of Manitoba Crop Insurance Corporation will be in attendance later on in the committee, but, again, I do not think that there are matters of controversy involved in the bill. It was my intention to have him present.

I have found over the years that to the extent possible where we can have senior staff available for committee members' questions, it helps clarify any interpretations or misunderstandings they may have of the amendments being proposed. But we have had a reasonably good discussion on this issue both in the House and in my Estimates, I remind the honourable member for Swan River (Ms. Wowchuk), and I recommend these amendments to the committee, Mr. Chair.

**Mr. Chairperson:** Thank you, Mr. Minister. Would the honourable critic have an opening statement?

**Ms. Rosann Wowchuk (Swan River):** Just briefly, Mr. Chairman, there is one section of the bill that we have had some discussion about, and that is the intention of the government to move toward reinsurance in the private sector versus having reinsurance through the provincial or federal government.

That causes us some concern. I had hoped that we would be able to discuss this with the minister's staff. However, it is through our moving of the bills to the beginning of the order rather than the end that the minister's staff is not here, so we will accept that. Perhaps when the manager of the Crop Insurance Board is here, we will have a chance to discuss that.

But I really question the reason for moving into this type of insurance when it is not necessary, when I understand we have a five-year agreement with the federal government on this, and I have raised the issue with the minister previously.

**Mr. Enns:** Mr. Chairman, I just want to for the record indicate that the issue that the honourable member raises was discussed. At the time, I had Mr. Neil

Hamilton in the Chamber with me during the course of the debates on the Estimates of the Department of Agriculture and Manitoba Crop Insurance, in particular. Mr. Hamilton gave me the very firm assurance that the Manitoba Crop Insurance Corporation has no intention of availing itself of this capacity; that is, to seeking out private insurance at this time. It is there as a prudent safeguard, in my judgment, in the event that Ottawa shirks its responsibility to agriculture in Manitoba and does cause us problems with respect to reinsurance that we have had and enjoyed the partnership with Ottawa over these many years.

I do remind the honourable member we do not have a five-year agreement right now. We hope to negotiate–my task at the beginning of July at the ministers of Agriculture conference on Niagara-on-the-Lake has that issue at the top of the agenda to, hopefully, successfully negotiate the next five-year safety net agreement.

What is being proposed right now–and I am looking at my deputy minister for confirmation–it looks very much that we likely will be seeking a one-year extension of the current agreement because it is not that easy for all provinces to come together to sign that five-year agreement.

So there is a little bit of uncertainty that creates some concern for us. The federal Finance Minister Paul Martin and others from the federal bureaucracy have on occasion indicated that among things that they were considering was the question of continuing to play a role in reinsurance. So I think it was only prudent on the part of the management at Manitoba Crop Insurance Corporation to enable themselves by means of this amendment to avail themselves of private reinsurers should that become necessary.

I do remind her and other members of the committee that dealing with private insurance is not new or unique to the corporation. In hail insurance, we use private reinsurance agencies.

**Mr. Chairperson:** We will then proceed to clause-by-clause consideration.

Clauses 1 and 2–pass; Clauses 3 to 6–pass; Clauses 7 to 9–pass; preamble–pass; title–pass. Bill be reported.

**Bill 37–The Farm Machinery and Equipment and Consequential Amendments Act**

**Mr. Chairperson:** Bill 37, The Farm Machinery and Equipment and Consequential Amendments Act. Again, the title and preamble will be set aside, and the table of contents will also be one of the last considerations. Is it again the agreement of the committee that we do the block-by-block consideration of the bill? [agreed]

Does the minister have an opening statement?

**Hon. Harry Enns (Minister of Agriculture):** Mr. Chairman, we received, as those members of the committee will recall who were present at the first consideration of Bill 37 before this committee, I think good and valuable comment from at least six or seven presentations that were made. We heard, certainly, from our premier farm organization, the Keystone Agricultural Producers organization. We heard from manufacturers located here in the province of Manitoba, as well, of course, as from dealers.

In the main, I am satisfied that the work that staff in co-operation with the Farm Machinery Board did in bringing forward these amendments reflect the 1990s. As we move into the new millennium, it does create a more harmonized set of regulations for farm machinery warranty and other issues, and I am recommending the amendments to the committee.

I am not unaware of the fact that should there be reason to reopen the act next year and take into consideration some of the points and issues that were raised either by presenters and/or by other individuals, I am more than willing and prepared to do this.

I remind honourable members of the committee that these amendments, in the main, that we have before us were presented to me by staff and by the board about a year ago, seeking their passage through the Legislature. I, at that time, took the position that that was rather short notice to myself and to other legislators and asked them to go back and review the issues specifically with our major farm organization, the Keystone Agricultural Producers organization. That was done, not just on one occasion but on several occasions, and despite the fact that I know that there is not unanimity of support for

these amendments, I nonetheless recommend them to the committee for their passage with the understanding that if we have reason to call for further amendments, I will not wait 10 years, as we have done in this instance.

I think it has been about 10 years since the last time the committee of the Legislature has looked at this act. I am more than prepared, under the scrutiny of not only members in the opposition and the farm community but from within my own caucus–I remind honourable members of the committee that I am privileged to have a number of active farmers in my caucus, notably the Chairman that sits right beside me, and no knife is wielded so astutely as that from behind and from within, you know, in pushing and promoting a minister to do certain things.

With those few comments, I recommend these amendments to the House.

* (1520)

**Ms. Rosann Wowchuk (Swan River):** Mr. Chairman, we, too, have talked to many people in rural Manitoba and producers, and I have to say that, as we have indicated in the House, we cannot support this bill. This bill reduces protection for farmers, and the minister talks about levelling the playing field. For once, I would like to see us levelling the playing field upward, rather than working to the lowest common denominator which is what we are doing here.

I would have hoped that our Minister of Agriculture (Mr. Enns) would have perhaps gone to the other western provinces and said, look, we have good legislation here in Manitoba. Maybe you can raise yours so that we have better protection for farmers.

This legislation reduces the warranty. It is true that the dealers want it, but really it is the manufacturers who should also be standing behind the products that they produce. Tractors and combines in this day and age cost, new ones in many cases, $200,000 to $300,000, and you would think that those people should be able to provide a decent warranty rather than trying to drive it down to one year.

Some of the arguments that were used for this is that it was going to reflect in the prices of the equipment. Well, we have done checking. I know that the minister knows, and, Mr. Chairman, you know, as well, that no matter what the warranty is or what the sticker price is, it is the bargaining price that the farmer is able to get. It is not going to make any difference what the warranty is; it is the bottom line. What you have done here by bringing this forward is really reduced the protection that farmers have.

The other area that I have real concern with is the change in providing emergency repair services, to have that time reduced to normal business hours rather than having the extended hours in peak seasons and during times when farmers will desperately need repairs. I can relate to harvest season and seeding season and various other areas, but different farmers need different emergency repairs.

So, Mr. Chairman, we cannot support this legislation. We could have brought forward amendments, but with the government having the majority, those amendments would just be ruled out of order. We will follow this legislation, and I hope that the minister is serious, that during the next session he will recognize the problems that this legislation could create. Perhaps it may be the opposition, that we also may bring amendments with the next bill.

