

LAW AMENDMENTS COMMITTEE
3:00 o'clock, Thursday, June 13, 1974

CHAIRMAN: Mr. D. J. Walding.

MR. CHAIRMAN: Committee will come to order. Bills before the Committee this afternoon are as follows: Nos. 24, 41, 56, 64, 68, 71, 73, 74, 75, 83, 84, 86, 87.

A MEMBER: Not so fast.

MR. CHAIRMAN: My apologies. 84, 86, 87, 90, 91, 92, 93 and 94. First Bill before the Committee is Bill 71. At the time of adjournment last night we had got to Section 5 and had passed 25.1 (1) (2) and (3) but we had not passed Section 5 itself. Page 4. Section 5. Mr. F. Johnston.

BILL 71

MR. F. JOHNSTON: Thank you. Mr. Chairman, last night when we were discussing this section - I would like to speak generally on this section. The point that I was trying to make last night using examples was this: that any legislation that requests a person to disclose a gift, whether it's commission or not, when there is a contract or an agreement between two people, is legislation which will force a person to disclose his income to another person. It is quite true that the Federal Government can do this, and the Provincial Government can do this, but legislation that forces one person to disclose his income to another is not good legislation, and I don't see how it can be done because there are many technicalities, which I mentioned last night.

Mr. Chairman, I would like to read something that says, "The Corporation may engage agents and fix their remuneration under contract or direct employment to obtain orders or contracts for the corporation within or outside Manitoba." That is in Bill 74, the Manitoba Trading Corporation Act. I don't think that the agents which will be hired by the Government, when they're dealing with finance in any way, shape, or form, will be expected to disclose their contracts, and disclose their income to the people they are selling to. Now, Mr. Chairman, this section is impossible. I really believe that it wouldn't hold weight in court; you couldn't force a person to do it, and certainly it is an infringement on people's privacy. And if you check the Privacy Act of Manitoba I think you'll find that it can't be done under that basis either.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Well, Mr. Chairman, I think we're dealing with something fairly fundamental and that is, in consumer protection the cost of borrowing has now been determined to be something that should be known to the purchaser before he purchases, so as to be in a position to give him all the information that's required for him to make a rational decision of the choices that are available to him in the purchase of whatever product he intends to buy.

Now that's the whole object of the cost of borrowing legislation and the cost of borrowing disclosure. In this particular situation there is nothing that is affecting the cost of borrowing. The fact that a commission has to be paid, the fact that wages have to be paid, the fact that rent has to be paid, the fact that in some cases interest to a bank has to be paid, the fact that salesmen have to be paid, are part of the cost of doing operation, and to that extent their cost of borrowing. But if the principle is accepted here that in this particular situation we legislate we must now either accept that the logical extension of this principle is that we legislate every phase of the purchaser's cost from the moment he purchases, whatever inventory he has to his whole administrative expense, his whole cost of operation, his advertising, his personnel, his maintenance, his upkeep, and I mean, you know, are we really concerned at this point. Is that a legitimate extension of what cost of borrowing was supposed to be? And I think, Mr. Chairman, we're really in a funny position here. The Government is really after a situation in which in their opinion there may have been an unconscionable kickback, or unconscionable transaction.

I must indicate that in the news release that was presented by the Information Service for the Government they specifically mentioned Spas, Health Spas, Health Spas' contracts. Now, you know, that is not the normal kind of sales financing that we have been hearing from in the presentations that have been brought forward, nor does it in any way reflect by any means the majority of sales financing contracts in the province. But because there is a concern to protect one particular situation, what we are asked here to do is to legislate and

(MR. SPIVAK cont'd) innovate in an area that has never been determined to be within the consumer legislation, and in the course of doing it what you are going to do is: (a) provide an additional cost to the consumer. And you know, Mr. Chairman, that has been suggested under consumer legislation, but I suggest it will happen here. And as the Honourable Member from La Verendrye indicated, what you are really going to do is put the small company at a disadvantage with the larger company who's capable of financing its own paper because it has the resources and reserves.

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: Mr. Chairman, if I may. Since this situation first came to my attention some nine months ago we tried in the Bureau to obtain information from the companies that were involved in the kind of three-party transaction that we're trying to get at through the Section 5 of the amendment, and we are told in no uncertain terms that they would not give us any information, and consequently we proceeded via legislation to try to get the information that we wanted. Now I think I've explained that to Mr. Spivak before. I think that since we've had this discussion in Committee that there has been a change in attitude on the part of many of the people that are involved in this particular type of transaction, and given that kind of progress, and given the, admittedly, difficult methods that would have to be adopted to implement these three sections in Section 5, I am prepared to have an amendment moved which would delete Section 25.1 (1), 25.1 (2) and 25.1 (3). In other words all of Section 5 of the bill. --(Interjection)-- Okay.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, if I may. It would require rescinding a motion that was passed last night, as well as the announcement of the withdrawal. If that meets with the agreement of the Committee I suggest that it be noted on the record and in the minutes, in the report, that that was deleted.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: Mr. Speaker, then I would by leave move that Section 5 of Bill 71 be struck out, and Section 6 to 24 thereof, both inclusive, be renumbered as Sections 5 to 23 thereof.

Hold it. There's one more motion. Is that agreed?

MR. CHAIRMAN: (Agreed)

MR. BOYCE: I subsequently move that renumbered Section 23 of Bill 71 be struck out, and the following section be substituted therefor:

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: There was another section prior to this one that was held last night and possibly we could go back to that and dispose of that, because it also might entail some renumbering as suggested by my colleague from Winnipeg Centre.

A MEMBER: No, it won't.

MR. PAULLEY: It won't. Okay.

MR. CHAIRMAN: If you go back one page, Page 3, there had been an amendment, a new Section 22.1 (8) which was held over. Is there any discussion on the amendment?

MR. SPIVAK: 22.1 (8). Mr. Chairman, I wonder again is there a precedent in Manitoba? There is none I guess.

MR. BALKARAN: No. Mr. Chairman, I must inform the committee that after diligent search I could not come up with a precedent in Manitoba, although there is something that comes very close to this in Saskatchewan in the Department of Consumer Affairs Act.

MR. SPIVAK: Do you have the particular section there, Mr. Balkaran? The Saskatchewan . . .

MR. BALKARAN: No.

MR. SPIVAK: Well, can you tell me the difference in Saskatchewan's . . .

MR. BALKARAN: It enables the Attorney-General in Saskatchewan to bring a class action on behalf of several people.

