Fourth Session - Thirty-Eighth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee
on
Social and Economic Development

Chairperson
Ms. Marilyn Brick
Constituency of St. Norbert

Vol. LVII No. 13 - 9 a.m., Monday, June 12, 2006

ISSN 1708-6698

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Eighth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON SOCIAL AND ECONOMIC DEVELOPMENT

Monday, June 12, 2006

TIME – 9 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Ms. Marilyn Brick (St. Norbert)

VICE-CHAIRPERSON – Mr. Doug Martindale (Burrows)

ATTENDANCE – 11 QUORUM – 6

Members of the committee present:

Hon. Mr. Lathlin, Hon. Ms. McGifford, Hon. Messrs. Sale, Selinger

Ms. Brick, Messrs. Cummings, Goertzen, Hawranik, Ms. Korzeniowski, Messrs. Martindale, Schuler

Substitutions:

Mr. Dewar for Ms. Korzeniowski at 12 p.m.
Mr. Altemeyer for Hon. Mr. Selinger at 12:28 p.m.
Mr. Aglugub for Hon. Ms. McGifford at 12:28 p.m.
Mr. Jennissen for Hon. Mr. Lathlin at 12:28 p.m.

APPEARING:

Mr. Kevin Lamoureux, MLA for Inkster
Mrs. Leanne Rowat, MLA for Minnedosa
Hon. Jon Gerrard, MLA for River Heights

WITNESSES:

Bill 32–The Real Property Amendment Act

Mr. Carl Braun, Executive Director, Treaty Land Entitlement Committee of Manitoba Inc.

Bill 34–The Public Interest Disclosure (Whistleblower Protection) Act

Mr. Martin Boroditsky, Private Citizen

Bill 41–The Pharmaceutical Act

Ms. Penny Murray, Vice-President, Manitoba Pharmaceutical Association

Mr. Scott Ransome, Executive Director, Manitoba Society of Pharmacists

Mr. Troy Harwood-Jones, Manitoba International Pharmacists Association

Ms. Sheryl Zelenitsky, Acting Dean, Faculty of Pharmacy, University of Manitoba

WRITTEN SUBMISSIONS:

Bill 34–The Public Interest Disclosure (Whistleblower Protection) Act

Mr. Paul Thomas, Private Citizen

MATTERS UNDER CONSIDERATION:

Bill 25–The Consumer Protection Amendment Act (Payday Loans)

Bill 29–The Degree Granting Act

Bill 32–The Real Property Amendment Act

Bill 33–The Northern Affairs Act

Bill 34–The Public Interest Disclosure (Whistleblower Protection) Act

Bill 41–The Pharmaceutical Act

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Madam Chairperson: Good morning. Will the Standing Committee on Social and Economic Development please come to order.

This meeting has been called to consider the following bills: Bill 25, The Consumer Protection Amendment Act (Payday Loans); Bill 29, The Degree Granting Act; Bill 32, The Real Property Amendment Act; Bill 33, The Northern Affairs Act; Bill 34, The Public Interest Disclosure (Whistleblower Protection) Act; Bill 41, The Pharmaceutical Act.

We do have presenters registered to speak this morning. On Bill 34, The Public Interest Disclosure (Whistleblower Protection) Act, Martin Boroditsky, Private Citizen. On Bill 41, The Pharmaceutical Act, Penny Murray, Manitoba Pharmaceutical Association; Scott Ransome, Manitoba Society of Pharmacists; Troy Harwood-Jones, Manitoba International Pharmacists Association; Dr. Sheryl Zelenitsky, Faculty of Pharmacy, University of Manitoba.

Since we concluded presentations on Bill 32 at last Thursday's meeting, the Treaty Land Entitlement Committee of Manitoba Inc. has expressed some

interest in making a presentation on that bill. Representatives from this group are in attendance this morning. Is it the will of the committee to hear a presentation from this group? *[Agreed]*

How long does the committee wish to sit this morning?

Mr. Doug Martindale (Burrows): Madam Chairperson, I think we should follow the usual procedure of this committee and sit till twelve noon.

Madam Chairperson: Is that agreed? *[Agreed]*

Before we proceed with presentations, we do have a number of other items and points of information to consider. First of all, if there is anyone else in the audience who would like to make a presentation this morning, please register with staff at the entrance of the room.

Prior to proceeding with public presentations, at the meeting we had previously we were part way through Bill 25, the clause-by-clause consideration of The Consumer Protection Amendment Act (Payday Loans). What is the wish of the committee in regard to this?

Mr. Martindale: Madam Chairperson, I recommend that we finish clause by clause in that bill.

Madam Chairperson: Is that agreed by the committee? *[Agreed]*

Bill 25–The Consumer Protection Amendment Act (Payday Loans)

Madam Chairperson: For the information of the committee, on Bill 25, we had previously passed clause 1 and clause 2, and we are now at clause 3.

Shall Clause 3 pass?

Hon. Greg Selinger (Minister of Finance): I have one amendment.

I move

THAT the proposed subsection 164(13), as set out in Clause 3 of the Bill, be replaced with the following:

Application of Public Utilities Board Act

164(13) Part 1 of *The Public Utilities Board Act* applies, with necessary changes, to the making of an order under this section as if the powers and duties of the board under this section were assigned to the board under that Part, except for the following provisions:

(a) section 33 (power of board on complaints);

(b) section 34 (power to appoint counsel) as it relates to the fees and expenses of the person appointed;

(c) subsection 51(2) (time for service of order);

(d) section 52 (enforcement of order);

(e) section 56 (order as to costs) as it relates to the costs of an intervener;

(f) section 57 (fees).

Madam Chairperson: It has been moved by Minister Selinger

THAT the proposed subsection–

An Honourable Member: Dispense.

Madam Chairperson: Dispense. The motion is in order. The floor is open for questions.

Is the committee ready for the question?

Some Honourable Members: Question.

Madam Chairperson: The question before the committee is as follows–did people want an explanation prior to putting the question to the committee?

Mr. Gerald Hawranik (Lac du Bonnet): Although I believe I know what the effect of that provision is, I wonder if I could have the minister, for the benefit of everyone at committee, explain, particularly as it relates to (a), (b) and (f).

Mr. Selinger: This section clarifies that the intervener fees will come from the consolidated fund, as opposed to being levied against the payday lending industry by the Public Utilities Board because we plan to collect the costs of providing this regulation through license fees, so it does not allow them to be double hit, both at the PUB and through the license fee.

Madam Chairperson: Is the committee ready for the question?

An Honourable Member: Question.

Madam Chairperson: The motion is as follows–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

Amendment–pass; clause 3 as amended–pass; clause 4–pass; enacting clause–pass; title–pass. Bill as amended be reported.

Madam Chairperson: Is it the will of the committee to now return to public presentations? *[Agreed]*

Did you want to do Bill 32 next, or did you want to do Bill 34?

An Honourable Member: How about presentations?

Madam Chairperson: On public presentations? We have a presenter on Bill 32, which was agreed by the committee to hear the presenter.

***** (09:10)

Bill 32–The Real Property Amendment Act

Madam Chairperson: Can I have the minister responsible for Bill 32, Minister Lathlin? On Bill 32, The Real Property Amendment Act, the committee calls Carl Braun from the Treaty Land Entitlement Committee.

Mr. Braun, did you have a written presentation you wanted to circulate.

Mr. Carl Braun (Executive Director, Treaty Land Entitlement Committee of Manitoba Inc.): No. At this time, I would like to simply read from correspondence that was previously sent.

Madam Chairperson: Okay. I will just need to recognize you.

Mr. Braun: Would you prefer I introduce myself? Okay. It is Carl Braun. I am the executive director for the Treaty Land Entitlement Committee representing soon-to-be 22 First Nations. Continue? Okay.

On June 8 of last week, we held our annual general meeting in the Opaskwayak Cree Nation. I also found out on the morning of the 8th that the standing committee was sitting on the matter of The Real Property Act. Correspondence was sent in. First, if I can, I would like to question whether the committee received the correspondence.

Madam Chairperson: As the Chairperson, I received the correspondence. It was not distributed to the rest of the committee as it was directed to myself.

Mr. Braun: What I would like to do is read the correspondence, and then add additional comments, if that is appropriate?

The correspondence comes from D'Arcy & Deacon, which is our legal counsel. It is addressed to the Honourable Marilyn Brick of the standing committee:

We are legal counsel to the Treaty Land Entitlement Committee of Manitoba Inc., also known as TLEC. As you may be aware, TLEC is a party to the Manitoba Treaty Land Entitlement Framework Agreement. It was signed May 29, 1997, and deals with the transfer of 1.1 million acres of land to 20 different First Nations within the province of Manitoba.

TLEC only recently became aware that Bill 32 was being presented to the Legislative Assembly in order to allow for the creation of easements as part of the reserve creation process. To this date, our client, as well as its member First Nations, remain confused as to the intent and workings of the legislation. There has been absolutely no consultation with Treaty Land Entitlement Committee or any of the member First Nations.

You should also be aware that the framework agreement is the implementation of the treaty right to reserve under the various number of treaties found in the province of Manitoba. Anything which may have an impact on the existing treaty rights of First Nations requires consultation on the part of the government in compliance with its fiduciary obligations and the honour of the Crown. This includes not only the federal government, but provincial government as well.

On May 29, 2006, representatives from Treaty Lands on the committee, as well as the Assembly of Manitoba Chiefs, and MKIO, which is Manitoba Keewatinowi Ininew Okimakanak, as well as representatives from the Department of Indian Affairs and Northern Development, which is Canada, met with Ministers Lathlin and Struthers over Bill 32. At that meeting, the minister promised that a committee would be struck including representatives from Treaty Land Entitlement Committee, AMC, MKIO, and the Southern Chiefs Organization, as well as from the government of Manitoba, and the government of Canada to discuss Bill 32 and its intent and implications on the framework agreement. That meeting has not yet occurred, and now our client, as of today's date, has found that Bill 32 has received second reading on June 6, and is, as of the date, or as of drafting this letter being presented to the standing committee.

We have had no opportunity to register as presenter. It is, in fact, in the middle of its Annual General Assembly, and will not be able to make any presentations on today's date. We must, therefore, respectfully ask that any presentations on Bill 32 be

tabled until an appropriate time as our client is able to register and prepare its presentation on Bill 32. As well, we call upon the Province of Manitoba to implement the framework agreement in good faith and to honour the commitments made on May 29, 2006, to our clients and other First Nations organizations involved.

Should the Province of Manitoba fail to do this, it may be necessary for our clients to invoke the dispute resolution processes under the framework agreement, as well as seek the necessary legal remedies which are available to it.

In short, we have had no opportunity to discuss this. The agreement speaks to having meaningful participation on any amendments to legislation relevant to the agreement. I am with the understanding again that we met on May 29 and we were supposed to strike a committee to have these discussions with INAC on behalf of Canada and the three political organizations within the province and our organization. We have not met yet.

My request for recommendation would be that the forward movement of this amendment be stopped until such time as we can responsibly sit down and have these proper discussions. That ends my presentation.

Madam Chairperson: Thank you.

Mr. Gerald Hawranik (Lac du Bonnet): Thank you.

Madam Chairperson: I have to ask you, Mr. Hawranik, to bring your mike up closer. Hansard has told me they are having trouble hearing you.

Mr. Hawranik: Yes, Mr. Braun. Thank you for your presentation, but I have no explanation as to why we do not have a copy of that letter. I am surprised, in fact, I think I heard the Chairperson of the committee say that she had a copy of the letter, the first we have heard of it as members of the opposition. I am really quite concerned about that, particularly when you say that there has been no consultation in spite of the fact that there was a meeting on May 29 which promised a committee to look at Bill 32 before it was presented in the Legislature, and I am really quite concerned about that. Obviously, consultation is clearly part of this process. We should not be hurrying legislation through this Legislature if the proper parties had not been consulted.

I take it that it is your recommendation, then, that the legislation not be passed at this point. How long would you suggest that we wait considering the fact that, of course, the Legislature rises tomorrow? How long would you need to take to, in fact, prepare a proper presentation?

Mr. Braun: First of all, that is my recommendation. As to the time line, I would say an initial meeting would be able to provide that time line. An initial meeting has yet to take place. I cannot give you a time line. I think once the parties sit down then we could speak to process and content and come up with some formal time lines.

Mr. Kevin Lamoureux (Inkster): I do–

Madam Chairperson: Mr. Lamoureux, you have to bring your mike a little closer, I am sorry.

Mr. Lamoureux: I do appreciate your presentation. We have expressed a great deal of concern in regard to the way in which the government is trying to manipulate legislation through the Chamber. I think you are an excellent case in point in terms of process. The bill was given second reading on May 31, so even as members of the opposition we were not provided the opportunity to really do anything in regard to this bill.

I would be interested in getting a copy of the letter. Is that something you would be able to provide myself and other members of this committee at this time?

Mr. Braun: Yes, certainly.

Mr. Lamoureux: Just so that you are aware from our perspective, we believe that this bill should then remain in the committee and should not pass today or tomorrow so that members of your organization and so forth would be provided the opportunity to be able to speak to this bill. So, when we do go into the discussion on bills, it would be our suggestion that this bill stop at this point and there be another committee called in order to accommodate your request. Thank you for your presentation.

Mr. Braun: Yes, I would agree with that statement.

Mr. Ron Schuler (Springfield): Madam Chair, with some concern I will ask the presenter to just stand for a moment. I would like to address the Chair on this issue. A letter was sent to this committee, and we have received other correspondence from individuals on other pieces of legislation who could not be here. I think the committee is quite concerned that a letter addressing the legislation and addressing this committee was not handed out to the committee. I do not think it is up to the presenter to hand out the

letter. I think it is up to you. Could we have that letter in the next 10 minutes? If we need to recess, that would be fine, too. But, really, if that letter was meant for this committee, then it should have been here this morning before the proceedings started, and I am sure you would have no problem.

***** (09:20)

Madam Chairperson: No, I have no problem with that, but I would just like to respond and make the committee aware that, on receipt of the letter, we phoned the author–actually, I do not think, Mr. Braun, you were the author; it was a lawyer–and informed them that the committee would then be sitting again on Monday and that we would be asking leave for them to come and present on Monday. So, if they wished to do so, they could do that. But we can also make their letter available to people. It is as he has read it, verbatim.

Mr. Schuler: When would that take place?

Madam Chairperson: We can do that right away.

Mr. Glen Cummings (Ste. Rose): Well, we have one of the ministers here, who–

Madam Chairperson: I am sorry. Mr. Cummings, you have to speak a little bit clearer, into your mike.

Mr. Cummings: Can you hear me now?

Madam Chairperson: I sure can.

Mr. Cummings: We have at least one of the ministers here who, according to presentation, had agreed to some consultative meetings. This committee, I do not think, constitutes the type of consultation that I expect was in mind. Perhaps Minister Lathlin could comment on that, or he could accept the offer that my colleague just made that perhaps we could delay dealing with this bill until the government can fulfil its wishes to have further meetings on this bill with the organization that the presenter represents.

Madam Chairperson: Are there any other questions for the presenter?

Mrs. Leanne Rowat (Minnedosa): You indicated that you were looking at striking a committee with Minister Struthers and Minister Lathlin. Have you been given any time lines of when that is going to take place? Is that in the next week or two weeks? Have they given you any indication when you had a meeting on May 29 when you will be reconvening?

Mr. Braun: My understanding is that we have set a tentative date of June 19 for an initial meeting.

Mrs. Rowat: At the June 19 meeting, have there been any terms of reference or, as you indicated, intent and implications of how it will unfold? Like, what would be the terms of reference for the meeting that you hope to have addressed?

Mr. Braun: Technically, I will say there are no terms of reference, but it has been struck with two primary services: one would be to discuss the amendment to Bill 32 and the other is to discuss a joint action plan to move the Treaty Land Entitlement implementation process forward.

Mr. Lamoureux: Could you indicate when you were first given indication of the content of Bill 32?

Mr. Braun: I recognize April 11, a provincial press release.

Madam Chairperson: Mr. Lamoureux, I just have to ask: Is there leave from the committee for one last question from Mr. Lamoureux? *[Agreed]*

Mr. Lamoureux: After the press release was actually issued out, was there any consultation between now and then in terms of the content of the bill with you or your organization?

Mr. Braun: My response would be that technically there was short dialogue, raising question to the amendment. Our opinion is that no, not meaningful, modified consultation.

Madam Chairperson: Thank you very much, Mr. Braun.

The committee will now return to Bill 34, The Public Interest Disclosure (Whistleblower Protection) Act–

Point of Order

An Honourable Member: Point of order.

Madam Chairperson: Is it a point of order, Mr. Cummings?

Mr. Cummings: Well, you can call it what you like. I asked the minister a question which he did not take the opportunity to answer. Before he leaves the chair, I wonder if he might comment on whether or not he is prepared to hold this bill and have further discussions, as was promised according to the presentation of Mr. Braun.

Madam Chairperson: If the minister wants to respond he can, or we can wait until we get to clause-by-clause for his response.

Bill 34–The Public Interest Disclosure (Whistleblower Protection) Act

Madam Chairperson: On Bill 34, The Public Interest Disclosure (Whistleblower Protection) Act, the committee calls Martin Boroditsky, private citizen.

Did you have copies of a written presentation?

Mr. Martin Boroditsky (Private Citizen): Yes, they have been provided.

Madam Chairperson: Mr. Boroditsky, I have just been asked to remind everyone here in committee that we have 10 minutes to speak and then five minutes for questions. Whenever you are ready, you can proceed, and if you could just bring your mike down just a little bit.

Mr. Boroditsky: Is that okay?

Madam Chairperson: Yes. You are free to proceed whenever you are ready.

Mr. Boroditsky: I will just wait until they are distributed.

My name is Martin Boroditsky and I have taken a particular interest in Bill 34 because of my unique experience in this field.

I myself have been a whistle-blower. I operate the consulting company Broad Range Alternative Talent, and I have represented a client who acted as a whistle-blower. In fact, I suspect some of the wording in the act is the direct result of his case.