But as this bill stands right now, Mr. Chairman, we cannot support it. We do not believe it is in the best interests of the farmers of Manitoba.

**Mr. Chairperson:** Thank you, Ms. Wowchuk, for your comments. I just want to clarify one of the statements that you made. You indicated the amendments that you would bring would be ruled out of order. It would not be the Chair's prerogative nor will to rule your amendments out of order. I would allow it to be brought to a vote.

**Ms. Wowchuk:** Mr. Chairman, that was what I was intending to say. I meant to say that the government has the majority. They would be voted out.

**Mr. Chairperson:** Could we then proceed with the clause-by-clause consideration.

Clause 1–pass; Clause 2(1) to 2(3)–pass; Clauses 2(4) to 3(5)–pass; Clause 4(1)–pass; Clauses 4(2) to

5(1)–pass; Clauses 5(2) to 8(1)–pass; Clauses 8(2) to 10(2)–pass; Clauses 10(3) to 14(1)–pass; Clause 14(2) to 14(6)–pass; Clauses 15(1) to 16(3)–pass; Clauses 16(4) to 17(1)–pass; Clause 17(2) to 17(3)–pass; Clauses 17(4) to 18–pass; Clauses 19 to 20(3)–pass; Clauses 21(1) to 22(1)–pass; Clause 22(2) to 22(4)–pass; Clause 22(5) to 22(9)–pass; Clauses 22(10) to 23(3)–pass; Clause 23(4) to 23(5)–pass; Clauses 23(6) to 24(2)–pass; Clauses 24(3) to 25–pass; Clauses 26(1) to 27–pass; Clause 28(1) to 28(5)–pass; Clauses 28(6) to 29–pass.

Clauses 30(1) to 31–pass; Clauses 32(1) to 33–pass; Clauses 34(1) to 35(1)–pass; Clauses 35(2) to 36(1)–pass; Clauses 36(2) to 38(2)–pass; Clause 38(3) to 38(4)–pass; Clause 38(5) to 38(6)–pass; Clauses 38(7) to 39(1)–pass; Clause 39(2) to 39(4)–pass.

Clauses 40(1) to 42(2)–pass; Clause 42(3) to 42(5)–pass; Clauses 42(6) to 43(1)–pass; Clause 43(2) to 43(5)–pass; Clause 44(1)–pass; Clauses 44(2) to 45(1)–pass; Clauses 45(2) to 46–pass; Clauses 47 to 49–pass.

Clauses 50 to 52–pass; Clauses 53(1) to 54–pass; Clause 55(1) to 55(6)–pass; Clauses 55(7) to 57(1)–pass; Clauses 57(2) to 58(2)–pass; Clauses 58(3) to 60(1)–pass; Clauses 60(2) to 61–pass; Clause 62–pass; Clauses 63 to 66–pass; title–pass; preamble–pass, table of contents–pass.

Shall the bill be reported?

**Some Honourable Members:** No.

**Voice Vote**

**Mr. Chairperson:** All those in favour of reporting the bill, will you say yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, will you say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** I declare the Yeas have it. The bill shall be reported.

**An Honourable Member:** On division.

**Mr. Chairperson:** On division.

**Mr. Enns:** That is a very civil way of passing legislation. Thank you.

**Bill 19–The Public Trustee Amendment and Consequential Amendments Act**

**Mr. Chairperson:** Next will be The Public Trustee Amendment Act and The Statute Law Amendment Act. Will the minister please come forward?

A kind thank you to the Minister of Agriculture (Mr. Enns). The Minister of Justice (Mr. Toews), will you come forward, please. Does the minister have an opening statement?

**Hon. Vic Toews (Minister of Justice and Attorney General):** No, I do not.

**Mr. Chairperson:** Does the opposition critic have an opening statement?

**Mr. Gord Mackintosh (St. Johns):** Further to the comments in the House on second reading, we are opposed to this bill in principle. We are opposed to it being reported from committee. We think that the purposes, the objectives of a special operating agency are inimical to the purposes and objectives of the Public Trustee in protecting the interests of the most vulnerable citizens in the province.

* (1530)

**Mr. Chairperson:** Thank you, Mr. Mackintosh. Any other comments? If not, we will proceed then to the bill. Again, the title and the preamble will be set aside as the last consideration of the bill. We will move then to clause-by-clause consideration.

Clause 1(1) to Clause 2(2)–pass; Clause 3–pass; title–pass; preamble–pass. Bill be reported?

**Some Honourable Members:** No.

**Mr. Chairperson:** No? All those in favour of reporting the bill–or do you want to report the bill on division?

**An Honourable Member:** On division.

**Mr. Chairperson:** The bill will be reported on division.

**Bill 44–The Statute Law Amendment Act, 1998**

**Mr. Chairperson:** That same procedure will proceed that the title, the preamble and the table of contents will be set aside for the consideration. Any opening statements, Mr. Minister?

**Hon. Vic Toews (Minister of Justice and Attorney General):** I do have a brief opening statement here. Bill 44, the Statute Law Amendment Act, 1998, is before us primarily to correct minor errors in the statutes with regard to spelling, cross-referencing and other editing errors.

I will be proposing committee amendments to amend The Financial Administration Act. The proclamation for this act was not published in the Gazette. Out of an abundance of caution, Legislative Counsel has asked that the act be amended to reflect the date the act was proclaimed. I do not have anything further to add at this time. I will be pleased to answer any questions members may have as we proceed through clause-by-clause consideration of the bill.

**Mr. Chairperson:** Thank you, Mr. Minister. Does the opposition critic have an opening statement?

**An Honourable Member:** No.

**Mr. Chairperson:** We will then proceed to clause-by-clause consideration.

Clause 1(1) to Clause 1(2)–pass; Clause 1(3) to Clause 2–pass; Clause 3 to Clause 4(3)–pass; Clause 5(1) to Clause 6–pass; Clause 7–pass. Clause 8, we have an amendment.

**Mr. Toews:** I move

THAT section 8 of the Bill be renumbered as subsection 8(1) and the following be added as subsection 8(2):

8(2) Subsection 113(1) of The Financial Administration Act is repealed and the following is substituted:

**Coming into force**
**113(1)** Subject to this section, this Act comes into force on April 1, 1997.

**Coming into force: subsection 25(3)**
**113(1.1)** Subsection 25(3) comes into force on a day fixed by proclamation.

**[French version]**

*Il est proposé que l'article 8 du projet de loi devienne le paragraphe 8(1) et qu'il soit ajouté, après le paragraphe 8(1), ce qui suit:*

*8(2) Le paragraphe 113(1) de la Loi sur la gestion des finances publiques est remplacé par ce qui suit:*

***Entrée en vigueur***
***113(1)*** *Sous réserve du présente article, la présente loi entre en vigueur le 1 avril 1997.*

***Entrée en vigueur: paragraphe 25(3)***
***113(1.1)*** *Le paragraphe 25(3) entre en vigueur à la date fixée par proclamation.*

**Motion presented.**

**Voice Vote**

**Mr. Chairperson:** Are there any debates on the amendment? Seeing none, all those in favour of the amendment, will you say yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, say nay. I declare the amendment passed.