MR. SPIVAK: But, Mr. Chairman, I think that, you know, that - I believe that B. C. has this as well. I think it may be that they've copied the Saskatchewan Act. But I think that's a far better position than what's being asked for here. I wonder if it would be possible to look at the Saskatchewan section, or obtain it, and even hold everything else, complete the Act, hold this section in abeyance, and then go into the other matters and examine it just to be able to see the difference in application. It may in fact fit the purpose.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Well, Mr. Chairman, if I may on the point raised by the Honourable the Leader of the Opposition. Would it be satisfactory to the Opposition, and particularly to the Minister of Consumer Affairs, that we accept the suggestion of the Honourable the Leader of the Opposition, and between now and the reconvening of the meeting of the Law Amendments Committee this evening that the endeavours be made to obtain the wording of the Saskatchewan Act so that it might be enacted, if satisfactory.

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: Mr. Chairman, I have another amendment which will come when we get to the last section of the bill, which stipulates that the whole bill will come into force on proclamation and as Mr. Spivak probably knows 22.1 (8) could not be proclaimed, and we could leave it at that.

The other point of course is the one I mentioned last night, and I could reiterate now, cannot have 22.1 (8) as amended; then if in fact a business person is found guilty of an offence then he can be prosecuted again and again and again for the same offence, and that's precisely - you know that would be onerous on the businessman.

MR. SPIVAK: The same offence; there would be different people.

MR. TURNBULL: Different people, but the same type of offence.

MR. SPIVAK: But that is not the same offence. I mean, you know, the fact is it's an offence with a different person, which is a different offence.

MR. TURNBULL: That's right.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, my concern is that - again this is a bit innovated - and if there's no objection, I'd like to be in the position - I didn't know that it was Alberta that was identified, I only have a memorandum and it's B. C., but either way I do not have the section, and I'm prepared to complete the remaining part of it, and with the exception of this, and if we can just get the precedent and examine it, and then by this evening we'll be able to deal with it.

MR. PAULLEY: That's Saskatchewan?

MR. SPIVAK: Yes. That's right.

MR. PAULLEY: Well I think that's reasonable, Mr. Chairman.

MR. CHAIRMAN: Committee agree to proceed and leave that one in abeyance? The new Section 5 -- pass; 6 -- pass.

MR. SPIVAK: The new Section 6 is 7, is that right?

MR. CHAIRMAN: Yes.

MR. SPIVAK: Well on this can I ask an explanation, if I may, from the Minister?

MR. TURNBULL: It's the new Section 6 . . .

MR. SPIVAK: It's 7 of the bill, Section 32 of the Act.

MR. TURNBULL: The new Section 7 of the amendment without the renumbering.

MR. SPIVAK: But what does it mean in relation to the present Act and the change, that's all?

MR. TURNBULL: That's a technical point, Mr. Spivak. If I could ask Mr. Mason to explain the relationship between the two Acts.

MR. CHAIRMAN: Mr. Mason, would you use the microphone please?

MR. MASON: Mr. Chairman, the Section 7 of the bill amends Section 32 of the Act, and Section 32 of the Act deals with default charges. And subsection 1 of 32 reads as follows: "No agreement creating or relating to a debt to which this part applies shall provide for any charge to be paid upon default in payment of an installment unless it is expressed as an annual rate on the amount in arrears."

Now what has happened is that quite commonly a flat charge may be assessed against default payments. For instance, if a customer has fallen in arrears of a payment for \$100.00 they'll say, "All right your default charge is five percent of that." So it's five bucks. In all fairness they normally allow a ten day period of arrears. But let's say there's 15 days. So the guy is paying really \$5.00 on \$100.00 for fifteen days, and that is not, that does not really relate to the annual rate as stated in the agreement.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Do I understand that 10 days grace is legislative?

MR. MASON: No. No it is not, Sir.

MR. SPIVAK: Just practice.

MR. MASON: I'm saying that some companies will do that, will allow that.

MR. SPIVAK: In fact probably most companies do that.

MR. MASON: Well some. I'm not prepared to say how many, Sir.

MR. SPIVAK: So the 10 days grace is allowed. Now the five percent would apply for the 15 days. Do you not believe that this section will eliminate the 10 days grace automatically as the matter of the practice of the industry?

MR. MASON: Not necessarily at all, Mr. Chairman, because there is the practical fact that I think that they will continue. Where they had been allowing this 10 days grace has been a matter of - what would you say - public relations, and I don't think that they would necessarily change their public stance just for a purpose of collecting that extra money at an annual rate.

MR. SPIVAK: Well is it likely that this section is going to cause more work for the companies involved, and will that add to the additional cost, to the actual cost of borrowing?

MR. MASON: Well I'm thinking in terms of, for instance, in the Small Loans Act, and many of the companies now are reverting instead of to what we call precomputed charges they're going to a rate per month, and they will apply that rate per month to the actual number of days, and it is quite possible for them to have tables that will extend the actual interest payable at a given rate on a given amount of money for a given number of days. So really as far as work is concerned it can be tabled very easily, and I don't really think that it would be that onerous.

MR. SPIVAK: Would you acknowledge that if in fact the 10 days grace was eliminated that that would become an onerous burden for many many people who default for a few days?

MR. MASON: Not necessarily, Mr. Chairman; I come back to it again, that I don't think necessarily that because of this the companies would eliminate the 10 days.

MR. SPIVAK: Well, you know, I don't know but it's been represented to me that they will, and I think that this becomes the problem area in this regard, and it's again a question of the judgment of the director and the department as to whether this, you know, this will alter the situation or not. If it does, then I think that in some respects it may do more harm than good. I put that as a position to the Minister and to the director, they make the decision on that. But I think that at least that notice should be raised in the committee, and should be recognized now because of the problem area, because I think the grace provisions, and the acceptance of the grace provisions in the trade and in people dealing, is a very important situation, particularly for people who for one reason or other fall behind and are not in a position to meet the deadline. I think we all recognize that that happens to everybody at different times on different situations, people involved in the finance end . . .

MR. CHAIRMAN: Mr. McKellar. Would you use the microphone, please?

MR. McKELLAR: If the policy of the credit companies have been to give ten days grace, why won't you as a government include that in your bill then, or in that section, particular section, after ten days, or something to that effect, so that the companies will not have to charge. I take it that they'll have to charge the day that the arrears come in default.

MR. MASON: Shall I answer that?

A MEMBER: Yes, please.

MR. MASON: Mr. Chairman, in response to that question, to require the companies to assess a default charge from the date that the payment falls due would in fact bring us into conflict possibly with the Small Loans Act of Canada where they do actually figure, and they pay, the charges calculated at the annual rate for the actual amount in arrears, and for the number of days that it's in arrears.