I cannot emphasize strongly enough to this committee that my personal experience and Walter Trafton's documentation of the investigation into his complaint against the manager of the Residential Tenancies Branch is the best evidence you will get about why this bill is faulty.

For all the lawyers, academics and pointy-headed blowhards who will bend your ears about whistle-blower protection, they do not have the practical, real-life experience that I bring forward in this presentation.

It is significant that not one group is registered to support this bill. If people who represent whistle-blowers are not stepping forward to voice support for this bill, what is the public to the think? If journalists and other watchdog groups have not stepped forward, it is because no one involved in whistle-blowing views this legislation as having any true merit.

Everyone knows the Ombudsman is already overwhelmed. Although some progress has been made, I still regularly get letters telling me that ongoing investigations into Freedom of Information and administrative matters are being postponed. This bill has no specific provisions for any increase in the funding for either the Ombudsman or the provincial auditor to conduct even more whistle-blowing inquiries. So telling the public that these are going to be handled expeditiously is a fallacy, unless the Legislature is willing to commit the necessary funding without question.

It is exactly because the Ombudsman and Auditor are well-known to be swamped that whistle-blowers in Manitoba have gone directly to the offices of the ministers responsible. But this law does nothing to help or protect citizens who recognize the backlog of the Ombudsman and Auditor and have good reason not to trust the bureaucrats. This bill is ministerial accountability going backward.

You might as well tell whistle-blowers to keep it to themselves because the people who carry ultimate responsibility, the ministers, can wash their hands of it, saying this flawed law was followed and they cannot influence the so-called process. This is not surprising as recent experience has shown the ministers are responsible for cover-ups: Workers Compensation Board, Seven Oaks School Division, Hydra House. Whistle-blowers went to ministers for remedy; instead, they got phoney investigations.

Ministers are accountable to voters, theoretically, at least, but bureaucrats are not. Their accountability is to the politicians. If they screw up an investigation, as was the case of the Seven Oaks land development complaint brought forward by Bob Snyder, why, they do not have to run for office. The opposition has to run for office and get into government to correct the errors and get to the bottom of it. How much confidence does this give whistle-blowers?

My years on the front lines have been spent dealing with high-handed departmental bureaucrats or, worse yet, government appointees who focus not on a search for the truth, but rather on deflecting any responsibility when faced with a complaint that may lead to a scandal.

***** (09:30)

It is in the provisions for investigation that this bill falls flat on its face and betrays the public interest rather than protects it.

(a) The definition of "Wrongdoings to which this Act applies" is far too narrow. The section defining an act or omission that creates a substantial and specific danger to the life, health or safety of persons must be amended to include a subsection where situations where the economic impact upon a complainant or other, such as an industry, is recognized as a protected complaint.

(b) The section "When investigation not required," clause (c): "so much time has elapsed between the date when the subject matter of the disclosure arose and the date when the disclosure was made that investigating it would not serve a useful purpose;". Ferreting out government abuse, unfair mismanagement is always of useful purpose, and the only person who would say otherwise must be a government lawyer.

(c) I suggest that an amendment be moved enshrining the definition of natural justice, as submitted by Walter Trafton in his complaint against RTB. Under Section 5(2)(b), the procedures established by department heads must include procedures "for investigating disclosures in accordance with the principles of procedural fairness and natural justice;". Just by coincidence, this was the very ground that Walter Trafton fought bureaucrats on all last year. Is it coincidence that it makes its way into this legislation? I do not think so. The words "natural justice" seem so obvious. You have to ask yourselves, who will object? That is why they are in there. What you do not know is that the bureaucrats are using the words to thwart complaint investigations, not support them.

Let me tell you Walter Trafton's story. After uncovering documents that supported his case– documents he was told by the Tenancies Branch had been destroyed–he made a complaint to the Minister of Finance blowing the whistle on wrongdoing and financial chicanery within the department. They had continued to demand he pay $23,000 in rent overcharges, when the documents proved he owed far, far less, if anything at all. RTB had scuttled the sale when a lawyer acting for an interested buyer was informed of the inflated figure and was told Trafton or the purchaser was going to have to pay or be ordered to do so.

Trafton was well aware of how this government dealt with other whistle-blowers, such as James Small with Hydra House, and he wanted to be sure, in advance, that his complaint did not get swept under the rug as the others initially were. That is all in writing and e-mail exchanges with the assistant deputy minister. Before giving his permission to proceed with the investigation, something you have to do now is firstly waive your privacy rights or else the government will not do anything.

Before he would do that, Trafton wanted assurance the investigation would be carried out under the rules and procedures of natural justice. He put his concerns in writing. He even outlined how the investigation would take place following the rules of natural justice as he understood them from researching in law books and on the Internet. He even asked the assistant deputy minister to correct him if he was wrong about his assumptions. On behalf of the minister, Alex Morton accepted his qualified waiver of his privacy rights. Only later, as the investigation took some strange twists, did he learn that she had misled him completely. The bureaucrat assigned the investigation did whatever he wanted. He would not explain the process he was following and disregarded the careful explanation of natural justice that Trafton had provided Morton.

When Trafton complained, he was told the department had its own definition of natural justice; one which conveniently cut out his right to review and offer rebuttal to the statements of the RTB manager. When he asked to see the written definition the government had arbitrarily imposed, he was told there was none. So the government claimed it followed the rules and procedures of natural justice. It accepted Trafton's outline of the rules and procedures as he understood them, and did not challenge them in any way until he waived his privacy rights. Then they said they were not bound by any of it. They made up their own rules and told him, tough luck, sucker. The resulting investigation report was completely unbelievable, factually incorrect and, of course, entirely dismissed his complaint.

Before passing this legislation, you must have a written definition of the rules of natural justice and the procedures that flow from it.

(d) The bill also fails to expressly protect whistle-blowers from the private sector, like Trafton, Snyder and Small, from retribution by government employees. It does not protect non-employees. Yet all the recent whistle-blowers were not employees of the government: WCB's Pat Jacobsen; Small with

Hydra House; Snyder, a taxpayer in the Seven Oaks School Division. How will the Labour Board protect these kinds of cases? It will not. This suggests the legislation is designed to draw out whistle-blowers, not protect them.

(e) Government lawyers regularly play both sides when it comes to whistle-blowers. They work to protect the rights of citizens when they work for the Ombudsman. Yet, when working for the government departments being scrutinized, double-talk and narrowing the scope of the investigation is almost always the order of the day.

This is important: the law must say that investigation of a whistle-blower's complaint is paramount. It comes before letting lawyers think of ways to sidestep or undermine the investigation. One person has to look at what both sets of lawyers do and pick one or the other. That has to be done by a senior bureaucrat who has to give written reasons for his decisions.

(f) The time limit of two years for prosecutions is designed by government lawyers to ensure that Freedom of Information and FIPPA requests can be stalled, so that, by the time whistle-blowers put the evidence and paper trail together, the lawyers' clients and their bosses, that being the government bureaucrats and ministers, are immune from prosecution.

I suggest an amendment be added that will exempt time spent in formal search for documents under FOI or FIPPA applications from the ticking clock. The time limits for prosecution must be amended or removed. For that matter, why not define "bad faith" as well, since that is the test you are setting out in law for lawsuits. Look at the lessons of Justice Gomery. The federal Liberals managed to stall his investigation until the two-year time limit for prosecutions had passed. We have been waiting two years for the Securities Commission to conduct hearings into the Crocus Fund fiasco.

Allow me to connect the two concerns about time limits and victimization of whistle-blowers by government employees with a very real example from my own career. I made a complaint in 1990 that was blown off by the minister and the Premier. Only when *The Winnipeg Sun* saw the evidence that altered documents had been given to myself and others by a government licensing agency were my concerns investigated by the provincial auditor. It was supported, and, in fact, legislation was brought forward in 1993 and '96 to try to rectify the wrongdoing and poor practices I had uncovered. I thought that was the end of it.

To my shock, 13 years later I was told about complaints about a production I was involved in that had been made to the same agency the Auditor had investigated. It took me months to learn that there had been a complaint about me from the person I had complained about in 1990. When I was first confronted by the agency, I immediately asked if he was involved. In front of my witness, the agency denied it, but when my FIPPA application unearthed the e-mails that same person had sent to the government with the false allegations–the only source of any allegations against me–I was told he was, somehow, a private citizen, even though he was still employed by the same agency; 13 years later, but he still tried to get payback.

To make things worse, the agency stupidly sent the e-mails to other people without any indication I was innocent of the allegations. I am still fighting with the department for correction of my public record because of the lies in the e-mails sent to the agency. This legislation does nothing to protect someone like myself from a government employee seeking revenge, for having had the whistle blown on them.

Therefore, when I tell you there are serious flaws in this legislation, and that amendments are required to salvage any credibility that you as elected representatives hope to garner from supporting it, and that members from all parties must set aside their ideology and fix this bill. I have identified these areas of concern that must be rectified for the bill to offer genuine protection for whistle-blowers and a true avenue for the redress of concerns brought forward in the public interest.

Madam Chairperson: Mr. Boroditsky, I am going to have to ask you to complete–

Mr. Boroditsky: Just the last paragraph, ma'am. Thank you.

An Honourable Member: Leave.

Madam Chairperson: Leave? Okay.

Mr. Boroditsky: In conclusion, the whistle-blower and public are being played for fools. Unless the Legislature itself in this bill crafts definitions for natural justice and procedural fairness, your lawyers and bureaucrats will continue to thwart the search for truth, and get paid by the taxpayers to do so.

Madam Chairperson: Thank you.

Mr. Gerald Hawranik (Lac du Bonnet): Yes. Thank you very much for coming forward, Mr. Boroditsky. It was a very interesting presentation. Obviously, you speak from personal experience in terms of how you feel that this legislation will affect whistle-blowers coming forward to members of the Legislature or even the media or others.

Thank you for pointing out what you believe to be the flaws in this legislation. You correctly point out that the Auditor General currently is backlogged and certainly needs more resources. The last we have heard is that they have a 10-year backlog in terms of audits. So, obviously, there are a lot of things that need to be audited, and they do not currently have the resources to take care of that backlog.

I point out, though, to Section 3. You have obviously read the legislation. So–*[interjection]*

Madam Chairperson: Mr. Boroditsky, I just have to recognize you.

Mr. Boroditsky: I have read it, but scanned some parts, and read other parts more intensively.

Mr. Hawranik: Well, thank you very much for that. I notice what is put in Section 3 is a definition of "Wrongdoings to which this Act applies," and it is very specific in terms of the kinds of wrongdoings that you can report as a disclosure to certain people and then be protected. One of the provisions that caught my eye is section (c) where it says "gross mismanagement." Do you not think that the word "gross" should be dropped? You know, if it is a disclosure should you not be able to disclose simply mismanagement, never mind gross mismanagement.

The other thing is, if you do include gross mismanagement, should you not have a definition section in the legislation to define that?

***** (09:40)

Mr. Boroditsky: I am glad you brought that up because I noticed that. We had some discussions within my consulting crew about how someone who does not know what has gone on, they get a complaint, prima facie documentation. How are they supposed to make a judgment call of what is gross mismanagement? The notion of gross mismanagement, you know, it may mean one thing to a minister or a premier in office; it means quite a different thing to the opposition or to the public at large, or especially the people, individuals who come forward who feel that they may have been victimized.

I think mismanagement, if that word alone had been used, I do not think anybody would have really noticed it. It is sort of like the argument with regard to what is natural justice and procedural fairness. Unless these things are defined, you are leaving a lot of leeway for someone who is not elected by anybody to make a decision whether to proceed with something or not. I do not know whether gross mismanagement–I could tell you that sometimes it is mismanagement, as in the case I have cited that I brought forward 13 years ago.

A person inside a government agency, a government appointee of the day, used whiteout to change regulations, but only for certain people, mind you. Now somebody could look at that and go, well, that is mismanagement. Is it gross mismanagement? To me, when I was kept out of business and my business venture was scuttled because of it, that was pretty gross.

So I share the concern that you voiced that there is some measure known only to someone clairvoyant as to what the definition is going to be or how it is going to be applied. I do believe, you know, look, somebody misplacing a paper clip or writing a sentence wrong, a misplaced period, creating a misunderstanding, clearly, that is something that, if a whistle-blower comes forward, a person looking at it could say, oh, we can fix this easily, expeditiously.

I share your concern because, you know what? I think that there are things that I brought forward and that other people I know brought forward in the past under that kind of provision. Some would have just said, well, yes, it is minor. It is not minor when you are the victim. One thing I want to mention is it takes a lot of intestinal fortitude, as they say, to put your name out there to come forward, to go to a government minister, to walk into a government office and drop a complaint, to try to talk with somebody. For some people, their knees are shaking. They are not like these honourable members here and myself, where we get used to public speaking or are used to stepping forward in positions of leadership. I do not see that this bill does anything–I am not saying whistle-blowers need to be coddled, but sometimes they need to have their hand held a little bit.

I think that this bill presumes that whistle-blowers are all like me, and everyone will have their opinion, but they are not. I do not think it is fair to expect that whistle-blowers are going to look at these provisions and feel secure with the idea that they can

step forward and do their public duty and report something they think is wrong.

Madam Chairperson: I have to ask leave from the committee. Is there leave for Mr. Hawranik's last question? *[Agreed]*

Mr. Hawranik: I think it is clear. I would like to go through a number of other sections with you, but, obviously, we have a limitation on time. Section 3, in particular, the principle of whistle-blower legislation is a good one, there is absolutely no doubt. We have to protect whistle-blowers, in terms of their employment, from reprisals so that they do not lose their employment simply because they are disclosing some wrongdoing out there.

When I look at the definitions section, Section 3, in terms of the kinds of wrongdoings that can be reported, it is not what is there but what is not there that is of concern to me. One of which is, for instance, if there was political interference in a process by a minister or a deputy minister, or someone else, for a political purpose, certainly, that type of wrongdoing should be able to be reported, should be able to be disclosed by a whistle-blower, and they should receive protection in their employment. Would you agree with that?

Mr. Boroditsky: That is an interesting point you raise, and one that I immediately recognize as being valid, although it had not sprung to mind when I prepared my review. I think you are absolutely right. I think there are situations that occur.

Let us look at these botched investigations more recently where these representatives of different departments investigated something and, lo and behold, would find nothing wrong. I am not saying in any particular case, whether it be WCB or Hydra House or the others, that there was any political interference, but when I go back again to this situation I had 13 years ago, where there had been an appeal put forward about these altered regulations. The minister of the day was Mr. Ernst, and he provided the response: Your appeal is dismissed; the law was changed, and completely ignored the fact that the material had had whiteout applied and something had been typed in over it. Now, that told us, at the time, 13 years ago–this is longer than 13 years ago now when that happened, it is more like 16 years ago–that someone inside the department or inside the government agency had prepared the response, and it goes in front of Ernst and he signs it, and off it goes.

That is not political interference per se, but, you know, when these investigations are gerrymandered so the boss does not get mad, that is something that in and of itself has to be whistle-blowed on. I mean, you cannot have this continue to go on. The public confidence–and this is the case no matter who is in government, all politicians, all elected representatives are faced with an increasing scepticism from the public. The only way to overcome that is to do the things that I have suggested in this bill. Your suggestion, I think, is a very good one.

You know, with regard to what kind of a problem people face, when Mr. Trafton got blown-off by RTB, we went to the Attorney General, and wrote a letter. The attachment is in the back, an adjunct to this paper and to the definitions of natural justice, which I provided for considerations and amendment. We went to the Attorney General's office, and a woman named Mary Miles responded on behalf of the Attorney General, and it was the same thing. Can you please provide us with a written definition? Where can we find this where it is written down that this is the custom, that government uses this definition that will not allow you to, in effect, cross-examine the statements? I mean, who knows better than the whistle-blower, the victim? When somebody crafts an excuse, whether it is true or not, or whether there is, you know, other information or documentation that systematically can pick apart these excuses, investigators, a lot of time, they do not have that kind of tolerance. They do not have that kind of intellect. They do not have that kind of bloodhound sense. Mary Miles wrote back that she could provide no definition either.

So now I have one lawyer from Finance who cannot provide a definition for natural justice; one lawyer from the Attorney General who cannot provide a definition for "natural justice." Yet I look at the bill last week and I am stunned to see that, somehow, it is going to be enshrined. Well, which definition is it going to be? The one that was invented in Walter Trafton's case, or the one he put forward that was very acceptable, until they realized that maybe it would not allow for the bureaucrat to hide? That the explanation that was provided would be vetted and would analyzed and, maybe, the wrongdoing would be ferreted out. How far up the ladder does it go?

So I think that, unlike the bill previous where it was recommended, maybe this committee has to step back. If you enshrine a definition of "natural justice"

as we have provided, and perhaps some other material, I think that then there may be some confidence on the part of the public. You know, I was stunned that I was the only person registered to present. Where is Murrow *[phonetic]*? Where is the Canadian Association of Journalists, you know? Well, if they are not stepping forward, it is not because they do not know the bill is here; it is because it is so flawed.

Madam Chairperson: I have to get leave before I can entertain your question.

An Honourable Member: Leave for one question.

Madam Chairperson: Is there leave for Mr. Gerrard's–

An Honourable Member: One question.

Madam Chairperson: –one question?

Mr. Hawranik, I have to have leave first.

An Honourable Member: Shut it down.

Madam Chairperson: Is there leave for Mr. Hawranik's question as a supplemental? *[Agreed]*

Mr. Hawranik: Yes, thank you very much for that. One of the concerns I have as well is Section 10. You have read the bill. I would like to be able to highlight the point that, when you do a disclosure to certain people you are protected, but if you do a disclosure to people outside the terms of the legislation, you are not. That is a real concern of mine.

When I look at Section 10, if you do not make a disclosure to the supervisor, a designated officer, or the Ombudsman, you are not protected. That, in my view, is a severe limitation to the bill–I think you mentioned Pat Jacobsen in your presentation–particularly, when you take the situation of Pat Jacobsen. When Pat Jacobsen did not go to her supervisors, she did not go to her designated officer, she did not go to the Ombudsman, she went to the minister, and, as a result of that, clearly, she would not be within the terms of the bill. She clearly would not be protected by the Labour Board. Do you have any thoughts about that, Mr. Boroditsky?