* * *

**Mr. Chairperson:** Clause 8 as amended–pass; Clause 9 to Clause 10(1)–pass; Clause 10(2) to Clause 11–pass; Clause 12(1) to Clause 14–pass; Clause 15 to Clause 17(2)–pass; Clause 17(3) to Clause 18–pass; Clause 19(1) to 19(4)–pass.

I understand we have an amendment on Clause 20(1).

**Mr. Toews:** I move

THAT section 20 of the Bill be amended

(a) in subsection (1), by adding "subsection 8(2)," after "and 9,"; and

(b) by adding the following after subsection 20(3):

Coming into force: subsection 8(2)
20(3.1) Subsection 8(2) is retroactive and is deemed to have come into force on April 1, 1997.

**[French version]**

*Il est proposé d'amender l'article 20 du projet de loi :*

*a) par adjonction, dans le paragraphe (1), après* "et 9,", *de* "du paragraphe 8(2),";

*b) par adjonction, après le paragraphe 20(3), de ce qui suit :*

*Entrée en vigueur : paragraphe 8(2)*
*20(3.1) Le paragraphe 8(2) s'applique à compter du 1er avril 1997.*

**Motion presented.**

**Mr. Chairperson:** Amendment–pass; Section 20(1) as amended–pass; Section 20(2)–pass; Section 20(3) to 20(5)–pass; preamble–pass; title–pass; table of contents–pass. Bill as amended be reported.

**Bill 41–The Life Leases and Consequential Amendments Act**

**Mr. Chairperson:** The next bill to be considered by the committee will be Bill 41, The Life Leases and Consequential Amendments Act. As previously indicated, the title and the preamble will be set aside, and so will the table of contents. Mr. Minister, do you have an opening statement?

**Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs):** Just very briefly, Mr. Chair. Thank you for this opportunity. I welcome staff here today. We have had some significant debate on this issue. I have had the chance to meet with my colleagues on the opposite. We have had a good discussion on the issue. A number of points have been raised. I will be introducing two small very minor amendments as we proceed through clause by clause.

I think my remarks on second reading in the House cover the policy and overview of the bill we have proposed. I look forward to the application of this bill in the market. It is an exciting and new bill, a new concept. This is the first of its kind in the British Commonwealth, and it has been a very challenging issue for staff to produce this matter. So with those few words, I would pass the gavel back to you, Mr. Chair.

**Mr. Chairperson:** Thank you very much, Mr. Minister. Does the honourable critic for the opposition have an opening statement?

**Ms. Marianne Cerilli (Radisson):** Mr. Chairperson, I do not have an opening statement, but I do have a number of questions. I am wondering if it would be suitable to simply ask my questions at the beginning, and then we could quickly go through the clause by clause.

**Mr. Chairperson:** Proceed, Ms. Cerilli.

**Ms. Cerilli:** Thank you. I have not got my questions numbered, so I have to decide which one I want to ask first.

I will start with something that was brought to our attention through one of the public presentations, and that was the advertisement for a life-lease condominium that was in the paper recently that bore the headline No Risk Financing. From our discussions of this bill, no risk would be far from an accurate description of a life-lease condominium.

I am wondering if there should be some provisions in the bill–you know, information that must be disclosed, we have regulations around the prelease information, if there should not also be some regulations around advertising of these types of condominiums; again, if that is just to catch someone's attention and sort of draw them in, and then once they got into the nitty-gritty they found that really there were some risks, and it was not as the advertising had led them to believe.

With the minister's interest in the other areas of Consumer and Corporate Affairs in terms of advertising, I wonder if this is something that has been considered by his department.

**Mr. Radcliffe:** As a point of clarification, I would ask the honourable member, when she says no-risk financing, does that mean there is no risk to the financing or no risk involved in the project? The statement in itself baldly–and I realize it is out of context–is somewhat ambiguous. I was wondering if she could clarify that before I respond.

* (1540)

**Ms. Cerilli:** Sure, I will do the best that I can. I do not have the advertisement with me. It was in last week's Free Press on page E6, the weekend's Free Press. To me it would suggest that this is an advertisement intended for potential tenants. It would suggest to tenants that they would put in their entrance fee and their initial payments, and it would be the tenants' financing that would be no risk. That is what I would read from this. So I am looking at it from the point of view of a tenant who would look at that ad. They are looking for a place to live and looking at life-lease condominiums, and that would be misrepresentative of what is involved in these life-lease condominiums.

**Mr. Radcliffe:** So I will direct and I guess qualify my answer and direct it to the issue of what is the status or the risk involved by the tenant occupant when they post their entrance fee. That, I believe, would be the issue that the member is directing her attention to. In this case, we will be posting regulations requiring that developers set out what the amount of the entrance fee is to be. There are criteria in the act right now which we have discussed already, Mr. Chair, about the time limits and the process for return of the entrance fee, if the project does not proceed. I think my honourable colleague is going a step further than wanting me to state the obvious.

I think the issue that my honourable colleague is raising here is that, if there is a negligent misstatement made knowingly under this arrangement, then the offence provisions of the act do come into play. There are significant penalties that can flow from that if, in fact, complaints are made and the appropriate inquiry is made and confirmed.

**Mr. Chairperson:** Ms. Cerilli.

**Mr. Radcliffe:** Oh, and excuse me, Mr. Chair, if I could just add to that.

**Mr. Chairperson:** The honourable minister.

**Mr. Radcliffe:** Thank you, Mr. Chair. I would direct my colleague's attention to paragraph 7(6). A representation made under The Life Leases Act by a landlord to a prospective tenant in respect of a life lease is a term of the lease. So that, too, has implications or consequences, so that I think that landlords, once they have the opportunity to absorb all the implications of this act, will be very chary on what they, in fact, are actually holding out–

**An Honourable Member:** Be very where?

**Mr. Radcliffe:** Chary. Careful. It is very speak de minibus. Because if they are loose with their language, then those terms and conditions could have implications on them and they could be deemed to be bound by them. So this is something, I think, that once people obtain familiarity with the legislation, I think we will see–I am hoping, at least–that all parties will try to be quite reasonable.

**Ms. Cerilli:** Mr. Chairperson, that is a very acceptable answer. I am wondering if you could direct me again to the section of the bill just referenced.

**Mr. Radcliffe:** Mr. Chairman, under Bill 41, Life Leases and Consequential Amendments Act, Section 57(3). I misapplied the nomenclature. So this is an amendment to the Residential Tenancies. It is found on page 45.

**Ms. Cerilli:** It sounds to me that after this bill comes into force that this particular complex may have to reconsider some of their advertising and look at it more closely.

The other question I have is just generally for the minister. Do you anticipate that tenants entering a life lease would use a lawyer either in signing onto the lease or in getting out of the lease, or are you intending that this arrangement would be more like a regular tenancy arrangement where you do not think when you

are renting an apartment that you need a lawyer, but you do need one when you are buying a house? So this arrangement fits somewhere in between that. I am wondering if you think that the average tenant would have to hire a lawyer.