Now another point that I think bears mention is that in the particular cases where this becomes an issue - I think I can describe it best by saying that if a contract with an unpaid balance of \$2,000.00 has precomputed charges of \$400.00 payable at \$100.00 a month for two years, now that \$100.00 each month comprises a part principle and a part interest, and if the customer goes into default on that \$100.00 and the credit grantor assesses a further charge, bear in mind that the customer is paying not only interest on a defaulted amount of money but interest on interest. So it's really not that onerous, and it could be highly lucrative if you have an extended number of months that are in arrears, say you have three payments in arrears, you're getting a lot of interest on a lot of interest, as well as on some principal.

MR. McKELLAR: Well just one other further question. Regarding the ten days grace, will that not be eliminated then, as my leader mentioned, like according to the Act, the way I read it, it will be eliminated. Is that not the case?

MR. MASON: Not necessarily, Mr. Chairman, because there is no requirement that they levy any default charge whatsoever.

MR. CHAIRMAN: New Section 6 -- pass.

MR. BALKARAN: Mr. Chairman, could I draw to the attention of the committee a technical error in that it should read subsection 32 (1).

A MEMBER: Where's that?

MR. BALKARAN: Renumbered 6.

MR. CHAIRMAN: The new Section 7 -- pass. (Sections 8 to 22 were read and passed.) Section 23 -- Mr. Boyce.

MR. BOYCE: I would move that renumbered Section 23 of Bill 71 be struck out and the following section be substituted therefor: Commencement of the Act. Section 23. This Act comes into force on the day fixed by proclamation.

MR. CHAIRMAN: Agreed? (Agreed) Mr. Paulley.

MR. PAULLEY: Mr. Chairman, if I may, Mr. Chairman, and through you to the Minister - I've just had a bit of a conversation with the Honourable the Leader of the Opposition in connection with the possibility of the adoption of the Saskatchewan clauses, I believe it dealt with Section 8. I originally made the suggestion that possibly we could hold that until this evening but in conversation, and I trust you will correct me if I'm in error, in conversation with the Leader of the Opposition he's having the Saskatchewan sections checked out by his legal advisors and there is a probability or possibility, let me put it that way, the possibility that if we do not have proceeded further at this particular stage and go on with another bill, that we may be able to clear this particular bill this afternoon rather than await this evening. If that's agreeable to the committee, Mr. Chairman, I would suggest that you proceed with another bill.

MR. CHAIRMAN: Agreed to hold Bill 71 over.

MR. PAULLEY: Temporarily.

MR. CHAIRMAN: Temporarily.

MR. PAULLEY: Right.

MR. CHAIRMAN: It was my intention to call the bills as they are on the list that I gave you earlier on, but I have received a request from the Attorney-General to consider his three bills first.

MR. PAULLEY: No, favoritism. No favoritism. Agreed, Mr. Chairman.

MR. PAWLEY: Mr. Chairman, I don't want to appear abrasive but my concern was that I may have to leave some time tomorrow afternoon, and I'd like to speak to my bills prior to that.

MR. PAULLEY: Howard, you might bugger things up, we've already agreed, so let's go.

MR. CHAIRMAN: Is the committee agreed? (Agreed) Bill 84.

MR. PAWLEY: Maybe, Mr. Chairman, we can deal with the Animal Husbandry Act first.

BILL 84

MR. CHAIRMAN: Bill No. 84, there are amendments?

MR. PAWLEY: Bud, would you make my amendments?

MR. CHAIRMAN: Page by page. Page 1 -- pass; Page 2 -- Section 4 (4). Mr. Boyce.

MR. BOYCE: Mr. Chairman, I would move that subsection 4 (4) of Bill 84 be struck out, and the following subsection substituted therefor: Subsection 8 (2) of the Act is amended by adding thereto immediately after the word "autopsy" in the second line thereof, the words "if authorized by the medical examiner in charge of the body, or the chief medical examiner".

MR. TALLIN: This section is the section of The Anatomy Act which deals with medico-legal autopsies. Initially, while the section first of all says that on medico-legal autopsies the person doing the autopsy can give portions of the body to the university for studies, they were going to expand this to allow the person making any kind of an autopsy to do that. But really, it was a misinterpretation on my part I suppose; what the medical examiners wanted was to say that no parts would be given without the consent of the medical examiner on these medico-legal autopsies. So this really just puts that the person before he gives any parts of the body to the university, he must get the authority of the medical examiner.

MR. CHAIRMAN: Agreed? Mr. McKenzie.

MR. MCKENZIE: What about the family, is that included in the legislation?

MR. TALLIN: The what?

MR. McKENZIE: The family.

MR. TALLIN: There's no family on a medico-legal autopsy ordered by the Attorney-General.

MR. McKELLAR: Mr. Chairman, what's the present situation right now? What's the difference between what you're proposing and what we presently have?

MR. TALLIN: At the present time the pathologist conducting the autopsy can give parts of the body to the university without any restriction at all.

MR. McKELLAR: Oh I see.

MR. TALLIN: And this is putting a restriction on them so if they're needed for evidence or purposes in an inquest, the authority can be renewed.

MR. CHAIRMAN: Agreed. (Agreed) Balance of Page 2 -- Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I wonder if we can get clarification on one thing that appears throughout all the Statutes of Law Amendments in a number of pages, and that is the reference to the fact that the Minister means the member of the Executive Council charged by the Lieutenant-Governor-in-Council with the administration of this Act. Now why is this being included at this time?

MR. TALLIN: Well one of the reasons is that the names of the Ministers are being changed quite frequently from year to year, and the Minister who is charged with the administration of the Act is quite frequently changed under the Executive Government Organization Act, and so as a general policy now we refer to the Minister charged with the administration of the Act by the Lieutenant-Governor-in-Council so that it fits in with that system of giving jurisdiction.

MR. SPIVAK: As a matter of fact I want to sort of make this point. In reality where in the past the Minister has been defined in the definition section as the Minister in charge of the Health and Social Development Department as the Minister, what you're really saying now is that in effect we are saying that the Minister is the Minister designated by the Executive Council with the administration of the Act. So that for all intents and purposes there should be almost an omnibus section which basically says that now, and which would basically revoke every appointment and the appointments then would be the appointments as indicated by Order-in-Council.

MR. TALLIN: That's what they're trying to do.

MR. SPIVAK: So you have to do this in each Act rather in an omnibus section in one . . .

MR. TALLIN: Well as we come across them we put them in, that's all.

MR. SPIVAK: Okay. All right.

MR. CHAIRMAN: 4 (4) as amended -- pass. Balance of Page 2 -- pass. Page 3 -- Section 7. Mr. Boyce.

MR. BOYCE: Mr. Chairman, I would move that Section 7 of Bill 84 be struck out, and the following section substituted therefor. It's striking out the reference entirely to Automobile Insurance Act, and making this the section with reference to the Beekeeping Act.