***** (09:50)

Mr. Boroditsky: Well, on the one hand, it could be the legislation has been designed for the notion to streamline this, but to expect whistle-blowers to automatically–I do not know. Are they going to put up a notice in every office: Your supervisor for whistle-blowing is so-and-so? I do not know. If they are absent, is so-and-so the substitute supervisor?

I can see the point in not wanting somebody to be able to say, oh, I blew the whistle by telling someone who is a clerk over on the side there. I can understand trying to define that there should be a chain of authority that has to be reported to. I understand that intention is, I think, very honest on the part of the people who drafted the bill, but I agree with you that the recipients of these kinds of actions, these whistle-blowing actions, I agree that list is very restricted.

I thought about the case of Pat Jacobsen. That is a curious one. I am not sure, because she was so high up in the food chain at WCB, I am concerned about what happens when your supervisor is the person that you are complaining about. What is she supposed to do, take this right to Wally? I do not think so. I have thought of that, and it is a problem.

I am not quite sure, I think there are more educated minds than mine that maybe will have to determine if there should be almost like a neutral outlet, not necessarily the Ombudsman or the Auditor, who are swamped, but someone else in government. I am just going to throw some in the air, and a particular official, say, from the Attorney General's (Mr. Mackintosh) department, with whom all whistle-blowers will know, well, we can go to this person or this office and we will know that we can put our complaint in there, and then it can be pipelined or whatever. I can see that the intention, as I said, was good, but I think it can be made better.

Madam Chairperson: For the information of the committee, I have Mr. Hawranik who would like to ask a question, and Mr. Gerrard who would like to ask a question.

What is the will of the committee?

Some Honourable Members: Leave.

Some Honourable Members: No.

An Honourable Member: Ominous that whistle-blowers get shut down.

An Honourable Member: The clickety-clack of the jack boots.

An Honourable Member: Somewhat ironic.

Madam Chairperson: Since leave has not been granted, I would like to thank you very much for your presentation, Mr. Boroditsky.

Point of Order

An Honourable Member: Madam Chair, just on a point of order.

Madam Chairperson: Mr. Lamoureux.

Mr. Kevin Lamoureux (Inkster): Madam Chair, the Member for River Heights (Mr. Gerrard) has not even been afforded the opportunity to ask one question. I am wondering if there would be leave to provide him the opportunity to ask one short question.

Mr. Kelvin Goertzen (Steinbach): I would support the comments from the Member for Inkster (Mr. Lamoureux), and I find it ominous that, when we are debating whistle-blower legislation, there would be members of this committee, members of the government, who would like to shut it down.

Mr. Doug Martindale (Burrows): We are prepared to let Dr. Gerrard ask a question. I would point out that we have been about five minutes over time on this witness, and there are four other people waiting to present, and possibly others.

Some Honourable Members: Oh, oh.

Madam Chairperson: Order. Just for the information of the committee, we do have four other presenters on another bill. We are now eight and a half minutes over on this particular presenter, which is fine.

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Madam Chairperson: Dr. Gerrard, would you like to ask one question?

Hon. Jon Gerrard (River Heights): Thank you.

You have alluded to the fact that the time limits on this bill and on bringing forward and having the complaint dealt with are a concern, and I agree with you. The question is how to address this, because, clearly, we do not want a situation where people, bureaucrats, can stall and then the time limit expires.

You have suggested that the time searching for documents and freedom of information not be included, but, to be honest, it is going to be a judgment call sometimes about what should be included and what should not be included. So I wonder which time period should and should not be included. Would it be better to have a longer overall time period, or would it be better to just exclude the time period when there is a specific freedom of information request outstanding?

Mr. Boroditsky: The problem with extending the time limit, Dr. Gerrard, is that then all you are doing is playing cat and mouse with the government lawyers. When I ran into this problem with the attack on me by the person that I had complained about many years ago, I immediately set about, as many of the members here, I think, are familiar with, using FIPPA to get documentation that proved that the person I suspected had tried to get me was in fact the only person who had filed any complaint, et cetera. Now there then was a bit of a rush on my part to try to get to the bottom of this, because the person within the government agency who handled the e-mails and had interrogated me, although later they claimed no investigation had been done and they did not believe these allegations, he was set to retire. So here I am trying to get the documents out from inside the department at the same time as the clock is ticking till this guy walks out the door, because I know that once he has walked out the door there can be no discipline. He certainly will not have to answer any questions from some representative of the Minister of Culture when he does not work there anymore. So there is a situation where I was faced with a ticking clock for my own situation, and, sure enough, the lawyers stalled, the whiteout came out for documents; this was severed; that was severed. At one point, we were told that they needed an extension of 30 days to consult with third parties, and the third parties were the department's own lawyers. It was the Ombudsman saying, well, that is not a legitimate extension; give Mr. Boroditsky the documents now, and the agency still refused.

So I have learned first-hand the kinds of tricks that go on when there is a cover-up, and there is no two ways about it. I think that from the, you know, my suggestion works because you file the application; they have 30 days to respond. There are time limits in the act. So that time can be measured, and this is why I suggested it. Because you can see, just through the application process itself, it was filed here; they have 30 days; they take an extension; you get it back; you can appeal. It is pretty easy to measure the time that is suspended from the clock ticking. By no means am I saying that my suggestion is perfect, but I think it is very practical because I am convinced that, if I were to come forward whistle-blowing tomorrow and this involved routing out documents that any government lawyer working to protect their client, which is what they do, would immediately stall, delay, do all these little tricks that I have seen first-hand they do, and at the same time the ability of me to come forward with the story to

Mr. Selinger, Mr. Robinson, or the Premier (Mr. Doer), whoever, the clock is ticking because I need the paper trail to be able to put together, you know, the wrongdoing or put together where the excuses were, the cover-up was.

So, Dr. Gerrard, any amendment that you come forward with or any suggestion to help rectify the ticking clock issue, I think would be very helpful to the cause of protecting the public interest in this act.

Madam Chairperson: Thank you very much, Mr. Boroditsky.

For the information of the committee, a written submission on Bill 34 has been received from Paul Thomas and distributed to committee members. Does the committee agree to have this document appear in the Hansard transcript of this meeting? *[Agreed]*

Bill 41–The Pharmaceutical Act

Madam Chairperson: We will now proceed to Bill 41, The Pharmaceutical Act.

The committee calls Penny Murray from the Manitoba Pharmaceutical Association.

You can proceed, Ms. Murray. But could I just have order at the committee please, committee members.

Ms. Penny Murray (Vice-President, Manitoba Pharmaceutical Association): Good morning. My name is Penny Murray.

Madam Chairperson: Ms. Murray, if you could just bring that mike up just a little bit. Yes.

Ms. Murray: Is that better?

Madam Chairperson: That should be better. Thank you.

Ms. Murray: Okay. I will just make sure that the papers do not get mixed up in there.

On behalf of the Council of the Manitoba Pharmaceutical Association, I am very pleased to speak in support of Bill 41, The Pharmaceutical Act. My name is Penny Murray. I am the Vice-President of the Manitoba Pharmaceutical Association. The President, Mr. Pat Trozzo, is presently out of the country and sends his regards to the committee members and his regrets for being unable to attend this meeting. Attending with me is the registrar of the Manitoba Pharmaceutical Association, Mr. Ronald Guse.

We firmly believe that this amended act will enhance the college's ability to serve and protect the public interest, and facilitate the changes in practice of Manitoba's pharmacists. It will enable pharmacists and government to be proactive to health care challenges in our province.

***** (10:00)

The proposed changes to The Pharmaceutical Act are the result of collaboration with the pharmacists of Manitoba, the officers of the Ministry of Health and their legal advisors. We believe that this new act will further enhance the patient care provided by pharmacists, and will strengthen the regulatory authority for patient safety. We have consulted with the College of Physicians and Surgeons of Manitoba and the College of Registered Nurses of Manitoba in drafting the new legislation. We have met with the Manitoba Society of Pharmacists; the Canadian Society of Hospital Pharmacists, Manitoba Branch; and the Faculty of Pharmacy and pharmacy technicians. We have considered the directions of new pharmacy acts in Alberta and British Columbia, as well as the recently passed Physiotherapy Act in Manitoba.

The quality of Bill 41 is testimony to the collaborative effects of interprofessional liaison and co-operation. Drawing from the results of the consultation and review, we firmly believe that the new Pharmaceutical Act will enhance the practice of pharmacy by moving to patient-focussed care. It will enable the collaborative role of the pharmacists, and it will enhance the regulatory body's ability to serve and protect the public.

The Manitoba Pharmaceutical Association has a long and proud history of self-governance of the pharmacy profession in Manitoba in the best interests of all Manitobans. We are pleased that the Manitoba Pharmaceutical Association will become the College of Pharmacists of Manitoba with the passing of the new legislation. Changing the title of the organization to include the name "College" will clarify the role and the mandate of the organization both provincially and nationally.

We also firmly believe that the new enabling legislation will establish the building blocks needed to assure safe, effective health care by better utilizing the knowledge and ability of pharmacists and by maximizing the respective talents and qualifications of our health professionals. Some of the specific benefits in the act will be to enhance the role of the pharmacist in patient care to better reflect the

knowledge, the training, and the competency of pharmacists and to effect improved patient care. It will increase public representation on council, on the complaints committee, and on the discipline committee to one third. It will enable all council members to make motions and to vote at general meetings of the college. It will enhance the responsibilities and opportunities for pharmacists to work collaboratively in health care settings.

It will enhance the patient care role of the pharmacist through the authority to prescribe and administer medications, to interpret patient-administered automated tests, and to order and receive screening and diagnostic tests. These roles will be further defined and clarified through regulation and standards of practice developed by the College of Pharmacists of Manitoba in collaboration with Manitoba Pharmacists, with Manitoba Health, and with other key health professions.

The act will also enable council to set standards and to license pharmacy practice in non-traditional settings that can enhance pharmacist service to northern and remote areas. It will increase the options available to the complaints committee to investigate and resolve matters brought to their attention, and it will recognize and register pharmacy technicians in practice sites.

Bill 41 supports the need to enhance collaboration among the health care professionals, and it is perfectly timed with the construction of the new Faculty of Pharmacy building that will be located at the Bannatyne Campus at the University of Manitoba. This relocation of the faculty will further support interdisciplinary practice through the anticipated shared undergraduate education and training programs among the students of medicine and pharmacy.

Pharmacists of Manitoba are already working with and supporting the prescribing role of the registered nurses extended practice and the clinical assistance. This professional collaboration through the sharing of patient-specific information supports patient care and safety, and is a first for Canada and, likely, North America. These are very dynamic times for health care in Manitoba, and Bill 41 will enable the pharmacists of Manitoba to apply their knowledge and training to address some of the ongoing challenges in the health care system.

We believe that Bill 41 is truly a non-partisan legislation, which should find support from all members of the Legislature. We are heartened by the leadership and the support of the Minister of Health, the Honourable Tim Sale; the opposition Health critic, Myrna Driedger; and the Leader of the Liberal Party, Dr. Jon Gerrard. We sincerely hope that the members of this committee and all members of the Legislature pass Bill 41 as quickly as possible so that all citizens of Manitoba can benefit from this very important and timely legislation. Thank you.

Madam Chairperson: Thank you very much.

Mr. Glen Cummings (Ste. Rose): Well, thank you for your presentation. Obviously, you are in support of this legislation. In opposition, we were a little surprised to see it arrive as late on the agenda as it did, and the opportunity to consult has been limited. We understand that the people you represent support it and would like to see it passed forthwith.

Are there any areas of weakness that you are aware of? I understand it was five years of consultation that occurred before we got to this stage, the concerns of the industry.

Ms. Murray: There has been a long period of consultation. Certainly, I have sat on councils since probably the late nineties, and we started consulting on this bill probably 2001. There has been a long period of consultation, as I mentioned, with all parties involved who might be affected by this act as well as with Manitoba Health and certainly their legal advisers. Our registrar, Mr. Guse, spent a considerable length of time dealing with Dr. Pope and with the nursing staff involved. It has been long. It has been lengthy.

Mr. Cummings: Just one question, not as important as the principles of this bill, but can you give me any idea of the nature of consultation and prescriptive abilities that the pharmacies would be assuming where they could in fact prescribe to customers?

Ms. Murray: I can respond to the best of my knowledge on that situation in the sense that what the legislation is, is enabling. It provides the ability, but within defining the responsibilities and specifically who and what will be done that would be done within the regulations and that would be done within the standards of practice. It would be my feeling that there would be certainly a high requirement for certain competencies and certain abilities prior to the application of those rights and privileges.

Mr. Kevin Lamoureux (Inkster): Madam Chair, I did want to express appreciation in terms of the presenter coming forward and adding comment. I would ask if she believes that there are any

shortcomings because I, too, like the Member for Ste. Rose, do have concerns. This bill more than any other piece of legislation the government has been negligent in terms of bringing to this Legislature. It should have been done in a much more timely fashion which would have afforded members the opportunity to actually be able to do more consultation.

I asked a specific question in regard to are there any shortcomings to this particular bill that you are aware of.

Mr. Vice-Chairperson in the Chair

Ms. Murray: I need to qualify my remarks slightly, Mr. Lamoureux, in that situation. I am not a legislative expert. I come to the executive of the Manitoba Pharmaceutical Association newly elected this year. My involvement with the general drafting of this legislation has been on the edges. I would suggest to you that, in a period of five to six years of the process, there has probably been some give-and-take in developing this legislation so that we all come out in a win-win situation.

To speak more directly to that I would have to indicate that there are three other speakers who are coming behind me and also give the committee opportunity for Mr. Ronald Guse to respond to that question more directly if that would be their wish.

Mr. Vice-Chairperson: Any further questions? Seeing none, thank you to the presenter.

The next presenter is Scott Ransome, representing the Manitoba Society of Pharmacists.

Mr. Scott Ransome (Executive Director, Manitoba Society of Pharmacists): Good morning. My name is Scott Ransome. I am the executive director of the Manitoba Society of Pharmacists.

On behalf of the Manitoba Society of Pharmacists, I would like to thank the committee for the opportunity to present our views. Established in 1973, the Manitoba Society of Pharmacists, MSP, is a not-for-profit voluntary organization whose purpose is to promote and advocate the economic and professional interest of its members. The membership is made up mostly of practising pharmacists and pharmacy students and currently has in excess of 1,000 members.

***** (10:10)

Let me begin with acknowledging the tremendous efforts of the Manitoba Pharmaceutical Association and the staff at Manitoba Health and Manitoba Justice in developing Bill 41. Ron Guse, Registrar, in particular, has put forward tremendous efforts in developing Bill 41 and is to be commended.

It has been some five years since Manitoba pharmacists last discussed and debated changes for new pharmaceutical legislation. Bill 41, as it has been presented to the Legislative Assembly, is progressive legislation which is consistent with laws in the province of Alberta in expanding the role of pharmacists. As recently as May 31, 2006, regulations in Alberta have been approved that will allow pharmacists to prescribe some drug treatments and administer injectable drug treatments such as vaccines.

Bill 41, as Penny Murray pointed out, is enabling legislation which brings with it the potential to develop and implement regulations which will allow pharmacists to prescribe and administer designated drugs. These are tremendous developments and are embraced by Manitoba pharmacists. Pharmacists are prescription drug experts. Pharmacists have more training in drug therapy than any other health professional. Pharmacists are trained to understand the chemical make-up of prescription drugs, their effects and how medications interact with one another and with their patients.

Effective medication management must become a reality. By more fully involving pharmacists, improvements can be made to the efficiency and effectiveness of drug therapy. This will reduce costs and enhance patient care.

Alberta and Manitoba are leading the country in adopting legislation which will expand the scope of practice for pharmacists. Bill 41 provides significant opportunity for pharmacists, and when it is enacted it will mark an historic moment in the practice of pharmacy in Manitoba.

Bill 41 is a comprehensive overhaul of the current Pharmaceutical Act and brings with it some noteworthy changes. For instance, Manitoba pharmacists voted three years ago to change the name of the Manitoba Pharmaceutical Association to the College of Pharmacists of Manitoba. This legislation allows for that name change to be realized.

It is noted that Bill 41 is consistent with other Manitoba legislation such as The Medical Act. Both of these acts require the respective colleges to submit

an annual report to the Minister of Health, and both acts allow these licensing authorities to create profiles of their members. These developments provide for an environment of greater accountability.

The act increases the ratio of public representatives on council to one third. These members of council are therefore not elected by Manitoba pharmacists. The act specifically dictates the public representatives cannot be pharmacists. It is understood that this increase of public representation is consistent with the College of Pharmacists' mandate to serve and protect the public interest. However, any further increases of public representation would be a concern as council does need to be governed by elected pharmacists.

As mentioned earlier, the new Pharmaceutical Act is enabling legislation and council will be given the ability to make regulations in a wide variety of areas. MSP intends to direct our efforts to working with the College of Pharmacists to ensure that regulations expanding the scope of practice are implemented in a timely manner.

Another area of particular interest to MSP is the expanded role of pharmacy technicians. In Manitoba, pharmacists and pharmacy technicians work closely together in providing the efficient delivery of thousands of health care services to Manitobans on a daily basis. Given this close collaborative relationship, pharmacists are directly impacted by any changes to the role of pharmacy technicians. Any regulatory changes must be managed in a manner that does not create any increased health concerns for patients and amendments must ensure that pharmacists continue to practise in a safe, efficient and effective manner.

As the supervision of pharmacy technicians remains with pharmacists, they are understandably concerned with the possibility that heightened risks of liability are created. MSP is committed to ensuring that regulations concerning pharmacy technicians are developed in a manner that is consistent with the best interests of pharmacists.

The act requires that the council circulate and consult with their members before regulations are adopted, and MSP is confident this will be done in a manner consistent with the fair and prudent manner that MPhA exercises all other legislative responsibilities.