**Mr. Radcliffe:** Having been a lawyer in my past life and civil litigator, I would never discourage any citizen of Manitoba from consulting a lawyer and obtaining the services of a lawyer. The fundamentals of The Life Leases Act, the up front issues, are clearly and succinctly set out, so at the first tranche of agreements and holdings out and undertakings, those are pretty straightforward. They are not rocket science by any means.

However, there will be underlying trustee agreements which could involve critical analysis, and so it is always prudent for a tenant to consult somebody who is learned in the law. They could get away without doing that, but I certainly would not advise it or condone that. I think that there is no exchange or replacement for good legal help.

**Mr. Chairperson:** Ms. Cerilli.

**Mr. Radcliffe:** I notice I have the condonation of the Minister of Justice (Mr. Toews).

**Mr. Chairperson:** The minister has an interesting way of sort of relating things after I had recognized the opposition member.

**Mr. Radcliffe:** I do not know if that went on the record, Mr. Chair. It deserved to be on the record.

**Mr. Chairperson:** I just want to make sure that those that are listening to the tapes later on in life do not think that Ms. Cerilli has a deep voice like that.

**Ms. Cerilli:** I am wondering if the minister could explain in a little bit more detail the kinds of sub-agreements under the act that the public would have to hire a lawyer.

**Mr. Radcliffe:** I guess, I would like to make the point here on the record, quite seriously, that what is envisaged here is that citizens will be parting with a significant amount of wealth. The market right now or the indicators are that the entrance fees on these projects are up to $80,000 so that anyone who is parting with that sort of money, I think, wants to assure themselves that the t's are dotted and the i's are crossed.

**An Honourable Member:** No. The t's are crossed and the i's are dotted.

**Mr. Radcliffe:** I always do it the other way, Mr. Justice.

There is a trustee agreement which is put in place to–[interjection] Yes, you cross your i's and dot your t's. Seriously, there is the trustee agreement for the trustee to hold the entrance fee. That has some specificity to it that should be checked out and should be inspected on a regular basis.

The mortgage itself, the whole mortgage regime, should be something that deserves scrutiny. As my honourable colleague knows, there is the development mortgage which is the first mortgage on these properties, and then often there can be a second mortgage which is the equity statement for the resident occupants so that they can be the cestui que trust to that second mortgage. The occupant tenant should ensure that under the terms of that second mortgage, that is the only claim they have to redeem their position or control the ultimate destiny of that project, that, in fact, their rights are ensured, and basically their rights of foreclosure, their rights to take ultimate title should there be a failure under the first mortgage, so these are some of the issues that I think a prudent resident life-lease person would want to address.

* (1550)

**Ms. Cerilli:** So how would your average tenant go about ensuring that the second mortgage is adequate?

**Mr. Radcliffe:** First of all, I suppose that the prudent resident would either consult a conveyancing solicitor or, if he or she chose not to do that, they would read the second mortgage to make sure that in default of payment on the first mortgage, there were foreclosure provisions made, there were management provisions made in the second mortgage, so that the trustee, the nominee who is the holder of that second mortgage, has the power to take title and assume the liabilities of the first mortgage and take over and manage the life-lease project.

I do not want any of these remarks to be deemed exclusive, either. I think that it deserves study and reflection, and I think probably the prudent owner, if they are skilled in mortgage work, there is nothing so complicated that cannot be made simple, but I do not want these remarks today to be construed as all there is to be concerned about.

**Ms. Cerilli:** I recall when we had the meeting in your office asking questions about the provisions with regard to a landlord going bankrupt and foreclosure on the mortgage, that there was no obligation on the landlord to refund entrance fees, and I asked if that did not pose a risk to the tenants. I think your answer then was if that was not there, the lenders would not lend any money. So what I am trying to do now is put the two things together that you have just told me. On the one hand, you want to make sure that the tenants are supposed to be prudent and ensure that the mortgage is adequate. What is adequate? How do they determine what is reasonable?

**Mr. Radcliffe:** I think my honourable colleague raises two case scenarios. One case scenario is the whole disposition of the entrance fee. When one embarks upon one of these projects as a resident occupant, one must satisfy oneself that the trustee agreement ensures that the funds received by the trustee will be held in escrow, they will not be mixed with other funds, that they will then be applied to the development of the project once the project reaches a critical point in development, and they will be paid to the builder who has a legitimate debt against the property. So that is first position. I think that the prudent occupant would be concerned that that trustee agreement addresses some of those issues.

The other thing that the prudent tenant should observe, as well, is that the second mortgage is, in fact, a registered instrument against the property, that it appears on the title as an encumbrance, that the amount of that second mortgage should at least be equal to the sum of the entrance fees of all the tenant occupants who have become engaged in the project. So those are some of the fundamental issues, I think, that a prudent resident would address.

**Ms. Cerilli:** The other thing related to this that I am wondering is if one life-lease condominium corporation that is managed, let us say, by a Rotary club, could they manage and operate more than one life-lease condominium under that corporation or do they have to set up a separate corporation for each condo? Because I can see where there could be problems in terms of the mortgage if it were the other way, if they could then use the finances for one in the other, and there could be all sorts of financial nightmares created by that.

**Mr. Radcliffe:** Each life-lease project has to be a stand alone corporate owner or personal owner. There can be no mixing of projects. I would direct my honourable colleague's attention to page 34 of the life leases consequential amendment. Clause 34 reads: "no non-profit landlord of a residential complex shall after the coming into force of this Act become, otherwise than under clause (b) of the definition "landlord" in subsection 1(1), a landlord of another residential complex."

So the import of that is that they have got to be stand alone, self-contained owners. If a service club wants to create a second project, then they have got to go through all the corporate structure independently so that you do not get a domino effect of a failure of one wiping out a series of projects.

**Ms. Cerilli:** Good. We are moving right along here. One of the other issues that was raised–I am not certain if this came up at the public meetings or when, but I put forward the idea for an amendment that there be additional provisions–or under the disclosure provisions that there also be included some of the items in the bill that prescribe tenant obligations or would be important for tenants to know. Some of the things like the time period of 60 days or 90 days before they can get their money back if they are withdrawing their money. There are a number of provisions under the act that I think important that tenants would know going into them. It does not specifically speak to an individual life-lease arrangement, but it is requirements under the legislation that all of the tenants should know going in. I suggested that there be an amendment to ensure that those would be included in the disclosure provisions.

Now, maybe that could be done in the regulations, but I am wondering if the minister has agreed that that is a good idea.

**Mr. Radcliffe:** Mr. Chairman, I think my colleague makes a very valid point, that it is important that tenants do know these essential rights and obligations going into the project. The proposal at this point, in order to lend flexibility to this type of legislation, is that they be instituted by regulation, that when the regs come out there will be a requirement on the part of developer landlords that the fundamental rights and obligations of tenants regarding their entrance fee, the stipend that they post at the outset for earnest money, the obligation under the mortgage, all these particulars and the respective time limits to which she makes reference will be set out at the initial information offering such as is done with a condominium.