I would move that clause (2)(g) of the Beekeepers Act is repealed and substituted therefor: 7 clause (2)(g) of the Beekeepers Act being chapter B20 of the Revised Statute as repealed, and the following clauses substituted therefor: sub-clause (g) "minister" means the member of the Executive Council charged by the Lieutenant-Governor-in-Council with the administration of this Act.

MR. TALLIN: I want to apologize for this because this is a ploy on the part of the Legislative Counsel to keep from having to renumber a whole series of amendments, and then put the renumbering into another series of amendments at the end of the bill. The amendments which were in this Act for the Automobile Insurance Act are now looked after in Bill 83, I think it is, and therefore we're trying to get rid of them. To prevent renumbering we just substituted another one of these ministerial change provisions just to preserve our numbering system. That's one of the reasons why we don't do all those ministerial changes at once.

MR. PAULLEY: In other words, Mr. Chairman, we will agree that the Legislative Counsel is quite coy?

MR. CHAIRMAN: 7 as amended. Mr. Graham.

MR. GRAHAM: Mr. Chairman, I want it to be made clear that just because a person gets stung on the arm by a bee this doesn't mean that he's exempt from any coverage under automobile insurance, does it?

MR. PAULLEY: Or workmen's compensation.

MR. CHAIRMAN: Section 7 as amended -- pass. Page 3 -- pass. Page 4 and 5 -- pass.

MR. SPIVAK: Mr. Chairman, I mentioned this in the House before, and I wonder if you're in a position to indicate, or the Minister's in a position to indicate, the repeal of the Billiard and Pool Room Act and the position the government has taken on that. --(Interjection)-- It's Section 8. I assume that that's a policy decision as opposed to, you know, a house-keeping . . .

MR. PAULLEY: If I recall correctly, Mr. Chairman, you made reference last year --(Interjection)-- last year on the report of the Act.

MR. TALLIN: This is a recommendation of the Law Reform Commission. The Billiard and Pool Room Act essentially says that a policeman can go into any billiard and pool room anywhere in the province for the purpose of investigating whatever he wishes, and that's what's being gotten rid of. And there's also an age restriction, I think.

MR. SPIVAK: Yes, the restriction - I'm thinking of the other thing we have a restriction on, a person of a certain age could not go into a pool room.

MR. TALLIN: That's right, without a consent in writing of the parent or guardian, which was an unworkable system.

MR. SPIVAK: But I just want to make this point; I think the point should be made. The Law Reform Commission may have recommended this, and the government's adopted it, I'm not quarrelling - it wasn't the Legislature that adopted this, the problem is that this is in a housekeeping bill dealing with realistically errors and corrections and changes as a result of experience, and that really is a policy decision - I'm not quarrelling with it but I just, you know, it is a policy decision that could have been handled by a bill, and may very properly should have been handled by a bill. I point that for the record and I'm not intending to make too much about it, but I think I'm right in this respect. This is a policy decision.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I think that possibly there is a lot of validity in that statement. I think it's a fair comment that we should try to avoid that type of thing.

MR. CHAIRMAN: Page 5 -- pass. Mr. Graham.

MR. GRAHAM: Dealing with Section 12 on Page 5 of the Cancer Foundation Act. Really, Sir, what is the point in having two persons who are appointed by the board of the Health Sciences Centre and who are not already members of the Foundation acting on behalf of the Cancer Foundation if the government in fact is not prepared to provide any finance for that association.

MR. CHAIRMAN: I take it that that was a rhetorical question?

MR. GRAHAM: Mr. Chairman, I suggest to you, Sir, that it's not rhetorical, it is actual.

MR. CHAIRMAN: (Pages 6, 7 and 8 were read and passed) Page 9 -- Mr. Boyce.

MR. BOYCE: On 9, Mr. Chairman. I would move that Bill No. 84 be amended by adding thereto immediately after Section 24 thereof the following section: subsection 19 (1) of Fatality Inquiries Act amended 24. 1 subsection 19 (1) of the Fatality Inquiries Act being Chapter 57 of the Statutes of Manitoba, 1970 (Chapter F52 of the continuing consolidation of the Statutes of Manitoba) is amended by striking out the word "summons" in the first line thereof and substituting therefor, the word "subpoenas".

MR. CHAIRMAN: 24 as amended -- pass. Balance of Page 9 -- pass.

MR. BOYCE: Mr. Chairman.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: I would further move that subsections, on Page 29, that subsections 26.2 and 26.3 of Bill 84 be renumbered as Sections 26.3 and 26.4 respectively, and the following subsections added immediately after subsection 26.1 thereof.

MR. CHAIRMAN: Yes.

MR. BOYCE: Subsection 13.1 (3) added. 26 (2) subsection 13.1 (3) of the Act is amended by adding thereto at the end thereof the words, "or where the garage keeper has not delivered a statement of his charges to the owner shall have annexed to the notice an affidavit of the owner setting out the amounts claimed by the garage keeper".

MR. TALLIN: Do you want an explanation of that?

MR. PAWLEY: Ray, can you?

MR. TALLIN: Do you want it explained, Sir?

MR. PAWLEY: Yes, I think . . .

MR. TALLIN: Under the Garage Keepers Act there are provisions for payment into

(MR. TALLIN cont'd) courts by a debtor who disputes the amount of the claim of the garage keeper. When the sections were first drafted two years ago the provision was that when he paid the money into court he had to attach a statement of the garage keeper. It has occurred a number of times now where the garage keeper refuses to give the statement of account to the person because the statement of account is essentially the order which is assigned by the person and he doesn't want to give it away to the person. That's the proof that he has that he received instructions. The judges therefore suggested that a way out of this would be that where the statement was not available the debtor could, by an affidavit, say the amount claimed by the garage keeper in this case is so many dollars, and then that affidavit would be attached to the documents in the court.

MR. JORGENSON: Mr. Chairman.

MR. CHAIRMAN: Mr. Jorgenson. Use the microphone please.

MR. JORGENSON: Is that particular amendment contained in Bill 84?

MR. TALLIN: It deals with the forms in the Garage Keepers Act presently.

MR. BOYCE: It's Page 9 there.

MR. JORGENSON: Yes, but . . .

MR. BOYCE: . . . Page 9 and 10 there.

MR. CHAIRMAN: Agreed? (Agreed)

MR. BOYCE: I would further move, Mr. Chairman, that the proposed notice of payment under the Garage Keepers Act set out in subsection 23 (3) of Bill 84 as printed, subsection 24 as renumbered, be amended by adding thereto immediately after the word "calculated" in the fourth line of the paragraph following the space of the name and address of the owner, the words "or as set out in the annexed affidavit of the owner". This follows from that prior amendment.