There is one matter I would ask the committee consider revisiting and amending. The committee needs to give full consideration to amending Section 90(1), of Bill 41. This is the section that outlines the maximum fines that can be imposed for contravening a provision of The Pharmaceutical Act or the regulations. Currently, a maximum fine of $5,000 for a first offence and $15,000 for a second offence exists in the current legislation. Section 90(1)(a) and (b) increases these maximums to $10,000 and $25,000 respectively.

When it comes to financial penalties for legislative and regulatory contraventions of health care law, the earning capacity of the offending individuals is obviously a significant factor. Monetary fines are meant to appropriately punish the individual based on the financial circumstances that exist. Some consideration must be given to the provincial benchmarks which currently exist.

The Manitoba Medical Act includes a maximum fine of $10,000 for an individual. It is difficult to debate that in Manitoba, as in every other Canadian jurisdiction the average wage for a pharmacist represents a fraction of the average wage of a physician. In Manitoba, physician compensation far exceeds that of the average staff pharmacist. It is difficult to reconcile that pharmacists, under their legislation, are liable to a maximum fine of $25,000. How can legislation provide for pharmacists to face maximum fines that are 150 percent higher than physicians? It is not appropriate. I suggest it is not defensible and it should not occur. MSP asks that Section 90(1) be amended to be consistent with the wording of The Manitoba Medical Act, Section 59.7(1)(b) a maximum fine of $10,000.

In closing, I would like to refer to a section from the Canadian Pharmacists' Association document, *Pharmacists and Primary Health Care*, which reads: Because of their knowledge, skills and accessibility, pharmacists are positioned to ensure that patients, other health care providers and the health care system safely achieve optimal drug therapy outcomes.

This position is consistent with the final report of the Commission on the Future of Health Care in Canada, which is commonly referred to as the Romanow Report. I quote: Pharmacists can play an increasingly important role as part of the primary health care team working with patients to ensure they are using medications appropriately and providing information to both physicians and patients, monitor patients' use of drugs and provide better information and communication on prescription drugs.

Thank you again for the opportunity to present MSP's views to you today.

Mr. Vice-Chairperson: Thank you, Mr. Ransome.

Hon. Tim Sale (Minister of Health): Briefly, Scott, I want to through you thank your members for the work that you are doing with us in regard to the 12-month deductible process. It is a tremendous public service that you are doing.

In regard to your question about fine levels, I think that it is important to note that these are maxima and they are based on some of the kinds of offences that we saw, for example, in a recent Hamilton case in which drugs were misrepresented as being Canadian safety standard compliant drugs and they were not even some of the drugs that were talked about.

***** (10:20)

They also apply to very serious offences. If someone representing themselves to be a pharmacist when they are not, for example. Thirdly, just so you know, they are consistent with fine levels in quite a number of other acts in which we, I think, have been sending a signal, not just in our government but in other governments as well, that breaches, serious breaches of professional duty will result in serious fines. But it is important to note they are maximum.

But thank you again with the work you are doing with us on the 12-month deductible.

Mr. Cummings: Thank you for your presentation, and just one point.

You did clarify, to some extent, what additional responsibilities pharmacists may be able to take on. Would you anticipate that you would like to see the regulations? That is, very often in the business of legislation, the devil is in the detail, when government tells us we will find out what is going to happen when we see the regulations. I wonder if you could give me any window of what occurs in Alberta, for example. Would that be what you would believe would be reasonable in regulation here?

Mr. Ransome: I think, Mr. Cummings, we will look closely at what happens in Alberta.

Madam Chairperson in the Chair

They are currently a few months ahead of us. They are, I guess, the most obvious example, and I think we will be monitoring that situation closely. I think that probably is a good working model to begin with, but there is hopefully going to be substantial debate prior to the regulations being adopted and approved.

Mr. Cummings: I am not opposed to moving in that direction, by the way, but I would just wonder for the record if you are aware of what additional responsibilities pharmacists can assume under the Alberta regulations. You mentioned that it could administer vaccines. Are there other obvious areas that would be possible?

Mr. Ransome: They are able to administer vaccines. They have some prescriptive authority. It is restricted prescriptive authority. It is not the same type of prescriptive authority that, for instance, physicians have. They would not be allowed to prescribe narcotics, for instance. That would be a condition, but there would be a list of drugs that they would be able to prescribe under certain protocols.

Mr. Cummings: Well, one that I would wonder about–a circumstance where someone was on medication, for example for diabetes, and their prescription had run out. Would that be a likely possibility of a role a pharmacist would be able to play there?

Mr. Ransome: I think that is probably a very good example. You know, the chronic diseases where medication prescriptions run out, I think those are excellent opportunities where pharmacists can move in and fill a gap, provide good health care and, I guess, avoid, in some cases, an unnecessary physician visit.

Mr. Cummings: Well, thank you, and just for the record, I think this side of the table is quite supportive of this legislation.

Madam Chairperson: Thank you, Mr. Ransome.

Mr. Ransome: Thank you.

Madam Chairperson: The committee calls Troy Harwood-Jones from the Manitoba International Pharmacists Association.

Mr. Harwood-Jones, you can proceed whenever you are ready.

Mr. Troy Harwood-Jones (Manitoba International Pharmacists Association): I will just give a moment for the handouts to circulate around the table. You will receive two documents: one is entitled "Discussion Paper on Bill 41," and the other is a PowerPoint presentation.

For this morning's discussion, you can follow along in the PowerPoint discussion. There is quite a

lot of information in the discussion paper. I will let you read that at your leisure, and I will just hit the highlights this morning.

While I am waiting I will tell you who I am. The Manitoba International Pharmacists Association is a trade organization of pharmacists who practise in Manitoba in the International Prescription Service Pharmacy, or IPS Pharmacy industry. I will refer to the Manitoba International Pharmacists Association as MIPA.

Before I begin, let me just tell you that I have three fundamental principles in presenting to you today. One is that this is very significant, important legislation which deals with the safety of delivery of health care. The second is that IPS Pharmacy is a reality. The third is that everyone in this room and all the representative interests support and value the importance of the new reality of IPS Pharmacy. MIPA strongly supports and is committed to the supply of safe and affordable medications for the improvement of health and the well-being of individuals around the world, as well as assisting its members to enhance the profession of pharmacy in general. MIPA is the oldest IPS Pharmacy trade organization in Canada.

IPS Pharmacies are specifically licensed in Manitoba by the Manitoba Pharmaceutical Association to provide pharmaceutical services to residents outside of Canada. Manitoba has recognized that the issues created by the new reality of the new reality of the Internet and e-commerce are complicated and as such has held discussions in order to seek viable solutions of these issues, the unique issues of IPS Pharmacy in Manitoba. MIPA has been working with the Province of Manitoba and the MPhA throughout the process of its inception, growth and maturation over the last five years.

These discussions have stemmed from a mutual desire to address the issues unique to IPS Pharmacy, while at the same time taking advantage of the exciting technological advances that are available within the field of pharmaceutical care. MIPA firmly believes that these discussions will ensure that professional ethics and patient safety continue to be protected and will ensure that the mechanisms required for all forms of inter-jurisdictional medical and pharmaceutical delivery are in place. More importantly, MIPA remains committed to working with the Province of Manitoba and the MPhA to ensure the continued viability of IPS Pharmacy in Manitoba while at the same time ensuring that Manitobans and Canadians continue to receive the best health care in the world.

Bill 41 represents the first major change to The Pharmaceutical Act in a long time. We understand that Bill 41 has been a work in progress that has been in consultation and discussion for some five years. Although MIPA has been working with the Province of Manitoba and the MPhA to address issues unique to IPS Pharmacy, it was not involved in any discussions relating to the drafting of Bill 41. This is my primary concern. The first time that my members and that I had a chance to see the text of Bill 41 was May 18 at first reading, of this year. We have had two weeks to consider this proposed legislation. Bill 41 should be seen as an opportunity to embrace quality distance-based pharmaceutical care.

***** (10:30)

On a reading of Bill 41, it appears that this opportunity has been missed. Bill 41 does not address any of the issues unique to IPS Pharmacy. Moreover, it could have a negative impact upon those currently providing IPS Pharmacy care within the Province of Manitoba. Particularly in these last five formative years, IPS Pharmacy should have been involved in the drafting of Bill 41. We will not get another opportunity.

I know I am constrained with time, and I do need to be brief, but I do need to tell you a little bit about IPS Pharmacy. A survey conducted by MIPA in 2005 concluded that there were 41 IPS pharmacies licensed by the MPhA. These are the most available statistics. The survey also revealed that there were approximately 1,350 people directly employed by IPS pharmacies in Manitoba and that those IPS pharmacies had collective annual sales of approximately $415 million.

IPS pharmacies provide pharmaceutical services on a distance-based care model. Individuals contact Manitoba IPS and provide to the Manitoba IPS their prescription. Many of these individuals are in the United States. They are seniors and, almost universally, they are on maintenance medications which have no risk of abuse. The prescriptions are required by our members, but a Canadian's prescription is required in order to fill a script in Canada and so Manitoba IPS retains Canadian licensed prescribers, physicians, to issue Canadian prescriptions. It is legally required for us to operate in Canada, and this is what happens.

The process of filling prescriptions by IPS is safer than any other kind of pharmaceutical prescription filling. It is safer because it involves a face-to-face relationship by a primary physician in the United States who issues a prescription. That original prescription is reviewed by a Canadian-licensed prescriber who can catch errors. In addition, there are usually one, two or three pharmacists who review the order before it is delivered in Manitoba for sale.

MIPA and the MPhA in the province of Manitoba have been meeting to discuss issues relevant to the practice of IPS Pharmacy in Manitoba and to ensure that the practice of IPS Pharmacy does not adversely impact the health care of Canadians. MIPA and its associated national organization CIPA maintains a Canada-first policy. This industry is good for Manitoba, and it is good for Canada.

Here you have my information, and there are a lot of concerns that I have with the legislation. But let me just address the most important ones.

First of all, in Bill 41, there is a new definition of a practitioner. The practitioner is described in Section 2 as a person licensed to practise medicine, dentistry, veterinary medicine, veterinary surgery, and veterinary dentistry in Manitoba or in any province or territory in Canada, and–and the "and" is vital–a person designated in the regulations. The problem with this definition is that it requires that the physician be licensed in Manitoba or Canada and in the regulations. Where Manitoba IPS needs to go is like 29 states which recognize Canadian prescriptions. We need to recognize the United States prescriptions, and if this bill is passed as drafted, the mandatory conjunctive nature of "and" will create a circumstance where we can never, not without significant revision, conduct the practice of IPS Pharmacy in Manitoba the way that we should.

The second matter that I want to bring to your attention is that in this new draft legislation, it broadly expands the scope of the registrar. There are a lot of ways in which it does this. However, in particular, at Section 94, Bill 41 allows expanded sharing of information by the registrar to organizations in Manitoba and entities and government organizations across the country. Mr. Ron Guse, the current registrar, has said publicly that he is frustrated by his inability to communicate certain information with other colleges in Canada. I am not opposed to expanded scope of shared information. However, the reality is that, currently, one of our members is being prosecuted by the MPhA for filling a prescription by a Canadian co-signing physician. An effective way to shut down this industry in Manitoba would be to share the information of the Canadian co-signing physicians with other colleges across the country. These individuals then may be subject to sanction because of the current regulatory climate and our members will not be able to conduct business in Canada any longer. This is a vital Manitoba industry and I would hate to see it lost.

Madam Chairperson: Thank you.

Mr. Sale: First, thanks, Troy, for your presentation. I just want to ask a couple of questions.

Were you aware that there were five public meetings open to all shareholder-stakeholders in terms of pharmacists in regard to this legislation and that all members who are certified pharmacists in Manitoba were able to go to those meetings, including your members?

Mr. Harwood-Jones: I was not aware of that. Furthermore, I have sent out numerous communiqués, and I have called a meeting of the members of my association. I have asked them repeatedly: Were you aware of this legislation? Does anyone have any information on this legislation? Were you ever consulted with the drafting of Bill 41? The answer has been a resounding no.

Mr. Sale: Secondly, in regard to your concern about both the two areas that you have told me that you were concerned about. I know that you are aware that our legislative drafters have indicated that "and" does not mean conjunctive "and"; it is simply listing. But we have also told you that, if you want to have "or" in there, we can have "or" in there. It does not make any difference to the interpretation of the legislation. Would you be happier if it said "or"?

Mr. Harwood-Jones: I can tell you I would be greatly relieved if you substituted the word "or" in the definition of practitioner.

Mr. Sale: We have an amendment that says "or." It does not make any difference, but if you want to say "or," we will say "or."

Thirdly, are you aware that your concern that you just ended your presentation with around other colleges in Canada is not, in fact, the meaning of Section 94, that it only allows the sharing of information with other governments, government agencies, which is, in other words, bodies that are

governments across Canada. It has nothing to do with sharing information with colleges and physicians, nurses, pharmacists, whatever, it is purely section (b), which is new, is in regard purely to government. Were you aware of that?

Mr. Harwood-Jones: I was not, and that is a relief.

Mr. Sale: We told you this morning. *[interjection]* Okay, good. I am glad.

Mrs. Leanne Rowat (Minnedosa): Thank you, Madam Chair. I represent the Minnedosa constituency, and RxNorth and Mediplan are part of my constituency, obviously. I was pleased to see that the minister was looking at the "and" component because my question to you would be in consultation with RxNorth or Mediplan, this would obviously be a concern for them. Can you speak to that comment?

Mr. Harwood-Jones: I can tell you that I have spoken directly with Andrew Strempler, the owner of Mediplan Health Consulting, and he is greatly concerned, as I am, regarding the implications of the drafting of the definition of practitioner. If the legislation is passed the way that it is currently drafted with the "and' rather than the amended "or," it may well put Mediplan out of business in Minnedosa.

Mrs. Rowat: Are you comfortable, based on the comments that the minister has made, that the amendment will address that? Are there any other issues or concerns that have been raised by Mr. Strempler regarding this piece of legislation that we should be addressing before the minister today in providing amendment?

***** (10:40)

Mr. Harwood-Jones: The best answer I can provide to that is that I have been in consultation, as president of MIPA, with the members of the association. We met a few weeks ago, and I have been sending out e-mail correspondence regarding this bill ever since I received it.

I have met with Andrew on one occasion. We discussed the bill. He asked for my comments on it, and I advised him that I had sent the draft copy of Bill 41 to our legal counsel for a review, which had not been completed. We discussed it in general terms, and we discussed some of the concerns that I had, such as the drafting of the definition of practitioner. It was only last Friday at 6:30 that I received a phone message, which I picked up the next day at work, advising me that this act was going to go to a committee this morning, and this was going to be our one opportunity to speak to this to affect the drafting of the bill.

Hon. Jon Gerrard (River Heights): I would like to address Section 92, which protects individuals from liability unless the person was acting in bad faith. There have been a number of such clauses introduced in a variety of bills to protect various people from ministers to a variety of other individuals. In this case, it applies to the Manitoba Pharmaceutical Association.

Our view is that the protection from liability should not be present where there is gross negligence or gross mismanagement and that there needs to be some liability when there are major mistakes made to let people know that there has to be some duty of care in actions taken. Would you comment on this?

Madam Chairperson: Just prior to your commenting, is there leave for Mr. Harwood-Jones to answer the question? *[Agreed]*

Mr. Harwood-Jones: I would answer the question as follows: I believe that the MPhA and the regulators proceed with good faith in all of their actions. I think that every person who takes public office does so on the basis that they are concerned for the public good.

My concern, however, is that the drafting of Bill 41 reverses the appropriate onus. I can tell you that it is a standard principle of law and it is a fundamental principle of natural justice that the individual has less power than the state and needs to be protected from the power of the state. This is why appropriate legislation creates a circumstance where the individual does not need to show bad faith in order to defend themselves. It is very difficult for an individual, with their limited resources, to marshal the kind of evidence to persuade our naturally cynical society that someone was proceeding in their office under some kind of nefarious purpose.

The drafting of Bill 41 reverses the onus. In effect, it says that unless you can prove that there was bad faith, the people who are responsible for protecting the well-being of Manitobans and individuals who receive pharmaceutical care will not be subject to any sanctions for the things that they do. That is not appropriate.

Madam Chairperson: Thank you very much for your presentation.

Mr. Harwood-Jones: Thank you and good morning.

Madam Chairperson: The committee calls Dr. Sheryl Zelenitsky from the Faculty of Pharmacy at the University of Manitoba.

Ms. Sheryl Zelenitsky (Acting Dean, Faculty of Pharmacy, University of Manitoba): Good morning, Madam Chair, ladies and gentlemen. My name is Sheryl Zelenitsky and I am the acting dean of the Faculty of Pharmacy at the University of Manitoba. I thank your committee this morning for letting me address, on behalf of the faculty, Bill 41.

I would respectfully submit that in order to consider this bill, it is important to know the background and training of pharmacists and pharmacy students in the province of Manitoba. Our support for Bill 41 is evident in our mission to provide an educational environment that facilitates the integration of pharmacy scholarship in the areas of practice, research and service to effect optimal health outcomes for individuals and communities and to advance the profession of pharmacy.

An important point here I think is that contemporary pharmacy education, there has been a dramatic change in pharmacy education over the last decade. Pharmacy programs across North America have adopted very patient-focussed clinical programs which expand pharmacy practice, education, develop professional skills, incorporate interdisciplinary education and a lot of experiential learning.

Our faculty and the profession of pharmacy at this point is very fortunate to be attracting talented students into our program who are eager to serve as health care providers in our community. I provided a little bit of background on the pharmacy students that we take into Pharmacy. The program requires at least one year of science. Many of our students come in with previous degrees. We have limited enrolment of 50 per year and a large recruitment of 200 to 300 applicants for those 50 spots. Our mean GPA for our pharmacy students coming into first year is above a 4.0.

After four years of education and training, our graduates, I feel, do demonstrate value and the desire to serve. As health care providers in our current exit survey of our 2006 grads: 100 percent have jobs; more than 80 percent remain in Manitoba, 80 percent serve community pharmacy, about 20 percent institutional or hospital, and this year 40 percent of our graduates took positions outside of Winnipeg in rural communities or cities and towns outside of urban Winnipeg.