Before one enters into a condominium transaction, there is an obligation on the part of the vendor to make known all the obligations that impact on the tenant.

**Ms. Cerilli:** The other good suggestion that did definitely come from the public presentations was the request to have tenants on the board of the management corporation, and I am wondering if the minister agreed that that is a good suggestion for an amendment, if that is going to become part of the bill.

**Mr. Radcliffe:** My honourable colleague is correct, that this is an issue that was raised. It was considered at quite some length by the drafters of the bill and by the respective legal counsel. We took counsel from a tax lawyer on this issue. The difficulty is that if a tenant is mandated to be on the board of management of one of these life-lease projects, this may taint their position on a tax perspective. They could be deemed that the income earned by the landlord could be deemed to be that of the tenants and therefore taxable.

I know it is a longshot, as my honourable colleague grimaces at this explanation, but we did receive quite some extended advice on this issue. There is a life-lease project in place right now that could be jeopardized by virtue of that issue. The point being that sometimes as these projects mature and the mortgage is paid down and funds build up inside the life-lease project, there is income earned. The management of the project may choose to effect a diminution in rent to the tenants, you see, and so therefore one does not want that, at least we do not want to jeopardize the tenants by having Revenue Canada then say, ah, well, maybe you have some reverse income here. The closer you are to control and management of that fund, the income tax rules are that that may be an attribute then of ownership. So we want to make sure that there is a clear definition of separation between the tenant and the owner-operator of the project.

* (1600)

It would be the same thing as when one is setting up a trust or foundation, that one must clearly separate oneself from the control of the trust. Otherwise, there is the implication that there really has not been a separation and that the income earned by the trust is included in the donor's income. So it is along those rules. They are complex, they are quite specific, but I would assure my honourable colleague that we did consult legal advice on this. We took legal advice and we wanted to err on the side of safety–I am tempted to say conservatism, but I will refrain from making that remark–but to ensure that there not be any revenue sequelae from that sort of a step.

Now, the other thing, of course, is turf protection, which we did outline with my honourable colleague, that some of the service clubs indicated that they would have a problem if tenants were involved in the management. I do not think that is as serious an issue as the income tax implications that could arise. So, therefore, we chose at this time to refrain from mandating that tenants be on the board of directors.

**Ms. Cerilli:** Mr. Chairperson, I am not sure that I buy this.

**Mr. Radcliffe:** What is that?

**Ms. Cerilli:** I am not sure that I buy this, Mr. Chairperson. Would that then apply to the board members that are on there now, of the Life Lease Corporation Board, who are members of a rotary club or other service club, for example? Are they now going to have all of these income tax risks or implications on their individual income tax? I guess they would not have the same interest because they are not living in the condominium.

**Mr. Radcliffe:** That is right, that is the point.

**Ms. Cerilli:** But, at the same time, the point raised by the presenter was why, if they have all of this risk and all of this investment, should they not have a voice on the board? And if they could be democratically elected by the tenants to sit on the board, then I think that it could be shown to Revenue Canada that they were there as a board member and were not there to benefit on an individual basis.

But, also, there should not be profit going to any of the board members. I mean, the board members are on a nonprofit board. So, I guess, maybe the minister could just take another chance at explaining why this is not a good idea, especially in the context that the presenter raised it as well, and the minister referenced in terms of the way that the management that relates to their vacancies and that relates to their rent.

**Mr. Radcliffe:** Okay, I will have another crack at this, Mr. Chair, and, in fact, counsel has just pointed out another aspect of concern with regard to this.

The landlords–and this is also significant and substantial–the landlord in a not-for-profit project has tax-exempt status. All right. So if the tenant is deemed to be part of the board and therefore part of management, it will jeopardize not only that there might be a tax imputation against the tenant on a diminution status, but the tax-exempt status of the landlord significantly could be in jeopardy. If a tenant is deemed to be getting a benefit from–oh, and the honourable colleague indicates it is hypothetical and precipitous and all those sort of implications. That is what good tax law, tax planning tries to anticipate. Before the problem occurs, design something that is watertight so that revenue would not attach this sort of a project. There is a risk that a tenant rep on a not-for-profit board of landlords would jeopardize the income tax status of the landlord. Tenants who have a right to elect directors could be construed to be members of the landlord corporation. That is the fear.

I will read that again. Tenants who have a right to elect directors might–and this is again anticipatory, I admit–be construed by Revenue Canada to be members of the landlord corp. Tax-exempt status will be lost if any income from the landlord is available for the personal benefit of its members. So there is a taint risk there that we are trying to avoid and make the two interest groups watertight so that everybody's position would not be jeopardized.

Also, the rent reduction issue, which I talked about previously, based on the landlord's income earned on the reserve funds might be construed as a benefit, so there is another issue as well.

Bill 41, I would add, as well, for the benefit of my colleague, that Bill 41 does not prevent tenant reps on landlord boards. But certainly, our best advice to date is do not do it because you run the chance, the very real risk, that there could be income tax implications, and we would not want to advocate or suggest that any resident occupant put themselves in a position of risk.

**An Honourable Member:** Okay, let us move on.

**Ms. Cerilli:** Okay, I will move on, as the Minister of Justice (Mr. Toews) has requested, but it is on a related issue, and it has to do with the rent increases. This, again, was raised at the public presentations–for the minister to explain how The Residential Tenancies Act is going to apply regarding rent increases, and when they are, more in the case of life leases, so much dependent on the vacancy of the complex. Again, this is one of the reasons why some of the tenants felt that they wanted to be part of that, to ensure that there is not going to be a large level of vacancies. But the managers of the corporations, the landlord, would also have an interest, of course, in making sure the places are full, but it seems that there has to be some special provisions to deal with rent increases in a life-lease condominium.

* (1610)

**Mr. Radcliffe:** There are a number of issues, I guess, that I would like to share with my honourable colleague on this particular issue. Number one, Section 140.1(1) on page 55 of the bill basically says that the tenants in a life-lease project have the liberty that they can apply to the director of residential tenancies on a complaint-driven basis to review the rents. So that is the first point of protection. So there is provision for that.

The next thing is that during the development of one of these projects, there has to be, realistically, a critical

mass of tenants, a threshold of applicants who all put up their entrance fee before the project can proceed. Now if a landlord developer chooses, he can proceed without all the units being presold, but the landlord must then put up an amount of money equal to the first year's rent to be held in trust until those vacant flats have been let, the vacant units have been sold. All right. So that is a second level of threshold of protection.

Then, thirdly, if the market should be slow at any particular point in time or the location not attract full occupancy, then the landlord manager has the option that they can let one of these flats on a rented, month-for-month basis in order to maintain the cash flow and the income of the project so that the dearth of occupants is not visited on the remaining life-lease people.

**Ms. Cerilli:** Mr. Chairperson, the minister had said that the tenants cannot complain for a rent review. Is that on the same basis, because the rent guideline does not necessarily seem to apply to life-lease condominiums? So what would the nature of the review be? How would that work? That is the question I am asking.