MR. CHAIRMAN: Agreed? (Agreed) (Pages 10, 11, 12, 13 and 14 were read and passed) Page 15 -- pass.

MR. PAWLEY: Well, there's an amendment there, Mr. Chairman.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: On 43. I would move that the proposed clause 43 (2)(b) of the Public Health Act as set out in subsection 51 (1) of Bill 84 be struck out and the following clause substituted therefor: (b) The director of preventive medical services employed by the Government under the Minister.

MR. TALLIN: It's on Page 19.

MR. BOYCE: Which?

MR. TALLIN: On Page -- it was Section what?

MR. BOYCE: 43 (2)(b).

MR. TALLIN: (2)(b), that's of the Public Health Act at 51 of the Act.

MR. BOYCE: Oh, excuse me, I'm sorry then. It's my error.

MR. TALLIN: That's all right.

MR. CHAIRMAN: Proceed. (Pages 16, 17 and 18 were read and passed) Page 19, Mr. Boyce.

MR. BOYCE: I see. This is 51, Section 51 (1) of the bill.

MR. TALLIN: That's right.

MR. BOYCE: So I would move an amendment to 51 (1) of the bill, that the proposed clause 43 (2)(b) of the Public Health Act as set out in subsection 51 (1) of Bill 84 be struck out, and the following clause substituted therefor: (b) the director of preventive medical services employed by the Government under the Minister.

MR. CHAIRMAN: Agreed? (Agreed). Page 19 -- pass.

MR. MCKELLAR: Mr. Chairman, before you pass 19, could you explain . . .

MR. CHAIRMAN: Mr. McKellar.

MR. MCKELLAR: . . . 54 (1) under Social Allowances Act. What does that mean striking out the word "Hospital" and substituting the word "Health"?

MR. TALLIN: This is a reference to the old Hospital Services Insurance Act where it should be the Health Services Insurance Act now.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Yes. I wonder in the No. 33 of Proceedings under Fatality Inquiries Act, is this housekeeping, or is there something more involved in this? I'm sorry, it's 51.

A MEMBER: 51?

MR. TALLIN: Of the Public Health Act -- in the Public Health Act.

MR. SPIVAK: It's Proceedings under the Fatality Inquiries Act. We're on Page 19.

MR. TALLIN: Yes. This is housekeeping. It previously referred to coroners and what coroners could do. Now we substitute the reference to the examiner and the Chief Medical Examiner under the Fatality Inquiries Act.

MR. BOYCE: There's no more coroner.

MR. TALLIN: Yes.

MR. CHAIRMAN: (Pages 19, 20, 21, 22, 23 and 24 were read and passed) Page 25 -- pass. Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, I wonder if we could have an explanation on the authorization of local government district. Is this an extension of the powers that we gave the local government districts under the previous Act in the bill this year, whereby the previous Act said the Minister could grant such powers to the council as he so deemed? I don't know whether I've got that quite right. Now, this says the Minister says we can give the authorization of the local government district to borrow moneys, and the other one, the gist of 1, 2, 3, 4, 5, to assume debt of another as debt of a local government district that is not repayable during the fiscal year. I wonder if we could have an explanation on that?

MR. CHAIRMAN: Yes sir. Mr. Pawley.

MR. PAWLEY: Mr. Chairman, we were surprised to find that in the present Act dealing with local government districts although there is power to create debt, there is no power to assume debt. We have here for instance a number of specific areas in which this power is required to assume debt in the creation of a - for instance, I have here a letter from the Local Government District of Pinawa, which is quite interesting, dealing with the fact that in Pinawa the Atomic Energy of Canada owned the homes and then sold the homes to the occupants of the homes. Prior to the sale of the homes to the homeowners in Pinawa, Atomic Energy of Canada paid the monthly fees on the cable television. Now the homeowners since they've acquired their property, these properties individually, find that they will be assessed each a monthly fee for the cable television, and this of course has a significant impact upon the charge that will be levied. Rather than it being levied on a bulk basis as it was before and the bill being paid to the Cable Television Companies by the Atomic Energy, here, as it presently stands, the owners would have to pay individually. Under the provisions here authority would be given to the Local Government District to assume a contractual responsibility, or a debt, so that the Local Government District which is interested in doing this can assume the contractual arrangement which the Atomic Energy of Canada had through the cable television in order to continue the payments as Atomic Energy had been making the payments all along, without any change in the arrangements that had been made. And they're also, I might add, they're quite concerned about a mass of antennas -- they want to continue this - a mass of antennas being erected on homes, and they like the present arrangement, they want to continue it. This would give the Local Government District the power to assume that type of contractual responsibility.

Also we do have the situation of Leaf Rapids in assuming that it's always been intended that the Local Government District would take over from the Leaf Rapids Development Corporation, and this would give the Leaf Rapids Development Corporation the power to assume, to take over from the Leaf Rapids Development Corporation, so we could move it from the corporation level to the Local Government District level. The debts and responsibilities that are presently handled by the Leaf Rapids Development Corporation would be assumed by the Local Government District.

I for one, had assumed that we had this sort of power and responsibility that a Local Government District could assume debt, but there is no authority presently in the Act at all, creation but not assumption.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: It would be in other words, Mr. Chairman, to the Minister through you, any contracts that have been held by corporations involved with LGDs that are turned over to let's say the people, that the council can continue the contract . . .

MR. PAWLEY: That's right.

MR. F. JOHNSTON: . . . and charge the people as the company may have been doing before.

MR. PAWLEY: Right. If members are interested I have this letter from the Local Government District of Pinawa because I found it quite interesting, and I think they're quite right

(MR. PAWLEY cont'd) in their thinking on assuming that contractual responsibility.

MR. F. JOHNSTON: Does this give the Local Government Districts any powers to start negotiating other contracts, or just take over existing ones?

MR. PAWLEY: To take only over the existing ones.

MR. F. JOHNSTON: Existing, that is fine.

MR. CHAIRMAN: Preamble -- pass; title -- pass, Bill be reported. Mr. McKellar.

MR. MCKELLAR: Before you pass subsection 4 regarding . . . Why are all these sections retroactive? Is it necessary to meet the . . .