I would like to provide an appreciation of pharmacy education which, as I mentioned, over the past decade has undergone dramatic and rapid evolution. We are in the midst of implementing a new program. Our programs are maintained and mandated by a national accreditation process. As was mentioned previously, we are also in the plans for a new pharmacy building which will be built at the Bannatyne campus specifically so that our students can be trained with other health care professionals.

Our students have four years of training in drug therapy. They have over 40 courses and 75 percent of those are directly on drugs and the use of drugs in patients. We focus a lot on developing skills in our students to meet patient drug-related needs. There has been a dramatic increase in our training and clinical disease-state management, patient evaluation assessment, and health promotion. We have also doubled our experiential training in our current program.

Beyond the traditional activities of drug distribution and patient counselling which are covered under our current act, contemporary pharmacy programs like the one in Manitoba has a tremendous emphasis on an educational outcome targeted to meeting patients' drug-related needs. Our students are trained in selecting the most appropriate drug therapies based on indication, on clinical evidence, looking at the scientific literature, on patient demographics, other disease states patients may have, drug interactions, adverse effects, compliance and cost.

Our students are highly trained on counselling on the effective and safe use of drugs, but they are also trained on the monitoring and adjusting of drug therapy to optimize both the efficacy and minimize adverse effects that patients may experience.

With all the education and training, it has been our frustration and contention at some times that our graduates are overtrained and overeducated for current scopes of practice in pharmacy in Manitoba. It follows that pharmacists are underutilized in the health care system. Furthermore, the current act is limiting and does have a very narrow scope. I would add that Bill 41 will be one of the most progressive acts in the country and will enable pharmacists to take a more active and regulated role in the health care of patients in Manitoba.

I have outlined on my last slide some of the opportunities that I think opening the scope and broadening the scope of practice will offer us in this

province. Our vision under the new Pharmaceutical Act will increase the utilization of pharmacists' expertise, and their accessible services as pharmacists are very accessible to the population and also their accessibility to other health care professionals.

***** (10:50)

Pharmacists can ensure appropriate therapy. They can look at cost-effective therapy, look at monitoring and ongoing monitoring of patients that have chronic disease states, and they can do it very efficiently and timely, ordering tests, adjusting therapies and selected prescribing. I also see that this act and the better utilization of pharmacists in this province can reduce the burden on other areas of the health care system that pharmacists are well-trained and skilled to manage.

With that I would like to thank the committee for the opportunity to present. Thank you.

Mr. Sale: I would like to thank you for your presentation. Obviously, you have looked at the act carefully. Do you see any areas that cause you concern at this point or do you feel that we have basically covered off the issues that you think should be dealt with in the act?

Ms. Zelenitsky: I feel that the act does cover the areas as was mentioned previously. The development of standards of practice and regulations to come, I would have no concerns with the act.

Madam Chairperson: Seeing no other questions, the committee thanks you very much for your presentation, and thank you for waiting.

Prior to proceeding, are there any other individuals in the audience who would like to make a presentation? That concludes the list of presenters I have before me.

Madam Chairperson: We will now proceed to clause-by-clause consideration of the bills. In what order does the committee wish to consider the bills?

Mr. Doug Martindale (Burrows): According to the list we got this morning.

Madam Chairperson: Is that agreed by the committee? *[Agreed]*

Bill 29–The Degree Granting Act

Madam Chairperson: Does the minister responsible for Bill 29 have an opening statement?

Hon. Diane McGifford (Minister of Advanced Education and Training): Madam Chair, I do not have a statement, but I think there is a point of clarification that I would like to make because I understand that my opposition critic had a concern which I think I can alleviate.

So let me give a little bit of background under this Degree Granting Act. An institution can gain the authority to grant degrees in three ways: (1) the institution can be incorporated through legislation, for example, The University of Manitoba Act; (2) the institution's name could be added to the list of exempted institutions in The Degree Granting Act itself, for example, Steinbach Bible College or (3) an institution could be granted temporary permission to grant degrees through a regulation designed to allow current students to complete a program of study.

Now under this bill Cabinet has the authority to authorize an institution to grant degrees for a period of up to three years. This is a transitional provision. It is only temporary, and it is designed to ensure that students are not penalized for taking a degree-granting program from an institution that under The Degree Granting Act would not be authorized to grant degrees. Now we do not know if those institutions are out there and, in fact, existent, but we want to make provision for this possible eventuality. I believe this was the concern of the opposition critic who felt that Cabinet would be enabled to grant institutions and not have to come to the Legislature. Indeed, that is not the case. With this exception, degree-granting authority is reviewed by the Legislature.

The proposed Degree Granting Act would require that institutions that have degree granting authority on a permanent basis be either incorporated through public or private legislation or that the institution could be added to Section 2 of The Degree Granting Act. That is the section where Steinbach Bible College is listed. So I do want to ensure the member that Cabinet cannot create new institutions. The institutions would need to be created by an act of the Legislature or added to Section 2.

So that is my only comment at the beginning, Madam Chair.

Madam Chairperson: Thank you.

Does the critic from the official opposition have an opening statement?

Mr. Leonard Derkach (Russell): I think that *[interjection]*

An Honourable Member: Here, here.

Madam Chairperson: Clause 1–pass.

Shall clauses 2 and 3 pass?

An Honourable Member: Pass.

Mr. Derkach: I would just simply like to ask the minister in the authorization of who can grant a degree or who is entitled to allow for degrees, I want to ask the minister whether or not she considered allowing for, for example: In an instance where a new institution perhaps is established in the province, whether it is the minister, the Cabinet, the Order-in-Council or whether it is an amendment to the act that would allow for that institution to be allowed to grant a degree.

Ms. McGifford: Any new institution would have to be created by an act of the Legislature offering, obviously, all members of the Legislature the opportunity to participate in the debate. Or it could be added to, under Section 2(2)(b), where we see the Steinbach Bible College.

Mr. Derkach: So, if an institution, for example, community colleges right now are not allowed to grant degrees, but if a community college wanted to grant a degree, if we were to sort of phase into a university college system in this province, would it simply be an amendment to this section in the act that would allow for that community college to offer degrees, or does that become a new piece of legislation on its own?

Ms. McGifford: Madam Chair, it would require an amendment to The Colleges Act, a modification to The Colleges Act. So, once again, it would be a matter that would be considered by the Legislature.

Madam Chairperson: Clauses 2 and 3–pass; clauses 4 through 6–pass.

Shall clauses 7 through 9–oh, I am sorry.

Mr. Derkach: I actually had a question in regard to clause 6(2).

Madam Chairperson: Clause 6(2)?

Mr. Derkach: Yes, it is passed, but I–

Madam Chairperson: With leave of the committee, can we return to clause 6? *[Agreed]*

Mr. Derkach: My question has to do with the regulation under subsection (1), which has a three-year expiry date after it is made, unless a shorter period is prescribed by regulation. What happens after the third year, if the regulation expires after year three, but there still seems to be a need for it? Does that regulation have to then be reinstituted or what is the process?

Ms. McGifford: It is renewable if there is still a need for that.

Mr. Derkach: And is it the minister then that renews it, or is that a recommendation that comes from COPSE?

Ms. McGifford: Well, I think it would be a recommendation that came from COPSE, but it is the Lieutenant-Governor-in-Council who finally agrees.

Madam Chairperson: Clauses 7 through 9–pass; table of contents–pass; enacting clause–pass; title–pass. Bill be reported.

***** (11:00)

Bill 32–The Real Property Amendment Act

Madam Chairperson: The next bill for consideration is Bill 32, The Real Property Amendment Act.

Does the minister for Bill 32 have an opening statement?

Hon. Oscar Lathlin (Minister of Aboriginal and Northern Affairs): Thank you very much, Madam Chair. I think most members are aware that under the 1997 federal-provincial agreement on treaty land entitlement, or TLE as we refer to it, a total of 27 First Nations in Manitoba are entitled to select up to a little bit more than a million acres of Crown land and also to purchase up to approximately 170,000 acres of private land and that land to be transferred to the federal government, and the federal government will, by Order-in-Council, convert it to reserve land. Also, as the members of the Legislature know, this land has been owed for upwards to 100 years to these Manitoba First Nations, 27 of them.

The provincial Treaty Land Entitlement, again as members would know, stems from the period of 1871 to 1910 when seven treaties were signed between First Nations and Canada. Now, again, members will know that not all First Nations have received their full land allegations under the TLE process, but Manitoba is constitutionally obligated under the 1930 natural resources transfer agreement act to set aside unoccupied Crown lands so that Canada can fulfil its outstanding treaty land entitlements to First Nations. That is not just Manitoba; it is across Canada.

So far Manitoba has transferred approximately 200,000 acres to the federal government of which roughly 100,000 acres have been set apart as reserve by Canada. Some 200,000 acres are in the process of being surveyed and an additional 240,000 acres have been approved for surveying. So, essentially, members will know that what we have here are some very serious overdue accounts, accounts that are in arrears for many years. Progress in addressing these overdue accounts has been painfully slow, as members of the official opposition will know because they had this file while they were in office.

So, again, I think people around the table here will agree that it is in everyone's interest that the provincial government fulfil existing TLE entitlements, land entitlements as sufficiently and as effectively and as fast as possible as we can. So as the Minister of Aboriginal and Northern Affairs and also being a First Nations person, I have always told groups that I have a vested interest that these lands, on OCN anyway, the First Nation I come from, be transferred to OCN's control and authority, ASAP.

Now, over the years that we have been in government, I have met with successive federal ministers responsible for the Department of Indian Affairs. I have met with the Grand Chiefs of AMC, SEO and MKO along with several chiefs and councils. Also, I have met many times with municipal officials regarding the TLE process. In all of these meetings, I have always stressed our desire to get these files processed in a timely basis.

Our department has made fast-tracking TLE a priority, and we are doing that right now, so the need for the current legislation was identified by the federal government through the Department of Justice, who said that they required this change to make it easier for them to accept many parcels of land. Bill 32, The Real Property Amendment Act, will address a perceived shortcoming in current legislation as it relates to the protection of easements through the land transfer and reserve creation process. The easements I refer to are for such public purposes as water storage, access, rights of way for public utilities among others.

This amendment is needed in order to accommodate a requirement of Canada that what they call true legal interest in land can be accepted under the federal Real Property Act. We are also told that, without this amendment, our ability to transfer land subject to easements created for public purposes may continue to be hindered and delayed. We have seen many cases of land that has been approved by the Province but stalled for long periods of time at the federal level because of these perceived shortcomings.

So, again, I suggest to members here that the completion of TLE is important for the future of the economic development of First Nations. I have always told people that the slow progress of this TLE in Manitoba has meant lost opportunities. In fact, it has cost this province probably millions of dollars because businesses need land tenure issues resolved before they can make investments. So I encourage all members to support this amendment.

Madam Chairperson: Does the critic for the official opposition have an opening statement?

Mr. Gerald Hawranik (Lac du Bonnet): Yes, just a very brief opening statement just to get a few matters on the record, Madam Chair.

I notice that the minister, when he made his opening statement, indicated that he was in support of an efficient and a fast process under the Treaty Land Entitlement agreement process that is in place. While I would agree with that, that does not mean that you should not be consulting before you ensure that you present legislation to the House.

I am somewhat disappointed in the minister in that respect because I recall in second reading in Bill 32 where the minister indicated, in fact, that he consulted with all the groups and special interest groups that Bill 32 would certainly have an impact upon. Clearly, he, during second debate, indicated that this will speed the Treaty Land Entitlement process up, and in fact, we hear today from Mr. Braun, who represents the Treaty Land Entitlement Committee, coming forward and saying that he was not consulted. We heard as well that on June 19 he is going to have a meeting with the minister, an initial meeting.

Here we are in committee a week before June 19 trying to pass this bill into concurrence and third reading, so, while the minister talks about consultation, he does not follow through, obviously.

***** (11:10)

Clearly, I think Mr. Braun was asking for Bill 32 to be tabled until proper representations were made. In fact, the Member for Ste. Rose (Mr. Cummings) asked the minister the question, and the minister chose not to answer. So I would hope that the minister would have been listening to Mr. Braun's

presentation. It impacts upon his group in terms of the ability to receive, and I think what Mr. Braun was dealing with in his presentation was compensation.

Clearly, I have made that comment before in the House in second reading debate that in fact Bill 32 is somewhat deficient in the sense that it does not have a compensation mechanism available because clearly, when you put an easement on someone's property, whether it is a First Nations property or whether it is private property outside of a First Nations community, any easement that you put on property like that will diminish the value of the property somewhat, depending on the kind of easement that you are putting on it.

Perhaps, with Bill 32, there should have been some kind of a compensation mechanism or some kind of dispute resolution mechanism within Bill 32 to facilitate that process. Clearly what we do not want to do is slow up the process of treaty land entitlement. I think what we have to do is make sure that there is an efficient process available, and perhaps, when Mr. Braun made his presentation, that is likely what he was alluding to. But, we would never know, of course, unless they would have a meeting with the minister before the bill is passed.

Madam Chairperson: We thank the member.

Shall clause 1 pass?

Mr. Ron Schuler (Springfield): I have a question to the minister. I was wondering if all these good words also apply to those individuals who are out front trying to get the minister's attention.

Mr. Lathlin: The individuals who are outside are trying to address their concerns as they relate to the Grand Rapids hydro installation. The issue that we are dealing with right now has to do with treaty land entitlement. So they may be similar, but in my belief, we are dealing with two different issues there.

Mr. Schuler: But the minister is dealing with the issue that the individuals outside are looking forward to have dealt with?

Mr. Lathlin: I understand the group met with the Minister responsible for Manitoba Hydro last week, and I understand also that further meetings are being contemplated at this time.

Mr. Schuler: My last question. I am sure they would appreciate that, when the minister walks out to his vehicle, if he would walk over and maybe just talk to them.

Mr. Lathlin: I have talked to them.

Mrs. Leanne Rowat (Minnedosa): Madam Chair, June 19 is the date that was shared by Mr. Braun as a meeting date to have discussions on Bill 32. Is it the minister's intent at that point to provide a briefing on the intent and the implications of Bill 32 at that point? Also, will there be a committee struck, and what will that committee be doing? This bill will already have passed. What does the minister hope to achieve with the amendment already passing? Can he share what his intent is with this committee?

Mr. Lathlin: I would like to clarify the comments that were made by Mr. Braun earlier this morning. At the May 29 meeting, it was the purpose of the meeting on May 29 to discuss the fast tracking of TLE. We had been talking quite extensively, we have had several meetings and there have been several pieces of correspondence that have gone back and forth to AMC, MKO and some individual chiefs and councils, to Mr. Braun himself, talking about TLEs. So, at the May 29 meeting, the idea was that we were going to talk about Bill 32. So, we, in fact our civil legal services, one of the lawyers, did quite an extensive presentation on Bill 32 to the group that we met on May 29.

Toward the end of the meeting, I made a commitment to the group that after that meeting, or shortly thereafter as soon as possible, that our same lawyer would meet with their lawyers and their officials, their technicians and chiefs, if they wish to be there, so that our lawyer could further explain the purpose of Bill 32. I did not in any way commit to forming a committee. My commitment was for our lawyer to sit down with their people and try to get a common understanding of the whole purpose of Bill 32.

I also have asked our staff to do a chronology of communication that we have conducted with the Treaty Land Entitlement Committee on Bill 32. If members wish, I have asked our people to package that communication together for your easy reference. I think you will come to understand that, contrary to what some people might believe, there has been communication with the Treaty Land Entitlement Committee regarding Bill 32.

Madam Chairperson: Is that agreed by the committee to have that information distributed? *[Agreed]*

Mrs. Rowat: I guess my question though is, there were some very serious concerns shared by

Mr. Braun about not being included in the process of the intent and the implications of Bill 32. I guess I would just share the concern of others at the table that when something of this magnitude is being presented and that will affect the livelihoods of individuals in Manitoba, that all residents of the province are given opportunity to consult and learn more about a bill prior to it being implemented.

So, I welcome the minister's information that he is going to share on the communication aspect and who has been consulted, but as the new critic for Aboriginal and Northern Affairs, I will be following this process and working with communities to ensure that their voices are heard.

Mr. Kevin Lamoureux (Inkster): There was a letter that was tabled from D'Arcy & Deacon, once the committee and the presenter had expressed some concerns in regard to Bill 32. I am wondering if the minister could indicate whether or not he was aware of the concerns and the request that this bill maybe not go through a second or a committee stage at this time? Was he aware of that?

Mr. Lathlin: Madam Chair, I am not sure if I understand the member's question. I wonder if I could ask him to repeat it.

Mr. Lamoureux: The content of the June 8 letter deals with concerns regarding Bill 32 and that it be tabled until an appropriate time as our client, and I am reading right from it, be tabled until an appropriate time as our client is able to register and prepare its presentation of Bill 32. Was the minister, or is his office aware at all of that particular request?

***** (11:20)

Mr. Lathlin: Well, let me begin by saying, Madam Chair, that our community in the Opaskwayak Cree Nation stands to, under the TLE process, stands to get an additional approximately 50,000 acres of land that has been owing for many, many years now. Being a First Nations person, there is no way that I would advise our government to come up with any piece of legislation that would in any way hinder OCN from getting land that is owed under the Treaty Land Entitlement process. Absolutely no way.

So, again, I often tell our people that blood is thicker than water, and I am going to do everything on my part while I am in this government to make sure that that one million acres of land that is owed to Indians in this province through treaty is fulfilled, because the file has been around too many years. I made a commitment when I was made Minister of Aboriginal and Northern Affairs that that would be one priority project that I would undertake, and that is what I have been doing for the last two and half, three years that I have been Minister of Aboriginal and Northern Affairs, because I see it as being very important for First Nations in this province to access land.

We talk about economic development, business development, business opportunities for First Nations, and yet we seem to sometimes forget that one very key component to business development and opportunities for First Nations people in this province is real estate. So I have made it my business that before I leave this building and my job here as Minister of Aboriginal and Northern Affairs, that I will try everything on my part to make sure that that happens.