**Mr. Radcliffe:** The criteria which the director addresses his mind on reviewing such an issue are found in 140.1(3). The director may, after considering any objections received from tenants and information received from the landlord, make an order adjusting or disallowing any of the budgeted costs, requiring that the amounts held in one or more of the reserve funds be applied to operating costs, or disallowing any part of the rents designated.

Now, what the director must do is see if the rents are set out in the lease, are the rents being applied, and then see if the costs are being properly borne on an equitable fashion by the rents being charged. Then the setting of the rent that may be charged for the rental units of the complex are calculated in accordance with life leases as of the date for which the landlord gave notice of a rent increase, so there has to be a consistency with the paper flow. So these are the criteria to which the director addresses his mind in order to see whether, in fact, it is appropriate.

Quite correctly, my honourable colleague mentions that there is no application of Part 9 of The Residential Tenancies Act to life leases. It is exempt.

**Ms. Cerilli:** This is another risk that I think tenants that are entering into a life-lease agreement should be made aware of. This is maybe another consideration for those disclosure provisions, because I could see a real problem with some tenants who get in, and they think they are going to spend a certain amount on the rent. A bunch of other tenants that are there would say, lookit, we would rather have these changes made, we do not care if our rent goes up. One person in the life lease or a few may not want their rent to go up but they are caught. I do not know if there are any other considerations for how to deal with that, if on an individual basis a landlord could have different rents for different apartments, if they would get into doing that, if the minister has any advice on that, if that has been considered by his department.

*Mr. Vice-Chairperson in the Chair*

**Mr. Radcliffe:** We have made no systemic provision for that. I think that is an issue. I think the risk that my honourable colleague has tagged is, in fact, very appropriate. That should be disclosed to the tenant occupant before they enter into the project, that the rents, the periodic rents, as may be incurred from time to time throughout the life of the project, are variable and undoubtedly will rise, well, could go down as well, but they are variable I guess is the best. So the person is at risk that there will be intermittent charges.

I think that this is something that will just have to be played out and rely upon the discretion of the director and the parties involved.

**Ms. Cerilli:** Just to note, then, it is all just up to what the market will bear. As we are seeing with these, they are going more and more upscale. So I am wondering if the minister then would just say that he would be open to looking at other regulations in this area depending on what happens.

**Mr. Radcliffe:** I certainly would. I think my honourable colleague is quite correct in saying that these are very popular in the private industry right now. They are becoming more upscale, and there is a

provision in the act that the landlord is only allowed one rent rise per year.

*Mr. Chairperson in the Chair*

So that is, in fact, one break on the project and on the costs, and I think that this is the first cut at this issue. It has not been done anywhere before. The act is comprehensive. There are always permutations and combinations that could develop that will have to be addressed in a future time. I think that this legislation will grow, the regulation will grow, and that is why the provision was mandating some of the requirements for disclosure in regulation because that then gives it more flexibility.

**Ms. Cerilli:** I think then for people to be aware, if this is the case, they could only get one rent increase this year; but then next year, they could get all the costs lumped in and their rent increase the following year would be even bigger. So I think we have already agreed that it is an important issue for disclosure.

The other question I want to raise is if there is any consideration about the percentage of the total costs of the development that could be made up of the tenants' entrance fees. Here again, this would be an issue sort of addressing the whole issue of risk. I know that one of the public presentations made reference to the fact that almost all of the initial cost was made up from the entrance fees of the tenants. I think I read that in one of the presentations. So I am wondering if there is consideration for that in the legislation.

* (1620)

**Mr. Radcliffe:** I think the answer to this question lies in the analysis of the situation that the tenant occupant is going to pay for the project one way or the other. It is either going to be through a large entrance fee and a low mortgage, which impacts on the monthly rent, or it will be a low entrance fee and a high mortgage, depending on what the needs of the individuals are that are going into the project. So I think that we anticipate at least that the market will dictate how these will be profiled.

Having said that, the other player in this whole issue will be the mortgagees. So the mortgagees will also demand that the residents have a certain equity commitment to a project so that the whole project is not being financed by debt, because the more debt there is in it, the more jeopardy there might be to the mortgagee's client with their money. So they have got to satisfy themselves that this is a secure loan and not dependent wholly on rental income.

**Ms. Cerilli:** I thank the minister for that answer. One of the other issues that is a concern that was raised with public presentation was with regard to construction deficiencies. There are provisions in the bill that if condos are not ready at the date that is specified in a prelease agreement, that if they are not the responsibility or out of the control of the landlord, that there is no obligation on the landlord to refund money or end the leases.

Now, what happens in the case when there are construction difficulties and the construction company goes bankrupt or goes out of business? Because it seems to me that if there were construction difficulties or other deficiencies in the construction, particularly with deficiencies, if they are after the fact and the construction company no longer exists, then the condominium itself, the landlords and the owners are going to have to deal with that. How are the tenants protected in that case?

**Mr. Radcliffe:** Mr. Chairman, the building contracts will be specified under regulation as to be fixed-price contracts. So that is one assurance, one piece of protection that the tenant will have, and then there will be a requirement through regulation that these contractors be bonded. By virtue of a performance bond, if there is a bankruptcy or a significant deficiency that the contractor cannot make up, then there can be reliance upon the bond to complete the project, and then, of course, I guess we have to rely upon the issue of substantial compliance, the doctrine of substantial compliance, sort of when is a suite a suite and when is it not a suite, and that is something that is discernible at law if, in fact, it cannot be solved through the bondsman.

**Ms. Cerilli:** In the past there was an approval mechanism in government for a proposal for a life-lease condominium. Is that still in place? What is the requirement in terms of approval from government

under the act for a service club or any organization who wants to develop a life-lease condominium or a developer to get that approved?

**Mr. Radcliffe:** Mr. Chairman, I think what my honourable colleague is thinking about is that under Housing, there was reference to financing for these multiple residential units. That support has been removed at this point in time. There is no preliminary or prior approval process to be granted from government because, of course, if one did that in government, then you raise the spectre that we are guaranteeing the completion of these projects, which I do not think is something that government wants to be in the position. That would raise unusual liability I think on the part of government, and government has assiduously avoided being in a position of being a guarantor.

So what we do is regulate, we mandate or dictate that there must be disclosure and then that will lead people with a full set of knowledge to make a willing commitment, but that is as far as we want to go, and that is getting into the philosophy behind the act itself.

**Ms. Cerilli:** Mr. Chairperson, my reason for asking this question is to get some understanding of how we know that life-lease condominiums are following the act. Is there any requirement so that you will be able to keep track of where they are being built and how they are progressing? How will we know that the act is being followed?

**Mr. Radcliffe:** Like much of the current consumer legislation that is in place right now, this will be complaint driven, and so there will be no overall master registry of life leases. I think the two functions that we are relying upon here are education to the industry so that the department will be proactive in trying to explain to the industry, both sides of the industry, what the parameters of this activity are, and then if someone feels aggrieved, there is a process by which they can consult the Residential Tenancies Branch, who can conduct the inquiries to see whether there has been compliance or noncompliance. If there is noncompliance, there is, I would suggest, onerous consequence that flows from a breach of the act.