MR. TALLIN: A number of them are corrections that are to be made to take the correction back to the date that the original Act came into force. I think that's probably the case in most of them. I'll have to take a look now. Sections 59, 60 and 68. Take it back to June 1st, 1970, which was the date that the revised statutes came into force. Section 70 is to August 1st, 70 . . . That, too, goes back to the date that the amendment came into force to the Real Property Act in 1970. 71 is the same thing, right; 73 is the same; 74, yes, that's going back to the date that that section came into force; 75, again back to the date that they came into force; six and nine was to cover some changes that normally would have come into force on the 31st day of March, 1974, so we've taken those again back to the date of when they were enacted; Section 18, I think was the date of proclamation of that one. No, Section 18 was the date that the Senior County Court Judge was sworn in.

MR. CHAIRMAN: Title -- pass. Bill be reported.

I have an indication that the committee is prepared to proceed on Bill 71 on the amendment on Page 3, 22.1 (8). Okay. Mr. Uruski.

BILL 71

MR. URUSKI: Mr. Chairman, just in the amendment for the clarification of the members on the amendment of 22.1 (8) on Page 2 of your amendments, I move that after the word "debtors" in the 12th line, I add the words "contrary to this section".

MR. CHAIRMAN: Is it agreed? (Agreed) Section as amended agreed. (Pass) 22.1 (9). Mr. Uruski, do you have the . . .

MR. URUSKI: 22.1 (9) Appeal. I move an appeal lies from an order under subsection 8 to the Court of Appeal.

MR. CHAIRMAN: Agreed? (Agreed) Mr. Graham.

MR. GRAHAM: Mr. Chairman, just as a matter of courtesy, have all members got copies of these?

MR. CHAIRMAN: Would you speak into the microphone, we can't hear?

MR. GRAHAM: I just wondered as a matter of courtesy, have all members got copies of the amendments?

MR. CHAIRMAN: They were distributed last night at the committee meeting.

MR. MARION: Are there any spare copies, Mr. Chairman?

A MEMBER: I gave you one. I gave you mine.

MR. CHAIRMAN: Any further discussion? Section 4 as amended -- pass. Preamble pass. Title pass. Bill be reported.

Bill No. 87, Animal Husbandry Act. Any amendments?

BILL 87

MR. PAWLEY: No. There's no amendments to this bill, Mr. Chairman, so we could go through page by page unless other members of the committee have amendments that they wish to propose?

MR. CHAIRMAN: (Bill No. 87 was read and passed.)

BILL 90

MR. CHAIRMAN: Bill No. 90, the Human Rights Act.

MR. PAWLEY: Mr. Chairman, I wonder if our amendments could be distributed to . . .

A MEMBER: They were.

MR. PAWLEY: Oh they have already been. I think Mr. Spivak doesn't have a . . .

MR. CHAIRMAN: Bill 90. Page 1 -- pass.

MR. PAWLEY: I wonder could you just hold for a moment, Mr. Chairman, until Mr. Spivak returns.

MR. CHAIRMAN: Right.

MR. PAWLEY: Unless you could deal with some other bill very quickly.

A MEMBER: Bill 74.

MR. PAULLEY: Maybe, Mr. Chairman, you might deal with 73. I don't think that that is controversial. I have no amendments to suggest, if it's agreeable with the committee to proceed with that. You can't of course say . . . The bill being the Buildings and Mobile Homes Act.

MR. PAWLEY: Or the Law Society Act.

MR. PAULLEY: How about getting to that and get that knocked off here.

BILL 73

MR. CHAIRMAN: There are no amendments indicated to Bill 73. Page by page.

Page 1 -- pass.

MR. PAULLEY: 73, the Buildings and Mobile Homes Act.

Oh there is one very slight amendment. Instead of ordinary mail it will be by registered mail. That is the notification under the Act.

MR. CHAIRMAN: On Page 10. You all have copies of the amendment. Page 1 -- pass; Page 2 -- pass; Page . . . Mr. Graham.

MR. GRAHAM: Dealing with Section 2 (2) (c) of that. The Minister refers to any part of the province or any municipality excluded by the regulations. Can the Minister indicate why he would want this covered by regulation rather than by Act?

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Yes, Mr. Chairman. We feel that this is the only way in which this can be done because of changing situations in municipalities. That if it was delineated in the Act, Mr. Chairman, we could only change them by an amendment to the Act. As I indicated in the House, there will be full consultation with the municipalities, and others, insofar as the application of the Act. If it was delineated in the Act, we couldn't achieve what we feel desired except by a change of the Act at a subsequent meeting of the Legislature.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, does the Minister not realize that with the growing bureaucracy we have in the Province of Manitoba that it is faster and easier to change legislation than it is to change regulation?

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: The Minister is quite aware of what my honourable friend refers to as growing bureaucracy, but bureaucracy also grows insofar as municipal corporations are concerned. This gives us the latitude within the responsibility of this Act to consult with the municipalities as to their desire without the necessity of calling a session of the Legislature.

MR. CHAIRMAN: (Pages 2, 3, 4, and 5 were read and passed.) Page 6 - Mr. Uruski.

MR. URUSKI: Mr. Chairman, I move that Section 10 of Bill 73 be amended by striking out the word "ordinary" in the first line thereof, and substituting therefor, the word "registered".

MR. CHAIRMAN: Agreed? (Agreed) Page 6 as amended -- pass. Mr. McKellar.

MR. MCKELLAR: Mr. Chairman, is this Building Standards Board a new board that's been set up?

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Yes, Mr. Chairman. It's a new board set up to consider various building codes after consultation, or so that they can have consultation with respect to the municipalities and cities, etc., in the province.

MR. MCKELLAR: How many members will be on this board? What's the maximum?

MR. PAULLEY: There is none set under the Act, Mr. Chairman, as before us, but it would be our inclination to have a board say of about five people representative of the municipality, the construction industry, and others, and that they would choose their chairman, and it would be divorced actually from internal, within the Department of Labour, and they would act as advisers to the Minister in respect of the adoption of building codes.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I'm sorry I was not here for the beginning but I can basically deal with it under this section.

MR. PAULLEY: Right.

MR. SPIVAK: The City of Winnipeg is not excluded from the operation of this Act at this present time, or is included?

MR. PAULLEY: No, Mr. Chairman, they are not precisely excluded at the present time from the Act but they may be by regulations Order-in-Council. The reason for that, Mr. Chairman, is that there has just been a revision of the, or a contemplated revision of the building code in the City of Winnipeg, and while we've no objections to the exclusion, we want to have the opportunity of taking a look at the changes of the building code as it applies to Winnipeg in the light of potential changes in the national building code as well.

MR. SPIVAK: But I think just as a matter of record the Government's intention should be declared, and I think it may rather be appropriate, not on the committee, certainly on third reading, to indicate this, because I think what's required and what's necessary is some indication of certainty with respect to what is being planned to be proceeded with in the next period of time. I would think, and I don't think it's the Government's intention not to create uncertainty at this point, or to leave, or to create a concern for what the future will be, recognizing that what we're talking about is something that will evolve in the normal course of events, but I think that that declaration that I am referring to should be made, and I would recommend to the Minister that it be made on third reading, so that in effect it will be declared and known as far as the Government's intention is concerned.