As well, I can tell the member, Madam Chair, that, as I said earlier, I have a chronology of events that have happened between my department and First Nations organizations with respect to Bill 32. I am prepared to give a copy of that to the member if he wishes.

I might add, too, that there are many First Nations who support this bill because they understand what it is trying to do. They have complained long and hard about how long it takes for a TLE to be processed. They know how much land is owed to them, and they know that if that land is finally paid to those First Nations people that their chances for economic opportunities would be enhanced that much further.

So, if the member wishes, I can give him a copy of the chronology that I have that clearly indicates our communications with First Nations organizations with respect to Bill 32.

Mr. Lamoureux: Yes. Madam Chair, I think it is important that we just be clear on the point in terms of whether or not, because–and I respect what it is that the minister is saying. But, in reading the legal counsel letter for the Treaty Land Entitlement Committee of Manitoba, it makes two assertions that cause a great deal of concern. That is why I just want to ask the minister: Was he aware of the content of this letter or the concerns by the Treaty Land Entitlement Committee prior to this morning?

I say that because it indicates very clearly in the letter: To this date, our client, as well as its member First Nations, remain confused as to the intent and workings of this legislation.

Then it goes further in the letter: We must therefore respectfully ask that any presentations on Bill 32 be tabled until an appropriate time that our client is able to register and prepare his presentation on Bill 32.

What I am asking from the minister is: Was he aware of these concerns in regard to Bill 32 prior to this morning?

Mr. Lathlin: The time I became aware of the contents of that letter or the concerns of the authors of that letter was in the afternoon of last Thursday. I became aware of it toward the end of the public hearing last week, and, I believe, Friday, I wrote a letter to the Grand Chief of MKO, again, trying to explain that the passage of Bill 32 would in no way affect existing agreements nor future agreements and that it would not affect Aboriginal and treaty rights. In fact, I also tried to make the point that there is current legislation here now called The Interpretation Act. I believe Section 8 gives First Nations that protection, that any legislation passed by this government here in Manitoba would in no way do away with treaty and Aboriginal rights that are recognized and affirmed in Section 35 of the Canadian Constitution.

So that is why as a First Nations person I do not have a problem in having this legislation approved. If I saw anything at all that would diminish the rights of First Nations people, I would not be sitting here supporting this legislation. But in my own mind I am satisfied fully that this legislation will not in any way negatively impact on Aboriginal and treaty rights.

I will also add for the member's information, all members of this committee, that, in fact, I was at that meeting in The Pas last Tuesday. I made a quick trip to The Pas last Tuesday morning because I was invited there. I attended the annual general meeting of the Treaty Land Entitlement Committee of Chiefs. It was held at OCN where I come from, and, in fact, the acting chief of OCN in his opening remarks to the assembly very clearly stated that he supported Bill 32.

As I said, I was there on Tuesday. I talked further about fast-tracking TLE and about how all of us have to get together and have one action plan that could be signed off by Indian Affairs, the three Grand Chiefs of the TLE Committee, Aboriginal and Northern Affairs and the Minister of Conservation (Mr. Struthers). So after I had done my presentation, Mr. Braun, in fact, came to me and said, a very positive presentation.

Mr. Lamoureux: My final question then is: Given the remarks of the minister, am I then to understand that the Treaty Land Entitlement Committee, MKO and AMC actually do then support this legislation as is?

Mr. Lathlin: There are advisors at MKO just like there are advisors for other organizations, including our government, who, for whatever reason–but I believe the reason that those advisors are advising MKO, because the opposition initially came from the Grand Chief of MKO. That was what his advisers were telling me.

In the meantime, I talked to individual chiefs of MKO, and like I said, OCN being one of them, and the acting chief's opening remarks at OCN supported Bill 32. He figured that it was a positive development because, as he said, he was tired of waiting for land owing to OCN to actually be paid to OCN.

***** (11:30)

Madam Chairperson: I would just like to add a comment, myself, at this point, just for clarification of the committee. We received the e-mail, and I received it at about 12:45 on Thursday. I took that e-mail to Legislative Counsel who suggested that it was somewhat the Chair's decision. I discussed it with our House Leader. I asked the Clerk to respond by e-mail to the writer of the letter that you have, suggesting that we would ask for leave on Tuesday morning because consideration of the public presentations had already occurred and been completed, that we would ask for leave on Monday morning for them to appear before the committee. So that is the e-mail that they received back which would have gone on Thursday afternoon. So that is just for clarification of the committee.

Mr. Kelvin Goertzen (Steinbach): I thank the Chairperson for those comments. Then, for further clarification, the minister indicates that the June 8 letter on the letterhead from D'Arcy & Deacon was that he was made aware of the contents of it on Thursday afternoon, obviously after the Chair of this committee received the letter and after the House Leader for the government was advised of it.

Can he indicate then, because I noticed he was not copied on the letter, how he became aware of the contents of the letter?

Mr. Lathlin: I was made aware of the letter by the committee Chair.

Madam Chairperson: Clause 1–pass; clause 2–pass; clause 3–pass; clause 4–pass; clause 5–pass; clause 6–pass; enacting clause–pass; title–pass. Bill be reported.

Is there agreement from the committee, given the size and structure of Bills 33 and 41, for these bills, the Chair will call clauses in blocks that conform to the parts of the bill, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose? *[Agreed]*

Bill 33–The Northern Affairs Act

Madam Chairperson: Does the minister responsible for Bill 33 have an opening statement? We thank the minister.

Does the critic from the official opposition have an opening statement?

Mrs. Leanne Rowat (Minnedosa): Yes, I do, Madam Chair.

We have had a briefing on Bill 33, and we appreciate that. There are some concerns that we have with the bill in itself and just want to have those thoughts and those comments put on the record.

I believe that Carl Braun, Treaty Land Entitlement Executive Director, had indicated that he would have liked to have stayed to present on this bill as well based on his concern with consultation on Bill 32. So we look forward to having his comments in writing at a future date on this.

Again, I think the minister is aware, and I believe staff within the department are aware, that we believe in what this bill will do for northern communities, but we do have some concerns with the community consultation board and the structure of that board and the qualifications of board members as being unclear at this point.

We have received no sense of how the board will be made up and the minister has not answered these questions to date, so we will be, as I had indicated earlier, following the process to ensure that the intent and the spirit of this bill is to move toward self-government, and we believe that we need to ensure that the people that are going to be part of this board have the qualifications to ensure that this process moves forward in an expedient manner.

It would appear that there needs to be some direction given to the board on the mission statement and outlining the roles and responsibility of the board, and we look forward to learning more about this process and having a sense of what the mission will be in this.

The bill also does not address or promote the amalgamation of communities, and this is something that has come up in discussions that we have had with different stakeholders. Amalgamation would improve the economic, social environmental conditions of northern communities in some cases, and we encourage the minister to give some consideration to this because it is not provided or given recognition in the bill.

The conflict-of-interest piece, during the briefing we indicated that this will be of a concern to some smaller communities where the relationship and cross-relationships between most community members and the interests those individuals have in the community, we find that that is a concern in The Municipal Act, and I believe that it will also be of a concern at times with The Northern Affairs Act. So we encourage the minister and his department to be cognizant of this and to attempt to ensure that councillors have as much impartiality as possible in these integrated communities.

As I indicated earlier, this is something that we have noticed in rural communities and in southern parts of the province. So this is a common thread.

I guess, just in closing, we support a large part of this bill, but, again, we do have some concerns, so we thank the minister for allowing us to put some points on the record.

Madam Chairperson: We thank the member.

The minister would like to make a statement. Agreed? *[Agreed]*

Hon. Oscar Lathlin (Minister of Aboriginal and Northern Affairs): Well, thank you very much, Madam Chair.

I know the critic made some statements and advice and I appreciate that very much, but during Estimates, we had also gone over this area quite a bit I thought. I guess the point that I want to make here is if we are talking about the qualifications of people who are going to be requested to sit on certain boards, I always find that a little bit offensive, you know, when members–are these people qualified?

Are they going to do the right thing? Are they going to be impartial, et cetera?

Well, if Aboriginal people had listened to that kind of paternalistic statement when we first started to develop, I often wonder where we would be today. You know, for example, when OCN started, if we had listened to people: Well, you are not qualified to, you do not have the qualifications to develop a 200,000 square foot shopping centre, or you guys are not qualified to run your own education program or to run, to build a hotel. I mean, where would we be today, if we listened to that talk?

So my suggestion to people is you are just going to have to trust us, you know. You are just going to have to look at the education development of Aboriginal people, and it is just like any other group. See, the more we become educated, the more we become like you. We get smarter, and we are going to be able to make the right decisions.

***** (11:40)

Madam Chairperson: I am going to also refer to parts as I go through this.

Part 1, pages 1 to 7, clauses 1 through 4–pass; part 2, pages 8 to 14, clauses 5 through 24–pass; part 3, pages 15 to 39, clauses 25 through 76–pass; part 4, pages 40 to 50, clauses 77 through 98–pass; part 5, pages 51 to 64, clauses 99 through 131–pass; part 6, pages 65 to 69, clauses 132 through 139–pass; part 7, pages 70 to 89, clauses 140 through 171–pass.

Part 8, pages 90 to 108, shall clauses 172 through 204 pass?

Mr. Lathlin: Thank you–

Madam Chairperson: On what clause are you making an amendment?

Mr. Lathlin: Madam Chair, clause 181(1) and (2).

Madam Chairperson: Clauses 172 to 180–pass.

Shall clause 181 pass?

Mr. Lathlin: Madam Chair, I move

THAT Clauses 181(1) and (2) of the Bill be replaced with the following:

Land acquired becomes Crown land
181(1) Land in northern Manitoba held by the government, including land acquired by the minister under section 180, is Crown land within the meaning of *The Crown Lands Act* and is vested in the Crown.

Dispositions: consultation and ministerial approval
181(2) Crown land in northern Manitoba may be disposed of as provided for in *The Crown Lands Act*, if

(a) in the case of a disposition of Crown land located in, or within eight kilometres of, a community, the minister has consulted the council of the community and approved the disposition; or

(b) in any other case, the minister has approved the disposition.

Madam Chairperson: The motion is in order. The floor is open for questions.

Seeing no questions, is the committee ready for the question?

Some Honourable Members: Question.

Madam Chairperson: Amendment–pass; clause 181 as amended–pass; clause 182 through 204–pass; part 9, pages 109 to 124, clauses 205 through 231–pass; part 10, pages 125 to 129, clauses 232 through 236–pass; part 11, pages 130 to 133, clauses 237 to 253–pass; part 12, pages 134 to 141, clauses 254 through 269–pass; part 13, page 142, clauses 270 through 272–pass; table of contents–pass; enacting clause–pass; title–pass. Bill as amended be reported.

Bill 34–The Public Interest Disclosure (Whistleblower Protection) Act

Madam Chairperson: Does the minister responsible for Bill 34 have an opening statement?

Hon. Greg Selinger (Minister of Finance): No.

Madam Chairperson: Okay. Does the critic for the official opposition have an opening statement?

Mr. Gerald Hawranik (Lac du Bonnet): Yes, I do, just a brief opening statement, though. While I can say at the outset, and I have said in second reading as well, that we do support the principle of the bill itself. I think it is important that we protect whistle-blowers, particularly public servants, who come forward with allegations and ensure that they not only come forward with allegations, but they are protected, I think, by the Labour Board. That is the key provision in this bill, and that is that we are to ensure that public servants, when they come forward, are not taken advantage of, are not subject to any reprisals and, in fact, are protected by the Labour Board.

But, when I looked through the legislation, and I think we heard this morning from one particular presenter, who very eloquently put his case forward, that, in fact, there may not be any protection at all in very serious circumstances.

First of all, I am going to be putting forward several amendments here at committee to, hopefully, take care of some of those concerns, one of which of course, is that, first of all, the disclosures are only protected in very limited circumstances, and they are protected only when made under Section 10 to the supervisor of the employee or a designated officer in the employee's place of employment or to the Ombudsman. So, if they are not made within those very limited circumstances, there is no protection to the Labour Board.

Secondly, the types of disclosures are very limited, and when we look at the wrongdoings that are defined in the act, it relates to gross mismanagement of public funds or assets, it relates to law-breaking activity, it relates to activity that is dangerous to life, health or safety. There is no protection, for instance, if an individual makes an allegation of government corruption, if he makes an allegation of corruption within government or political interference in a process, that is not protected by the Labour Board and that is, of course, of some concern. So it is very limiting to a great extent as to when the Labour Board protection kicks in, and that is only when the disclosures are made to certain people and only when certain types of disclosures are made.

I have some concern as well with Section 14, and I will also be proposing some amendments with Section 14, and that is with respect to the media. Only in very, very extreme circumstances are whistle-blowers protected when they go to the media, very serious circumstances, and those circumstances relate to things that are imminent. In no other case are they protected. So those are the kinds of amendments I am going to be proposing to various clauses, and I would hope that members opposite will support those kinds of amendments. Thank you.

***** (11:50)

Madam Chairperson: We thank the member.

Clause 1–pass; clause 2–pass.

Shall clause 3 pass?

Mr. Hawranik: I have an amendment with respect to clause 3, and I alluded to it in my opening statement.

Madam Chairperson: You have to move it first and then you can speak to it.

Mr. Hawranik: I move

THAT Clause 3 of the Bill be amended

(a) in clause (c), by striking out "gross";

(b) by adding the following after clause (c):

(c.1) an improper or corrupt act;

(c.2) abuse of authority, or an act that constitutes interference with a valid or appropriate action taken by an employee;

(c) in clause (d), by striking out "to (c)" *and substituting* "to (c.2)".

Madam Chairperson: It has been moved by Mr. Hawranik

THAT Clause–

Some Honourable Members: Dispense.

Madam Chairperson: Dispense. The motion is in order.

Mr. Hawranik: I would urge members opposite to support this amendment, and the minister as well. I am somewhat concerned about the limiting effects of the legislation, the way it is written.

I believe that, certainly, if there is an improper or corrupt act that is reported or is within the wrongdoing section of the act, that clearly if someone reports an improper or corrupt act or political interference or government corruption, for instance, as in the Crocus scandal, that, hopefully, if they came forward, they would have the protection of the Labour Board as well as the legislation. So I would ask that members opposite support that amendment.

Mr. Selinger: I think I would have to put a few comments on the record. By taking out the word "gross," the member starts creating a situation where we would be using this legislation for dealing with matters that already have controls in place within the public service, such as controllership arrangements, such as normal supervision and review arrangements that occur within the public service.

The purpose of the bill was to protect whistle-blowing around serious matters that affect the public

interest. As we are seeing in Ottawa right now, there are going to be several amendments to their legislation because of a widely held perception that the legislation went too far in micromanaging the public service through the whistle-blower legislation.

So I would have to disagree with the member that the adjective "gross" should be eliminated, because I think you would create a situation there where public servants would perhaps be afraid to use their discretionary authority to make the business of government flow forward.

Madam Chairperson: Is the committee ready for the question?

Some Honourable Members: Question.

Madam Chairperson: The question before the committee is as follows. It has been moved by–

Some Honourable Members: Dispense.

Madam Chairperson: Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Madam Chairperson: All those in favour of the amendment passing, say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed to the amendment passing, say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it, and the amendment is defeated.

Formal Vote

Mr. Hawranik: I would ask for a recorded vote.

A COUNT-OUT VOTE *was taken, the result being as follows: Yeas 4, Nays 6.*

Madam Chairperson: The amendment is accordingly defeated.

*** * ***

Madam Chairperson: Clause 3–pass; clauses 4 and 5–pass; clauses 6 through 9–pass.

Shall clauses 10 through 13 pass?

What clause, Mr. Hawranik?

Mr. Hawranik: Clause 10. I have an amendment to clause 10.

Madam Chairperson: Please proceed.

Mr. Hawranik: I move

*THAT Clause 10 of the Bill be amended by striking out "*or*" at the end of clause (b) and adding the following after clause (c):*

(d) a member of the Legislative Assembly; or

(e) the public.

Madam Chairperson: You have to hold on for a moment.

It has been moved by Mr. Hawranik

THAT Clause 10–

An Honourable Member: Dispense.

Madam Chairperson: Dispense. The motion is in order.

The floor is open for discussion.

Mr. Hawranik: I would urge members opposite to support this amendment. This amendment itself would allow people to come forward to members of the Legislature, to ministers of the government, ministers of the Crown with allegations of gross mismanagement since the last amendment was not passed, gross mismanagement in government. I am not certain why the minister would not want the ability of civil servants to come forward to members of the Legislature or ministers of the Crown with allegations of gross mismanagement, say, for instance, and be protected by the Labour Board.

I certainly would expect as well, and I think that clause (e), the amendment that I am proposing in terms of the public as well, has to do with, of course, clause 14 which deals with the circumstances in which members of the public or members of the civil service can go to the public, can go to the media, and very limiting in terms of their ability to be able to go to the media with allegations of, in this case, gross mismanagement in government.

It may not be an imminent threat, and therefore they cannot go to the media and be protected by the Labour Board. So, if we added a member of the Legislative Assembly, and to the public, people who have allegations of gross mismanagement and other issues certainly could go to the media and talk about it and be protected by the Labour Board and could go to members of the Assembly. I think that is why we were elected. We were elected to, first of all, bring concerns forward that are of concern in the government, whether it is gross mismanagement or

mismanagement. We certainly want to be able to protect members of the civil service who come forward to the members of the Legislative Assembly. I would ask that members opposite support this amendment.

Mr. Selinger: The member's point that they should be able to go directly to a politician with their concerns, the federal Conservative Party has not allowed this. I think they have not allowed it for the following reasons: They have not allowed it because they think, and I would agree with this, that if there is going to be an allegation of gross misconduct, the accused, under the rules of natural justice, has some rights to a thorough and impartial review of that accusation before it become a partisan political event. That is why we provide it here.

Some legislation in other jurisdictions requires you to go to go to the employee's supervisor and then to their supervisor and then to any other third party. In our case, because we use the conjunction "or," you can go directly to the Ombudsman which will give you, in the case of a whistle-blowing concern, an impartial review by a person who has the staff and the investigative resources to properly look into the matter and a person that is trained in the rules of natural justice to ensure that the accused's rights are protected as well.