**Ms. Cerilli:** I think the minister may have answered my other question about that. Then it is the Residential Tenancies Branch that follows up and enforces the act, so that is where people would take their complaints to, not just in terms of the tenants provisions, because there are all sorts of other issues around the mortgage and all these other things that are outside the purview of the tenants who deal more with the board. So that is also where the board goes to complain or to deal with any requirements under the act?

**Mr. Radcliffe:** Yes, I would direct my honourable colleague's attention to Section 153(6) contained on page 57 of the bill, which says that, firstly, the matter can be referred to a director, and if the director declines to determine the question by virtue of complexity, amount of money, or the numbers of persons involved, then the process can be initiated in the court. So there is provision for reference to a court of competent jurisdiction.

* (1630)

**Ms. Cerilli:** I wonder if I might request that we take a break.

**Mr. Chairperson:** What is the will of the committee? Should we take a short break? Five minutes? [agreed] A five-minute break it shall be.

*The committee recessed at 4:30 p.m.*

---

**After Recess**

*The committee resumed at 4:33 p.m.*

**Mr. Chairperson:** The committee will resume its deliberations, clause by clause.

**Ms. Cerilli:** I basically just have one more issue I really want to ask questions about.

**Mr. Chairperson:** The committee will recess then until we have voted. We will appear back here as soon as the bells quit ringing.

*The committee recessed at 4:34 p.m.*

---

**After Recess**

*The committee resumed at 4:59 p.m.*

**Mr. Chairperson:** The Committee on Law Amendments will come back to order, consideration of Bill 41.

**Ms. Cerilli:** Mr. Chairperson, I just have a couple more questions, then we can finish this bill off. I had previously expressed a concern about the prelease payments with respect to any interest that would be incurred by the landlord of keeping them prior to a tenant wanting a refund of their prelease payment. I think previously the minister had said that that would have to be taken care of by individual arrangements for each tenant with the landlord. I am wondering why the prelease payments are not protected under the bill. Why would you leave that up to the tenants to have to again make sure that they understood that that was their responsibility? Why are they not protected of getting the interest on the prelease payment?

* (1700)

**Mr. Radcliffe:** The issue which my honourable colleague is addressing at this point in time is the earnest money that tenant occupants put up prior to the payment of the entrance fee. To date these funds have not exceeded a thousand dollars per unit. So we are looking–albeit a thousand is a fair amount of money, but in the whole realm of an $80,000 downstroke on such a purchase, it is in relationship to the total investment a modest amount of money. These funds could be held for up to a year, possibly even longer, although I suspect that if a project has not proceeded at the end of a year that probably realistically the funds would be released or returned.

But, in any event, it is from a practical point of view of demanding that or imposing a requirement of interest or requirement that there be this accountability to the tenant, we felt it was going to be overly onerous. I can tell my honourable colleague that from the perspective of formerly being a conveyancing solicitor, I did always inspect the attribution of interest on deposits to satisfy myself that, in fact, if it were a significant amount of money that interest would be earned. Otherwise, something like a thousand dollars, it is not customary in the market for that amount of money to attract interest.

So I guess it was practical considerations that led us to the conclusion we did on this issue.

**Ms. Cerilli:** Okay, I will accept that, but the thousand dollars is a lot more than what tenants put in as a damage deposit on an apartment, and interest provisions do apply there.

The other question I wanted to ask about is another issue that I raised with the minister in our meeting, and I think this is one of the things that he wanted to look into a bit more, and that is when these life-lease condominiums are bought and then sublet so that the person on the lease is not necessarily the inhabitant of the unit but they are subletting it, one of the questions I had in that case is: who is the landlord and how is the legislation going to apply? If there is some kind of problem with the person that is actually living in the unit, there becomes a problem with the unit itself. You know, there is going to be this difficulty with defining who the tenant has the relationship with.

**Mr. Radcliffe:** I believe the structure to be as follows. The developer owner of the property, being the life-lease project, for purposes of the life-lease project is the landlord and defined as such under the terms of the life-lease project and under the terms of this act. Then the person who moves in as an occupant resident is a tenant for the purposes of the life-lease project. If that person, the latter, being the resident occupant, then chooses to sublet that space, that residential space, then the incoming person who then becomes the actual resident occupant is a tenant under The Residential Tenancies Act, and the relationship between the resident and the original landlord–excuse me a second.

I apologize for the delay. The ultimate occupant, the sublessee, then becomes a tenant under The Landlord and Tenant Act and the landlord would be the original developer landlord as defined under the life-lease project, but it is a residential tenancies relationship under the other piece of legislation that is developed.

**Ms. Cerilli:** I just want to clarify to see if I am following you. So the sublet tenant would then have a regular residential tenancies landlord-tenant relationship with the owner of that unit or who has the lease on that unit who is–no, I am not understanding that correctly. This is where I think it is confusing.

The reason I am asking this is if the tenant who is simply renting that unit as a sublet, if their tenancy agreement would be governed by the regular Residential Tenancies Act, particularly in the areas of rent increases because the individual who has purchased, perhaps they have purchased more than one unit or they have signed a lease on more than one unit and then are subletting them out, they would not be able to have larger rent increases and start trying to use that as a sort of a revenue property when they rent it out, so I believe I am clear that The Residential Tenancies Act would apply. I saw you nodding when I was saying that, but I am still not clear who the landlord is and if there would be some protection in that they would not be able to have large rent increases.

**Mr. Radcliffe:** Mr. Chairman, I will try it again because it is a complex and intricate process. The landlord for all purposes is the developer, landlord, owner of the property, so that is in whom the title is vested. The tenant at first instance under the life leases is this person whom we have governed and defined in the relationship under the life-leases legislation. If that tenant then chooses under this scenario to sublet that space, the tenant is, in fact, a tenant and only a tenant, not an owner, never was an owner, never can be an owner unless they go through the foreclosure under the second mortgage. So the new person, the third person coming into the scenario, is a sublessee, and The Residential Tenancies Act deems that that subtenant shall be a tenant to the original landlord.

* (1710)

**Ms. Cerilli:** Okay. The other issue had been that there is nothing in the legislation then that would prevent someone from purchasing a number–I should not use the word purchasing–from signing the lease on a number of units and then subletting them out. There is nothing in the legislation that prevents that, but they could do that and then sort of flip them by having someone else take over the lease, but they would not be able to do it just by having increases in the rent.

**Mr. Radcliffe:** Mr. Chairman, there is nothing in the act to prevent what we, perhaps, call the primary tenant from occupying and posting an entrance fee and applying for that sort of status in a number of projects. They have the facility, if they so choose, and they have got the money and the inclination, they can do that. But where the break would be on that sort of activity is that the primary tenant cannot mark up the rent to the subtenant.

So the rent that is charged from the landlord developer, who is your primary owner, to the ultimate occupant must be the same amount of money. So there is no advantage, there is no profit involved whereby that primary tenant could charge more to the subtenant.