Otherwise it really at this point is still subject to the whim of Cabinet, and I don't think that's the intention at this point, and I think that that should be very clear.

MR. PAULLEY: Well, if I may, Mr. Chairman; this point was raised by the Honourable the Leader of the Opposition some time during the consideration of 83. We can exempt them by regulation. The only thing is there are two ways that could provide for the City of Winnipeg under this bill: one would be to simply exempt them in the regulations; however, we would suggest a second method that might be more acceptable to all concerned, including the City of Winnipeg, that it will be necessary in order to prepare the regulations to have our Building Standards Board actively engaged in suggesting additions or deletions to the code before the regulations are made up, and this applies to Winnipeg. I have no objections, Mr. Chairman, to the point raised by my honourable friend the Leader of the Opposition, and if the message doesn't get through as a result of this committee, I hope I may make the statement on third reading of the bill. I have no desire to circumvent the responsibilities of the City of Winnipeg in this respect . . .

MR. CHAIRMAN: Page 6 -- pass.

MR. PAULLEY: . . . providing, Mr. Chairman, providing they adhere to the provisions to the building code of Manitoba and Canada.

MR. CHAIRMAN: (The remainder of Bill 73 was read and passed.)
Bill No. 90, the Human Rights Act.

BILL 90

MR. PAWLEY: Mr. Chairman, there are amendments I believe by both Government and by Mr. Spivak in respect to this bill, so that we have to deal with this clause by clause.

MR. CHAIRMAN: . . . indicated an amendment on Page 1.

MR. SPIVAK: I would prefer it if you do for the few moments it will take. It will be easier for me and I think I'll probably - just to go clause by clause, just numbers.

MR. PAULLEY: You don't want any deferment, Mr. Spivak to consider another bill while you're taking a look at this particular one?

MR. SPIVAK: No, I've looked at it. I think we're ready for this now.

MR. BOYCE: Okay, righto, let's go.

MR. CHAIRMAN: Section 1 -- (a) pass . . .

MR. SPIVAK: No, no, Mr. Chairman, just numbers.

MR. CHAIRMAN: All right. (Sections 1, 2, 3 and 4 were read and passed.) 5 --
Mr. Boyce.

MR. BOYCE: I would move that Clause 5(a) of Bill 90 be amended by striking out the words "or dwelling unit" in the first and second lines thereof, and substituting therefor the words "units or housing accommodation". This is to fit in with the use throughout the Act of the term "housing accommodation" as in Section 4, and as defined in the definition section.

I would further move, Mr. Chairman, that Clause 5(c) of Bill 90 be amended by striking out the words "dwelling unit" in the second and third lines thereof, and substituting therefor, the words "housing accommodation".

MR. CHAIRMAN: Agreed? (Agreed). Five as amended -- pass. Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I wonder if we can just revert back to Clause 3, and I'd like to just ask the Minister one question if I could. In 3 (3) the Exceptions for discrimination for being prohibited in public places, does not apply to prevent the barring of any person because of the sex of that person from any accommodation, services or facilities, upon the ground of public decency.

Now, again, there, I don't think there is any definition of public decency in the definition section and the question -- I'm not even sure in words and phrases whether there is any definition of what public decency is. I just wonder realistically whether this is a section that is going to have any interpretive quality at all by a court.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Well, Mr. Balkaran I think gave some thought to this amendment because it's a difficult one to deal with. We all know what we're after here. Maybe Mr. Balkaran would like to . . .

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, we wrestled with this subsection for quite some time and in the end we adopted what Alberta did, and this is a straight lift from the Alberta Human Rights Act, so if they've gone wrong, I guess we're going to go wrong with them. I'm not saying that that's correct, but . . .

MR. SPIVAK: I guess you'd have to say because we're following Alberta's, you know, lead with respect to oil windfall revenues . . . But realistically I think that, you know, that the point has to be made that in effect the ability -- to frustrate the ability for this Act to be enforced would be a mistake because I think the principle of the Act, and we can argue about it from a philosophical point of view, the act has both the legislative function and has the educational function. And the difficulty I see is in this, and we talked about it with respect to the question of political beliefs, in the sense of discriminating because of someone's political beliefs, is the almost impossibility of definition. You know, I think when we get to public decency we're in an area that we're not going to have any agreement as to what it really means.

MR. PAWLEY: You know, the obvious examples that come to mind, male and female washrooms, say, right off the bat. I know that there is this problem. The Act in many respects would have to be an educational Act, educational basis to it. But it's very wide and open to interpretation as to whether it's given a very limited interpretation or a wide interpretation, I suppose, and depending upon one's moral views left to be discussed by the courts if it reached that point, and of course we saw the different points of views in court even with the question of decency as in "The Last Tango" case. So, Mr. Spivak is quite correct. It's very difficult to pin this down.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, in order to achieve, and the Honourable the Attorney-General made reference to it, that is, similar accommodation for the sexes insofar as -- I don't know exactly how to . . .

MR. PAWLEY: Well, you've got the Young Men's Christian Association.

MR. PAULLEY: No, the point though is, that even under the Department of Health Act there has to be provisions for accommodations in factories and working areas for toilet facilities separate for male and female, and also I believe in some of the actual labour legislation, or the Workmen's Compensation Safety . . ., they would all have to be taken into account in conjunction with this, so possibly this is taking care of it temporarily because of our approach to the human condition, and is changing, it might be necessary to change other Acts as well, such as I indicate with the Health Department Act and the provision of facilities, restrooms, toilet facilities, in factories . . . -- (Interjection) -- Get out of here. My honourable colleague from St. Johns says for the three sexes now. He has been brought up in a new school. I'm from the old school, and it was understood that there were only two sexes. In my day I didn't know of the neuter sex and apparently my colleague does. But apart from that, Mr. Chairman, I think that is really one of the sections that we're considering here. And it's one of the problems I might say, Mr. Chairman, that we are having with the extension of the involvement, say, of women in the mining industry in Northern Manitoba and other areas where there has to be provisions made under some Acts for separate accommodations. I think this, through you to the Attorney-General, is the purpose of this.

MR. CHAIRMAN: Five as amended. Mr. Sherman.

MR. SHERMAN: That's five as amended, Mr. Chairman?

MR. CHAIRMAN: Yes.

MR. SHERMAN: Mr. Chairman, I wonder if I could ask leave of the committee to go back to Section 2 (1). I had to leave the committee meeting because of a phone call.