This amendment here would allow essentially a free hit on people without them having a chance to reply before it became public or was raised in the Legislature, and I do not think that furthers the objective of being able to have a properly operating public service where whistle-blowing occurs when there is a serious or a form of gross misconduct or mismanagement. So I would recommend against the amendment. I think it would set a very dangerous set of precedents.

Madam Chairperson: The time being 12–yes, Mr. Goertzen.

Mr. Kelvin Goertzen (Steinbach): I wonder if you could canvass the committee to see if there is leave of the committee to sit till 12:30 and then review the business of the committee at that point.

Madam Chairperson: Is that agreed? *[Agreed]*

So is the committee ready for the question?

An Honourable Member: Question.

Madam Chairperson: The question before the committee is it has been moved by Mr. Hawranik–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

Voice Vote

Madam Chairperson: All those in favour of the motion, say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed to the motion, say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it.

***** (12:00)

Formal Vote

Mr. Hawranik: I would like to have a recorded vote, Madam Chair.

Madam Chairperson: A recorded vote has been requested.

Just for the information of the committee, Mr. Dewar has been subbed for Ms. Korzeniowski. *[interjection]* Mr. Dewar of Selkirk.

***A COUNT-OUT VOTE** was taken, the result being as follows: Yeas 4, Nays 6.*

Madam Chairperson: In the opinion of the Chair, the motion is defeated.

*** * ***

Mr. Glen Cummings (Ste. Rose): On the clause that we are just debating, was there anything that precludes the employee–

Madam Chairperson: Mr. Cummings, you are going to have to turn your microphone just a little bit more, sorry.

Mr. Cummings: Communications 101.

Madam Chair, is there anything in this clause that would preclude the employee going to both the designated officer and the Ombudsman?

Mr. Selinger: No.

Madam Chairperson: Clause 10–pass; clauses 11 through 13–pass.

Mr. Cummings: The Ombudsman being the–

Madam Chairperson: Are you talking about clause 13, Mr. Cummings?

Mr. Cummings: No, I am still on clause 11.

Madam Chairperson: Oh, okay. Is there leave from the committee to go back? *[Agreed]*

Mr. Cummings: Would the minister indulge me to answer a question?

Madam Chairperson: Yes. Please proceed, Mr. Cummings.

Mr. Cummings: Well, an employee makes a disclosure. One of the things that is frustrating about this is that it appears that it would be a year or, if it is at the wrong time of the calendar year, it could be virtually two years before the Ombudsman would report on having received a complaint. Is there anything that precludes the Ombudsman from reporting sooner, or as he sees fit?

Mr. Selinger: It is not clear to me why the member is focussing on clause 11. This allows in Section 11 if somebody in the Ombudsman's office has a concern, instead of having to go to their direct supervisor or the Ombudsman themselves, they have the ability to go to another independent officer, i.e., the Auditor General. So we were trying to preserve the principle of anybody having a whistle-blowing complaint being able to go to an independent office separate from their workplace to get a hearing for their concern.

Mr. Cummings: Well, Madam Chair, while this might be the inappropriate clause, my question is, what in this bill is there that would limit the ability or the obligation of the Ombudsman to report sooner?

Mr. Selinger: When we get to the section on page 13, 26.3, you can see there that there is the ability to produce a special report and the member might want to read it for himself, but it gives that extra flexibility to report sooner on a matter that the Ombudsman considers to be important.

Madam Chairperson: Clauses 14 through 16–pass. Oh, I am sorry. Mr. Hawranik, on what clause?

Mr. Hawranik: I did not have my hand up.

Madam Chairperson: Okay. So we will go back to clauses 14 through 16–pass; clauses 17 and 18–pass; clauses 19 and 20–pass; clause 21–pass; clauses 22 through 25–pass; clause 26–pass; clauses 27 and 28–pass.

Shall clauses 29 and 30 pass?

Some Honourable Members: Pass.

Madam Chairperson: Clauses 29 and 30 are accordingly passed–Mr. Minister?

Mr. Selinger: We have an amendment in clause 30.

Madam Chairperson: We will return back.

Clause 29–pass.

Shall clause 30 pass?

Mr. Selinger: I have an amendment. This one you will like.

I move

THAT Clause 30(3) be replaced with the following:

Ombudsman may investigate
30(3) *Upon receiving information under this section, the Ombudsman may investigate the wrongdoing. In that event, Part 3 applies, other than subsection 21(3) (protection from reprisal).*

Madam Chairperson: It has been moved by Minister Selinger–

An Honourable Member: Dispense.

Madam Chairperson: Dispense. The motion is in order.

Mr. Selinger: This actually is a lower threshold, this amendment, to allow the Ombudsman to investigate. In the original clause, there is a higher test: has reason to believe. We have lowered that test to give the Ombudsman more latitude to investigate a complaint.

Madam Chairperson: It has been moved by Minister Selinger–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

Amendment–pass; clause 30 as amended–pass; clause 31–pass; clauses 32 and 33–pass; clause 34–pass; clauses 35 and 36–pass.

Shall clauses 37 through 39 pass?

Mr. Hawranik: Yes, I have an amendment to clause 39.

Madam Chairperson: Clauses 37 and 38–pass.

Shall clause 39 pass?

Mr. Hawranik: I move

*THAT Clause 39(1) of the Bill be amended by striking out "*a day to be fixed by proclamation*" and substituting "*the day it receives royal assent*".*

Madam Chairperson: It has been moved by–

An Honourable Member: Dispense.

Madam Chairperson: Dispense. The motion is in order.

Mr. Hawranik: Yes, I would urge members opposite to support this amendment and, as I said earlier, we are in favour of the principle of the bill, and I am not sure why the government members would not pass this amendment other than they have got something to hide, obviously.

If they are concerned about protecting whistle-blowers, we should be passing this amendment. I would urge members opposite to, in fact, support this amendment. Thank you.

Some Honourable Members: Oh, oh.

Madam Chairperson: If I could just have order, please.

Mr. Selinger: The reason that the clause is written as it is, on a date fixed by proclamation, as the member knows, this is very new legislation and there is a requirement to prepare the correct procedures to make those procedures known broadly in the public service and to prepare the regulations. That is going to take a little bit of time once this bill has been passed by the House, and that is why it is required to be done by proclamation, to allow those pieces of groundwork to be put in place to allow the legislation to operate effectively.

Mr. Goertzen: The minister talks about a little bit of time. Can he be more specific and define what a little bit of time means to him?

Mr. Selinger: Well, assuming the legislation passes, I will be meeting with my staff within the next five days to start the implementation procedures, and soon as all of those are done and the public service is informed of how this legislation works, including the managers who may, in some cases, be receiving complaints, then we will proclaim it.

Once again, I know the members will make me accountable in terms of time. We just need the time to get a hold of the proper machinery and infrastructure in place to make this legislation effective.

***** (12:10)

Mr. Goertzen: Well, and we are going to make the minister accountable. and we are making him accountable right now in terms of time. I would find it more than passing strange that the minister would not have had some sort of a briefing or an indication from his staff about how long it would take to have this particular piece of legislation implemented. It has been talked about for a number of months. The Premier (Mr. Doer) has said that it is a priority. He said that in the Legislature and tried to make some political points of it. So I am sure that the minister would have listened to the Premier and, based on this comments, determine how quickly it can be put into place.

Mr. Selinger: As the member knows, it is fairly normal to have, upon proclamation, provision in the act. As I have indicated, we will be meeting very shortly after the legislation passes to put in place the execution and implementation procedures and I, of course, will remain available for accountability on that. But I cannot give a hard date right now until all the procedures are mapped out and implemented.

Mr. Cummings: Well, the Member for Steinbach and the minister probably just covered it, but the record of FIPPA legislation being properly implemented in a timely fashion is not good. Can the minister commit to any kind of a time frame to implement this? Because I can see this dragging on for six months to a year, and the frustration of that level is going to be extremely high. The ability to hold this government accountable will be low when we are not in session. Surely, the minister can do better in terms of when he anticipates being able to put this legislation in place.

Mr. Selinger: Once again, I have not heard arguments. I have not heard discussion from senior civil servants who will be implementing this legislation about what the potential impediments are. But I can assure the member that I will always be around to be made accountable.

An Honourable Member: No, you will not.

Mr. Selinger: Yes, as long as the good people of St. Boniface elect me, I will be around and, certainly, as long as we are a government we will be around to be accountable.

I am not going to put a hard deadline on a process that I have not seen mapped out and understood by everybody. But the member knows proclamation is a very normal procedure and if he wishes I will come back to him in the fall when we get back together and I will give him an update on where we are at.

Madam Chairperson: Is the committee ready for the question?

Mr. Goertzen: You know, when the minister says he is going to come back in the fall to give us an update, which indicates that he at least knows that it is not going to be until at least the fall, given his statements. I find that more than strange when the Premier has been out there saying this legislation is one of the reasons why we do not need a public inquiry into Crocus, because whistle-blowers will potentially be protected. That has been his suggestion, that this legislation is partially the rationale for not calling a public inquiry. Yet the minister has not even gone so far as to determine when it is going to be put into place, although he now says that it will not be put into place by fall because you said you would come back and give us an update in terms the process.

Can you give us some assurance that this legislation is going to be put in place at least within 60 days? I mean, I do not know how long it takes to brief staff in terms of this. He has indicated that the federal government has legislation, so he has a model to go by. At least from that determination, can he tell us whether or not, in fact, he will give us a guarantee that we can move in 60 days?

Mr. Selinger: Well, the federal legislation also becomes effective upon proclamation as well, and the member might wish to know that they have not figured out how long it will take to implement it as well. But I have indicated that we will get on it right away upon it passing the Legislature and put the proper procedures in place to implement it. I am sure the members will be very vigilant in ensuring that we bring it into place, and will ask me questions if they do not see it brought into play in a reasonable period of time. And, of course, we will be accountable for that.

Mr. Kevin Lamoureux (Inkster): Madam Chair, the government is wanting it both ways. It wants the headline that says we passed whistle-blower legislation, yet it does not want to actually make the commitment to whistle-blower legislation in terms of its proclamation.

I would ask the minister, because we are being asked to pass this bill through not only committee, but ultimately the government is going to require leave in order to even get it through the third reading stage. The question I have for the minister is: is he prepared to give this committee a commitment that this will be proclaimed no later than the end of this year? By the end of this year we will have not only legislation passed; it will be the law in Manitoba. If he is not prepared to give that commitment, one has got to question why it is we would even want to pass it right now.

Mr. Selinger: Well, to answer his last comment first, the sooner we pass it the sooner we can get on to the business of implementation and putting it in place. If we do not pass it now, then it is just going to delay everything even longer. In terms of being able to give the member a commitment by, say, the end of the calendar year, I cannot do that until I have actually had a chance to know that the legislation is in place and to set up the implementation procedures. But I will be happy to let the member know about the progress, and the Member for Steinbach (Mr. Goertzen) has assumed that progress means it will not be implemented. Progress could mean that it is ready to go.

So, as soon as we can get it in place, we will put it in place.

Mr. Lamoureux: Yes, Madam Chair, I do not believe what the Minister of Finance (Mr. Selinger) is saying. I do not buy his arguments that you have to wait for the civil servants in order to be able to ultimately proclaim it. I would have thought that the civil servants are very much aware, the civil servants that need to know about the legislation are already aware of the contents of the legislation.

What I am calling into question is the actual intent. The government is trying to push through legislation, even though it knows it is going to require leave in order to get this bill through, in the belief that if it does not pass, well, then, you have whistle-blower legislation being denied to Manitobans, when in reality this government is not even committed to act on it if, in fact, it even passes. It says it is in progress.

Why can the government not give Manitobans the assurance that if this bill passes it will become law before the end of the year? Why can you not give that assurance? I do not buy that he needs to do more consulting, in essence, with his civil servants. There has to be another reason for it.

Mr. Selinger: There is no other reason. The member is speculating. It is also not the case that we are not committed; we are very committed. The sooner the legislation passes, the faster we can get on to putting it in place. I have given an undertaking that we will act on it immediately upon it being passed, and we

will be accountable and report to them about the progress.

But to give a hard date before I know and have not had a chance to discuss it with the Civil Service Commission, the senior deputies of government and all the folks that need to be brought up to speed, and to do the appropriate education of the civil servants who may have concerns upon which they wish to whistle-blow would be presumptuous on my part.

So the member will make me accountable. We will act on it as quickly as possible, and we are simply following a procedure to be a date to be fixed by proclamation, which is a very standard procedure, which has always been in place for a bill of this kind of complexity.

Mr. Cummings: Well, I just wanted to point out to the minister that he has to be mindful of the position that he is putting himself and his government in, particularly on the Crocus file. We saw the changing of the ministers from the period of time when we believe there were serious mistakes made. We have seen the Securities Commission delay their hearing until this time next year, and now I think it would be a fair assumption that he is angling toward not having the whistle-blower legislation in place until this time next year.

So I want it clearly on the record that the member from the Liberal Party, and certainly everyone on this side of the table from the Conservative opposition, are concerned that this is another opportunity to hide behind legislation, get the quick hit out there for the press release and then, six months, a year from now, we are still waiting for legislation that will actually allow some people, who we know wish to come forward and express their concerns, any kind of legislated protection.

Can the minister not give us a better answer?

Mr. Selinger: Yes, I have given the member my undertaking that we are going to act on implementation as soon as the bill is passed. If you do not feel that we have it in place quickly enough, you can make me accountable for that. If you are concerned about a change in minister, certainly, the decision about who will be the minister in the future is not within my ambit of authority, but I can assure you that as long as we are government we will be fully accountable for it. Unfortunately, I am going to have to remind the member that we have indicated our interest in putting this legislation in place early in this calendar year, and we have acted upon it. We hope with support of the Legislature to have it passed.

It was April 8, 2004, that the members of the opposition promised to bring forward whistle-blower legislation, and we still have not seen it. So I can guarantee you that we will be more efficient and more effective in putting our legislation in place than members opposite have been in even presenting a bill.

***** (12:20)

Mr. Goertzen: Well, I would encourage the minister, perhaps, to talk to his colleague the Minister responsible for Healthy Living, who is a more junior minister in terms of time served than this Minister of Finance (Mr. Selinger), but when we had the Youth Drug Stabilization bill before us we had the same issue about it being brought into effect on proclamation. I brought my concerns to the minister, and we had a good discussion about how much time it might take to implement the bill. It is a brand-new bill in the province of Manitoba to allow young people under the age of 18 to get treatment at the behest of their parents or their guardians, has never been brought forward in Manitoba, so it is a significant bill to implement. To her credit, she indicated that it could be done by November 1, I believe, put it in the legislation. We came up with a compromise to that, and yet here the minister, on what, one might suggest, is a piece of legislation that is less difficult to implement, cannot seem to come up with a date. If it is going to be past November–the Member for Inkster (Mr. Lamoureux) is indicating by the end of the year and the minister could not give an indication to that–one would assume that we will be back into a legislative session by the end of the year at some point–if we cannot even get an assurance on that date, then what is the rush of passing this bill?

The Premier (Mr. Doer) stood up in the House and said, pass the legislation. The Minister of Finance (Mr. Selinger) says it might not be implemented, or he cannot commit to having it implemented by the end of the year when we will be back in the session; perhaps he could indicate what the rush is then.

Mr. Selinger: Once again, the member is misinterpreting my comments. At no point did I indicate that it could not be implemented; I simply indicated that we would act on it as quickly as possible after it is passed. It has to be law before we can take the implementation steps necessary to

educate the public service, put the proper procedures in place, draft the appropriate regulations and bring them forward for careful consideration. And we will do that expeditiously. But to give a hard date before I have even had a chance to discuss it with all the folks that have to carry out those various functions would be presumptuous on my part, and would be to commit them to a set of responsibilities that they have not had a chance to consider yet in terms of their complexity and the time that they need to bring them into play.

We have to remember that these folks are also working on several other files. It is not as if they are just sitting idly waiting for this legislation to pass. They have many other responsibilities that concurrently are under their responsibility. So we will move on it as quickly as possible. The members will make me fully accountable, and we will be happy to answer any questions they have today, tomorrow or in the future.

Madam Chairperson: Is the committee ready for the question?

The motion by Mr. Hawranik, the question is–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

THAT Clause 39(1) of the Bill be amended by striking out "a day to be fixed by proclamation" and substituting "the day it receives royal assent".

Voice Vote

Madam Chairperson: All those in favour of the motion, say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed to the motion, say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it.

*** * ***

Madam Chairperson: Clause 39–pass.

Shall the table of contents pass?

An Honourable Member: Pass.

Mr. Lamoureux: Madam Chair, I am wondering if the minister could give just an indication as to why it is that he would not allow for individuals to bring an issue directly to a minister if they see that there is gross negligence. Why would he not allow that to happen?

Mr. Selinger: I do not know if the member was here earlier when I discussed that topic, but it will appear in Hansard. The short answer is that when a matter of gross misconduct or wrongdoing is–somebody has a concern about that, it is best reviewed by an impartial officer of the Legislature, because there is also the person being accused that has rights as well. We are trying to provide an impartial review process that balances, through natural justice requirements, the rights of the accused versus the people making the whistle-blowing allegation. To put it right into the hands of a politician would necessarily make it more partisan and might actually harm the accused without them having a chance to reply before it was made public.

Madam Chairperson: If I could have order from the committee.

Mr. Lamoureux: Does the minister not recognize that there would have been significant advantage to the province, using Pat Jacobsen as an example? Had there been an onus of responsibility in Pat Jacobsen's case, we could have saved millions of dollars. She might even still be here today. Would he not acknowledge that in that case Pat would have done the right thing by bringing it to the Minister of Labour Becky Barrett's office at that time?

Mr. Selinger: This legislation would have, in a situation like that, given a clear path to the Ombudsman's office for that person to have an impartial and full investigation with all the resources of the Ombudsman's office of that individual's concerns. That is why it is an important piece of legislation.