So we think realistically that this scenario will not arise by virtue of a desire to make a profit or to be a sort of type of intermediary landlord. For personal reasons somebody might sublet because of health or change in personal plans or lifestyle, et cetera, but from a point of view of trying to be a marketeer, we do not anticipate that that will happen.

**Ms. Cerilli:** I just wanted to clarify there is nothing in the legislation that prevents that, other than there is a provision that requires that the rent would be the same for the sublet tenant.

**Mr. Radcliffe:** That is correct.

**Mr. Chairperson:** Any further questions? If not, we will then proceed to clause-by-clause consideration of the bill, and as previously agreed, we will set aside the title, the preamble and the table of contents till the end of the bill.

Item 1(1)–pass; 1(2) to 2(3)–pass; 2(4) to 4(2)–pass; 5(1) to 6(3)–pass; 6(4) to 7(2)–pass; 8(1) to 8(4)–pass; 8(5) to 9(3)–pass; 10(1) to 10(6)–pass; 11(1) to 11(5)–pass; 11(6) to 12(2)–pass; 12(3) to 33–pass; 34 to 37(2)–pass; 38(1) to 38(2)–pass.

Item 38(3), I understand there is an amendment.

**Mr. Radcliffe:** On 38(3), Mr. Chair, I would move

THAT subsection 38(3) be amended by adding "under subsection (1) or (2), as the case may be" at the end of the subsection.

**[French version]**

*Il est proposé que le paragraphe 38(3) du projet de loi soit amendé par substitution, à "une infraction les*

*administrateurs, les dirigeants et les mandataires d'une personne morale qui autorisent une infraction que vise le paragraphe (1) ou (2)", de "l'infraction prévue au paragraphe (1) ou (2) les administrateurs, les dirigeants et les mandataires d'une personne morale qui autorisent cette infraction".*

**Motion presented.**

**Mr. Doug Martindale (Burrows):** Could the minister explain the amendment, please?

**Mr. Radcliffe:** Mr. Chairman, I would direct my honourable colleague's attention to Section 38(3). This is a penalty section, and this is a structural amendment basically, because in 38(3) as it exists in the legislation, we had referred to offences under sub (1) and sub (2), so what we are doing is expanding the ambit of potential for penalty or potential for infraction and not restricting it to (1) and (2).

The implication is that if this went to court and we had only specified that the penalty section applied to (1) or (2), by implication, a court could then say, well, you have not designated that this penalty section apply to the entire act, and therefore there is no penalty applying to the rest of the potential offences. So it was an oversight on our part, and we are, in fact, plugging what could be potentially a gap.

**Mr. Martindale:** Mr. Chairperson, could the minister tell me then when it says subsection (1) or (2), does that not imply that it only refers to subsection (1) or (2)?

**Mr. Radcliffe:** Sorry, clarify that, clarification, the amendment creates a penalty for directors, officers and agents under (3) as is set out in (1) and (2). Before there was no penalty attaching to misdemeanours of directors, officers and agents. I direct your attention to sub (5), the penalties applied to an offence under sub (1) and an offence under sub (2). Okay, you see that. All right. So now what we have done is we have folded an offence by an officer, director or agent into this regime with this wording, as the case may be. We have included: an offence under (3) is now an included offence under (1) and (2).

I guess that is the easiest way to explain it, so that, in fact, directors, agents and officers are at jeopardy because they are included under (1) and (2). We figured that was the safest way to wrap them into the penalty regime. Otherwise, a director, officer or agent could commit an offence, and there was no prescription for a penalty against them. This was an oversight on our part when we were designing this. We went back and were doing the last pass through, and said, whoops, there is no penalty as it sits without that clause in there, so this folds them into the penalty regime.

**Mr. Chairperson:** Amendment–pass; item 38(3), as amended–pass. Item 38(4).

**Mr. Radcliffe:** Mr. Chair, I have a further amendment. I move

THAT subsection 38(4) be struck out and the following substituted:

**Defence**
**38(4)** No person is guilty of an offence under this section if the person can prove on a balance of probabilities that he or she took reasonable steps to avoid the commission of the offence.

**[French version]**

*Il est proposé que le paragraphe 38(4) du projet de loi soit remplacé par ce qui suit:*

***Défense***
***38(4)*** *Ne commet pas l'infraction prévue au présent article la personne qui peut établir selon la prépondérance des probabilités qu'elle a pris les mesures voulues pour empêcher sa perpétration.*

**Motion presented.**

* (1720)

**Mr. Radcliffe:** The meaning of that is, and I was starting to mix my metaphors in the previous explanation, the act the way it is read now is as follows: "No person is guilty of an offence under subsection (1) if the person can prove on a balance of probabilities that he or she took reasonable steps to ascertain that the statement was not false or misleading."

All right? So there, there is specific reference–this is the defence section–of reasonable belief. The defence of reasonable belief was restricted to sub (1).

Now we have said we have expanded it to the whole act so that if somebody is functioning under a reasonable belief that what they are saying is true, even though it is not true, that is a legitimate defence. The common law poses the defence of reasonable belief, but specific legislation by virtue of its specificity might be interpreted to exclude that if we do not say it so, therefore, we have expanded it to cover the whole act.

**Mr. Martindale:** Maybe we should use that expression "reasonable belief" in the Legislature here as well. I wonder if the minister can tell me if any of these amendments were suggested by comments or criticisms of our Housing critic. She had indicated to me that you are going to make some changes to regulations as a result of her observations, but I am wondering if any of the amendments are a result of our suggestions.

**Mr. Radcliffe:** The critic did not specifically catch these issues, but I would suggest that probably the whole process of inviting the critic to sit down with staff, go through the act, go through the concept, caused us to go back and review the whole legislation as a piece. Again, it was staff who identified these issues. These came out of the community consultations actually, but as a result of the inspection from the critic, we have been constantly going over the issues. I think there was a lawyer in town–

**An Honourable Member:** There is always one of those.

**Mr. Radcliffe:** That is right–who raised these issues and brought it to our attention. But it was because of the whole process of re-evaluation, reinspection under the criticism of the critic that caused us to be vigilant and initiated this process.

**Mr. Martindale:** Mr. Chairperson, I would like to thank the minister for the answer and also for his staff in sitting down with our critic. You have very good staff, and we would be delighted to have them work for the member for Radisson (Ms. Cerilli) or myself a year from now.

**An Honourable Member:** Dream on.

**Mr. Radcliffe:** Mr. Chair, I must chide my honourable colleague opposite for such specious allegations that I would think impute his grip on veracity or reality at this point in time. I think that the scenario that he is describing is something that is quite fictitious.

**Mr. Chairperson:** Thank you very much to both of you. I will consider this as two baseball bats having been crossed and the ball placed right in the middle of it, so I thank you very kindly.

Amendment–pass; item 38(4) as amended–pass; 38(5) to 90–pass; table of contents–pass; title–pass; preamble–pass. Bill be reported as amended.

Committee rise.

**COMMITTEE ROSE AT:** 5:25 p.m.