Mr. Lamoureux: I hear what the minister is saying, and I guess we will just have to agree to disagree. I think that this is the most significant flaw to this legislation, and the public will have the misconception that the government is bringing whistle-blower legislation that is going to ultimately protect our civil servants and others. That means accountability to, I believe, ultimately the ministers, the government, where the public through elections hold them ultimately accountable. I think that this is a serious flaw, and it is unfortunate the government chose not to deal with it. Thank you.

Mr. Selinger: I think the member has perhaps misunderstood. The legislation actually will increase accountability dramatically in that the Ombudsman

reports to the Legislature, not to the government, not to the executive, and has the ability in this legislation to bring a special report. If a matter of gross mismanagement or misconduct is considered by the Ombudsman to be serious enough, they can issue a special report to the Legislature at any time. So there is full accountability to all of us that are here who have been involved actually on a non-partisan basis in selecting the Ombudsman, who is trained in law, who has the experience of the Ombudsman's office and has the resources to do a thorough investigation to ensure not only that the concerns of the whistle-blower are taken into account but the concerns and the possible reaction and protection of the rights of the accused are also taken into account. So this is a dramatic step forward which reduces the partisan political elements of whistle-blowing and makes it a fair process for all involved.

Madam Chairperson: Table of contents–pass; enacting clause–pass; title–pass. Bill as amended be reported.

Mr. Doug Martindale (Burrows): On a matter of committee procedure, I think if you canvass the committee you would find there is a willingness to sit until a quarter to one in order to deal with Bill 41.

Madam Chairperson: Is that agreed. *[Agreed]*

Bill 41–The Pharmaceutical Act

Madam Chairperson: On Bill 41, does the minister responsible for Bill 41 have an opening statement?

Hon. Tim Sale (Minister of Health): Simply to let the committee know that I will be amending the definition of "practitioner" in accordance with the discussion we had earlier.

Madam Chairperson: Does the critic from the official opposition have an opening statement?

Mr. Kelvin Goertzen (Steinbach): Only to say that the critic, the Member for Charleswood (Mrs. Driedger), did put comments on the record, I believe, when this was at second reading.

We look forward to the amendment as suggested by the International Pharmacists Association.

Committee Substitutions

Madam Chairperson: For the information of the committee, we have two substitutions. Mr. Altemeyer has been substituted for Minister Selinger. Mr. Aglugub has been substituted for Minister McGifford.

Also, Mr. Jennissen has been substituted for Minister Lathlin.

In keeping with our previous agreement, I am going to be reading parts and pages and clauses that correspond.

Part 1, pages 1 to 4, shall clause 1 pass?

Mr. Sale: Madam Chair, I move

*THAT the definition "practitioner" in the English version of Clause 1(1) of the Bill be amended by striking out "*and*" at the end of clause (a) and substituting "*or*".*

Madam Chairperson: It has been moved by Minister–

Some Honourable Members: Dispense.

Madam Chairperson: Dispense. The amendment is in order.

Mr. Sale: I would just say for the committee, very briefly, laws of legislative interpretation as they have been explained to me indicate that "and" does not have the normal meaning in this kind of situation. It is simply a listing, this and this and this and this. It does not mean this and this in the sense of a requirement. It is a legislative convention. I am also told that "or" has the same kind of interpretation. Nevertheless, for the greater comfort of the group involved, we make this suggested amendment.

***** (12:30)

Madam Chairperson: Any other questions? Is the committee ready for the question?

Some Honourable Members: Question.

Madam Chairperson: Amendment–pass; clause 1 as amended–pass; part 2, pages 5 to 7, clauses 2 through 4–pass; part 3, pages 8 to 10, clauses 5 through 8–pass; part 4, pages 11 to 23, clauses 9 through 26–pass; part 5, pages 24 and 25, clauses 27 and 28–pass; part 6, pages 26 to 49, clauses 29 through 62–pass; part 7, pages 50 to 55, clauses 63 through 72–pass; part 8, pages 56 to 63, clauses 73 through 76–pass; part 9, pages 64 to 66, clauses 77 through 81–pass; part 10, pages 67 to 80, clauses 82 through 100–pass; part 11, pages 81 and 82, clauses 101 through 104–pass; table of contents–pass;

enacting clause–pass; title–pass. Bill as amended be reported.

Madam Chairperson: The time being 12:32, what is the will of the committee?

Some Honourable Members: Committee rise.

Madam Chairperson: Committee rise. Thank you very much for all your hard work.

COMMITTEE ROSE AT: 12:32 p.m.

WRITTEN SUBMISSION PRESENTED BUT NOT READ

Re: Bill 34

I. Introduction

The government of Manitoba is following the example of a number of governments in Canada at the national and provincial level and elsewhere by adopting legislation to encourage the disclosure of serious wrongdoing in the public sector broadly defined and to offer protection against reprisal for individuals who bring forward such complaints.

As is the case in other jurisdictions, such legislation is being adopted in the context of recent controversies about wrongdoing in the public sector and is accompanied by excessive rhetoric about widespread misuse of public authority and public money. Passage of legislation in such an atmosphere can lead to an overreaction in which an appropriate balance is not found among a number of values and interests which need to be promoted and protected in any whistleblower protection act. The experience of other jurisdictions indicates that such laws seldom achieve the desirable balance on the first try. Most laws have, in fact, not worked very well–either in terms of encouraging responsible individuals to come forward to disclose serious wrongdoing or in providing them with meaningful protection against reprisal when they do. The usual reaction to this type of experience is to increase the incentives for people to blow the whistle and/or to strengthen the oversight body which supervises the operation of the act. In other words, there is a bias towards more legislation and regulation. The possibility that there is far less wrongdoing than is popularly assumed or that the "policing" approach to the promotion of responsible behaviour does not work are not considered as plausible explanations for the apparent lack of success of the laws.

The fact is that a whistleblower protection act will make a limited contribution to integrity in the public sector in Manitoba because it will deal with exceptional events (serious, ongoing wrongdoing) and with exceptional individuals, highly courageous public officials who don't let fear of retaliation and/or pessimism regarding the willingness to fix problems discourage them from reporting. A comprehensive approach to the promotion of responsible, ethical behaviour in the public sector must include a significant investment in communication and education of public officials, both elected and appointed.

The following commentary on the specific features of Bill 34 is written from the above perspective. In general terms, I would describe the Bill 34 as appropriately cautious in attempting to prevent and to deal with wrongdoing in the public sector. Such legislation and the rhetoric used to justify it should avoid creating the impression of widespread wrongdoing. On the other hand, it must be more than symbolic. There must be adequate encouragement, support and protection for public servants and other citizens who take considerable risks to their careers and private lives by blowing the whistle. Managers who are the target of false, misleading or vindictive allegations are also entitled to protection. The public is entitled to know that wrongdoing will be exposed, investigated, corrected and prevented in the future. So, legislation such as Bill 34 may have a limited impact on a daily basis within Manitoba's public sector, but its detailed provisions matter because they affect the public trust in government and the reputations and livelihood of individuals. Because of the sensitive issues involved, I believe that there should be a mandatory review of Bill 34 and its effectiveness by a committee of the Manitoba Legislature five years after the proclamation of the Act.

II. Detailed Comments

The purpose of the act is stated in the limited terms of facilitating and protecting responsible whistleblowing. This restricted approach avoids attaching multiple and inflated aims and expectations to the legislation which are not likely to be met and cannot be measured in the real world.

Bill 34 does not set forth in a preamble the core values of the public service. There is no requirement for a code of conduct or code of ethics to be adopted within government. The definition of wrongdoing in a later section of the bill does not, therefore, include

violation of a code(s) as a form of serious wrongdoing reportable under the bill.

There are legitimate debates over the desirability and practicality of adding a preamble and/or codes of responsible behaviour in legislation. Inclusion of such provisions highlights the importance of encouraging "rightdoing" as opposed to simply discouraging wrongdoing. Codes of conduct tend to be more concrete and legalistic than ethics statements which tend to be vague and subjective. Including a reference to both would widen the scope of the act in terms of the types of behaviour covered by its procedures. It would, however, also introduce a greater element of uncertainty, increase the need for interpretation of vague phrases and expand the discretion of the Ombudsman in mediating and reporting on wrongdoing. It is possible to pursue the entrenchment of ethical norms of behaviour in the culture of the public sector without codifying and enshrining them in legislation. A prudent course might be to try the non-legislative approach initially and revisit the issue in five years when a review of the effectiveness of the act could take place.

The volume of cases arising under the act will also be affected by the type of organizations covered by its provisions. The definition of a "government body" (Section 2) refers to "agencies" under The Financial Administration Act (departments, commissions, boards, Crown corporations, et cetera), regional health authorities and child and family services agencies/authorities. Other bodies will be designated by regulations. There will be pressures over time to make the coverage inclusive of all public sector organizations: school boards, divisions and schools, colleges and universities, municipal governments, et cetera. The provision which allows governments to designate other organizations by regulations adds flexibility, but ideally the coverage of the act should be determined by the Legislature. If the government can add agencies without reference to the Legislature, does this mean it can also delete them? At the very least there should be a provision that regulations adding or deleting organizations should be tabled in the Legislature and be potentially available for debate.

The overall architecture of the whistleblower protection regime established by Bill 34 would resemble the Public Servants Disclosure Protection Act (the former Bill C-11) passed by the federal Parliament in November 2005 but not yet (June 2005) proclaimed. Bill C-2, the Federal Accountability Act, currently before the federal Parliament would amend the act in significant ways, if it is passed during the current Parliament.

Bill 34 would follow the federal model by requiring executives in departments and agencies to establish internal disclosure policies and practices. This may be the most positive outcome of the legislation if it leads public organizations to create safe channels of communication and leads to a culture in which responsible dissent is encouraged and supported.

Bill 34 would give public employees complete freedom, as in the federal legislation, to make a disclosure to their supervisor, to the senior official designated by the executive to receive and investigate complaints or to the Ombudsman. In other words, the bill does not create (as does the law in the U.K.) a preference for the use of procedures within the organization first. Employees can make public disclosures, but the permitted circumstances (Section 14, 1 and 2) of an imminent threat to life, health, safety or the environment appear to be more narrowly defined than in the federal legislation and narrower than has been defined by the courts in common law rulings (as I understand those rulings as a non-lawyer).

The language of "disclosure" resembles the federal legislation. It is meant to avoid the implication that someone is making an accusation against another person. Section 10, 30(1) refers to "information that" [an employee] "believes could show that wrongdoing has been committed or is about to be committed." This suggests that the whistleblower is not accusing, but rather sharing information that could trigger an investigation.

Unfortunately, this neutral wording seems to be contradicted by other parts of the bill. Section 12(10) and Section 30(2) require that disclosures be made in writing, that the name of the person "alleged" to have committed the wrongdoing be included and that the date of the wrongdoing be included. All of these requirements are presumably intended to prevent "bad faith" allegations and to ensure due process. However, these provisions make the act of disclosure tantamount to an accusation and may discourage employees from disclosing wrongdoing. Also, the requirement to name persons alleged to be involved with wrongdoing increases the probability that the name of the discloser will have to be revealed to the "accused" under principles of due process and natural justice, thus removing the anonymity of the disclosure process.

The categories of behaviour typically covered by whistleblower protection laws are included in Bill 34: unlawful action; gross mismanagement, including gross misuse of public funds; threats to health, safety and the environment; and directing or counselling wrongdoing. As noted earlier, failure to comply with codes of conduct/ethics is not a type of activity covered by the bill. Also, it appears that reprisal against whistleblowers is not included in the definition of wrongdoing.

Bill 34 adopts the sensible, economical approach of using existing institutions (the Ombudsman and the Labour Board) to oversee the operation of the legislation, rather than follow the path of Bill C-2 at the federal level which creates a new Officer of Parliament and a new tribunal to handle complaints of wrongdoing and appeals about reprisals. Given the limited number of cases likely to arise in a smaller jurisdiction like Manitoba, it should not require new institutions to be created. However, the additional work created for the Ombudsman's office will have to be recognized by additional financial and staff resources. The amount of such resources will depend upon whether or not the Ombudsman's function is limited to advising and dealing with complaints or whether it will include a significant communication and education function.

Bill 34 (Part 5) allows for individuals outside of the public service to disclose wrongdoing. These provisions would enable employees or clients of for-profit firms or not-for-profit organizations delivering public services to come forward with concerns about wrongdoing to the Ombudsman. Section 30(3) provides that if the Ombudsman "has reason to believe that a wrongdoing has been committed or is about to be committed then an investigation 'may' be undertaken." This sets the bar too high; it seems to require the Ombudsman to decide in advance of an investigation that a complaint is credible or not. This condition is not imposed on internal disclosures. There may, in fact, be greater risks of wrongdoing when programs/services are being delivered by third parties, not operating in the administrative framework of departments or non-departmental bodies which report to the Legislature through responsible ministers. It is arm's-length bodies and contracting firms which have been at the centre of recent controversies about misuse of public money and mismanagement.

Bill 34 prescribes an advisory, communication, mediation, publicity and recommending role for the Ombudsman. That role stops short of granting her the right to order the correction of wrongdoing. In contrast, the bill now before the federal Parliament would grant the Public Sector Integrity Commissioner the right to issue binding directives. The Manitoba proposal is preferable. Granting the Ombudsman the power to issue orders would change the dynamics of her relationship with the institutions covered by the act. The use by the Ombudsman of mediation, persuasion and publicity will be more economical and expeditious than a more legalistic, quasi-judicial approach. Reporting and recommending on wrongdoing, without being able to order corrective action, will not make the Ombudsman a "toothless" watchdog because both ministers and public servants are never pleased to receive "bad" report cards. Allowing the Ombudsman to intervene directly into the operations of departments and agencies would constitute a fundamental constitutional change involving the principle that responsible ministers answer to the Legislature for everything that takes place within their departments and that deputy ministers and other executives are delegated responsibility to run organizations on a daily basis. Allowing the Ombudsman direct power over departments/agencies would blur the accountability picture. This major change is not justified by the nature/size of the problem being addressed by Bill 34.

If the Ombudsman relies upon influence rather than decision-making power, then the office must have strong investigative and publicity powers. The investigative powers of the office will be those which already exist under The Ombudsman Act. After completing an investigation, the Ombudsman must report her findings and recommendations to the employee and to the chief executive or to the minister/board if a chief executive is involved. Failure to act on report can lead to a further report to ministers, boards of directors or the Speaker of the Legislative Assembly if the case involves an officer of the Legislature. Chief executives are required to report annually on disclosures and corrective actions and this information is to be included in the annual reports, if such reports are produced. Otherwise, such information is available to the public on request. In the case of complaints from non-public employees, the Ombudsman is obliged to report only to the citizen but to no one else, as I read Section 30(4). This seems to be an odd formulation of the reporting requirement in the instance of an outside complaint.

Reprisal is defined in Section 2 of Bill 34, and the procedures for providing redress to employees

are contained in part of the bill. The definition of reprisal uses the language found in statutes elsewhere. The list of measures which constitute reprisal include "any measure that adversely affects his or her employment or working conditions." This is a general phrase which could be very open to conflicting interpretations.

As I read Bill 34, there is no time limit placed on the filing of a complaint of reprisal. The fact that there is not a specified period (say six months), when combined with a general statement about any change to working conditions may be too open-ended in terms of allowing employees to draw a connection between any employment action and their prior act of whistleblowing.

In some jurisdictions a rebuttal presumption has been created in law that any negative action affecting an employee's career is deemed to be reprisal, and the onus is on the employer to demonstrate that the action was underway or contemplated before the whistleblowing occurred. These kinds of provisions illustrate how legalistic the process can become and the constraints which can be imposed on the rights of management to deal with "problem" employees. Most claims of reprisal handled by the Public Sector Integrity Officer at the national level turn out to be employment matters, rather than strictly reprisals, and had to be redirected to other channels for redress.

Complaints about reprisals are made in writing to the Manitoba Labour Board which is given power to order remedies (See Section 28(3) for the list of possible remedies). The board can order the payment of the legal and other expenses of a complainant. There is no ceiling on the amount of such payments. This matter might be handled in regulations passed by Cabinet, which would be more flexible than specifying amounts directly in the statute. Section 34 of Bill 34 allows the Ombudsman to arrange legal advice for employees, subject to Cabinet regulations. Bill 34 also provides for fines up to $10,000 for obstruction of investigations or reprisals.

Bill 34 is wise in avoiding rewards or awards for whistleblowers. Having studied the operation of financial incentives in the U.S.A., I have concluded that they do not encourage many more people to come forward and create suspicions about the real motivations of whistleblowers.

All of these provisions would operate in addition to existing protections under employment law and collective agreements. The web of legal rules and processes will undoubtedly be confusing to individual employees and most will need to seek advice from their unions and/or the Ombudsman. While employees are provided with advice and financial support, there is no provision for similar help to managers who may be the targets of complaints.

Bill 34 omits an important provision of the Public Servants Disclosure Protection Act (Section 24(2)) that prohibits the Public Sector Integrity Commissioner from reviewing adjudicative decisions.

III Conclusions

The above comments are written by a non-lawyer, and it may be that I have misinterpreted the provisions of Bill 34. The comments are meant to be constructive. Whistleblower protections laws turn out to be more complicated than most people appreciate because of the requirement to balance a number of values and interests. It is necessary to ensure due process and natural justice for everyone affected by such laws. Not every aspect of the operation of a whistleblowing system can be covered in the legislation; important details must be left to regulations and evolving administrative practices. On the other hand, it is necessary to provide everyone affected with as much clarity, certainty and understanding as possible. Also processes conducted under the act must be as expeditious as possible to avoid ongoing harm to individuals and organizations when there is undue delay in resolving complaints.

If passed into law, Bill 34 will require a significant educational campaign to make employees aware of its provisions. Communication about the act seems to be the responsibility of departments and agencies, but there should be a central body like the Civil Service Commission to monitor the implementation of the act. On its own, Bill 34 would make a marginal contribution to integrity in government. There needs to be a companion program built upon a code of conduct/ethics to develop ethical awareness, understanding and commitment to the principles of responsible behaviour. I make this observation without accepting the false premise that there is a widespread problem of wrongdoing in government, either at the political or the administrative level.

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