MR. CHAIRMAN: Oh.

MR. SHERMAN: I don't wish to detain the committee, but I wonder if I could ask leave to go back to Section 2 (1) to propose an amendment.

MR. CHAIRMAN: Mr. Sherman have leave of the committee? (Agreed) Proceed, Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. I thank all members of the committee. Section 2 (1). I would like to move that Section 2 (1) of Bill 90 be amended by adding after the word "shall" in the first line thereof, the word "knowingly".

MR. PAWLEY: Maybe Mr. Sherman wishes to speak to his proposed amendment. If I could just add a comment, maybe Mr. Sherman could speak to it.

MR. SHERMAN: Just a minute, nothing doing.

MR. PAWLEY: . . . because it would be my understanding that under 2 (1) that there would have to be implied knowledge in any event, so that in fact we would not require the word "knowing" to ensure that that would be implied within the section in the event.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Well, that certainly reassures me, Mr. Chairman. I don't think it comes as any surprise to the Minister that I would raise this point at this stage, and I'm sorry I wasn't here to do it 15 minutes ago because I had mentioned it on second reading I think; that I think there is a tremendous burden of responsibility placed here on broadcasters and publishers for being aware of every piece of information that is disseminated through their facilities and that's a super-human challenge and super-human responsibility. Nobody can be aware of everything going out in their publication or over their airwaves, so I'm concerned that they could be victimized by somebody else's words. That's the reason for suggesting that amendment. But if I have that assurance from the Minister that knowledge of that kind of dissemination is implicit in the prohibition provision, that then I'm prepared to accept the clause as is.

MR. CHAIRMAN: Mr. Pawley. Mr. Spivak.

MR. SPIVAK: Well, I think, you know, so Mr. Sherman should not be misled, I'm wondering if the strict interpretation of the section would really suggest that "knowingly" is part of it. In other words, as I would interpret it, if a sign, or if there was a publication innocently, there's still a discrimination under this section, that there's nothing that would appear to say that it's known. I appreciate that the courts probably would be lenient to that extent; it would probably not want to find; and I think maybe that's one of the problems we've had already. It's more the cases that come through. Not on this, particularly, but on the question of discrimination. The problem at this point is that I think the way it is worded is the fact that from a strict legal point of view a publication, with or without knowledge, is an offence.

MR. SHERMAN: Well, this was my original . . .

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. This was my original concern of course and Mr. Spivak has underlined it, reinforced it once again. I suggest that just as no Minister can know everything that's happening down the line in his department, no broadcaster and no publisher can either and it seems to me that it makes one, despite one's best intentions and despite one's own ethics and one's own moral and philosophical commitment to certain ideals, it puts one in an extremely vulnerable position the way the clause is written at the present time. That was my original case.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm trying to listen to some of the comments from the lawyers in the Attorney-General's department as well. The reaction I had to the suggestion was that I believe that when you leave the section as is, then it is assumed, as it is in most cases that if I do something I know what I'm doing. And if in this case it really was something done without the knowledge, or by inadvertence, then that is a defence to an action. I think that that is sufficient to protect the innocent publisher of this information or this statement, whereas if you put in - so I think he has a defence if he can say, "Well, I didn't know; it happened, somebody else did it." But if you say "shall knowingly", then it's up to the prosecution to prove that he knew, and it's very difficult to say, "Well, you knew." I believe

(MR. CHERNIACK cont'd) that I'm being supported by the people who would be involved in the prosecution saying that that would put on them an onus to prove what is in your mind. It's very difficult to prove what is in your mind. I believe I'm stating the problem, that a prosecutor would see it. I don't know if you want to call on the prosecutor to ask him.

MR. CHAIRMAN: Mr. Spivak.

MR. PAWLEY: Mr. Goodman, could you . . .

MR. SHERMAN: Well, I would like to call on the . . . could we call on the prosecutor for his opinion. (Laughter) Providing he's not going to prosecute.

A MEMBER: Right.

MR. GOODMAN: Well, certainly putting in "knowingly" changes the . . .

MR. PAWLEY: Maybe Mr. Goodman could identify himself for the records.

MR. GOODMAN: Well, I'm Mr. Goodman. "Knowingly" changes the section to the extent that the Crown will have to prove that the person did it knowingly. I just commented to the Attorney-General, if there was concern, let's say, with the Crown in the exercise of it's discretion prosecuting people perhaps improperly in the sense that you have suggested, that, you know, could happen, then I would indicate that there should be a further section indicating a reverse onus, that is, in effect, that everyone is presumed to have done it knowingly unless that person proves that he didn't do it knowingly, that he did not know, because otherwise the section will really be meaningless and the Crown -- it would be impossible to prove these cases.

MR. CHERNIACK: Then you'd be back where you were then.

MR. GOODMAN: Well, no, except that that gives an out if a person can prove that he did not do it knowingly. But he would have to establish that himself.

MR. CHAIRMAN: Mr. Marion.

MR. MARION: Well, Mr. Chairman, I have a lot of compassion for what Mr. Sherman is trying to accomplish, but I do appreciate the insertion of "knowingly" becoming a real defence as it were for people who might know full well the import of their actions. I wonder, though, as a layman to the law, is it not a fact that ignorance of the law is not a defence, and that just brings forth the loophole that Mr. Sherman is trying to cover in this particular case? I wonder if we could have further contribution on how we can best alleviate the responsibility, or the onus, that is placed on the publishers or all of the disseminators of public information?

MR. CHAIRMAN: Question, Mr. Goodman?

MR. GOODMAN: Well, the only comment I can make is that if you do put "knowingly", "no person shall knowingly publish", etc., there, in my opinion, for the Crown to be in a position to successfully prosecute those who are publishing in this manner, and knowingly doing it, there would have to be a reverse onus clause, and in effect stating, that everyone is presumed to have done the act knowingly unless they prove to the contrary.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm just wondering whether Mr. Goodman's suggestion goes a little too far to make, you're making it a little rough on a guy. It's hard to prove what is in your mind or in your knowledge. It seems to me that putting it that way "knowingly", and then say, "Well, now, you have to prove you didn't know", might be more difficult than leaving it as it is now where there is a presumption of knowledge with a right to disprove, but I don't think is so hard and rigid. I'm not opposing the suggestion by Mr. Goodman, I'm kind of afraid that we're making it a little too awkward to deal with, and yet I'd have to defer to Mr. Goodman's advice, and if he feels it's okay, then I would defer to that, although I would doubt it myself.

I wanted to deal with Mr. Marion's point about ignorance of the law: I believe that ignorance of knowing what the law is is not an excuse to be convicted of an offence, but ignorance of effect is an excuse.

A MEMBER: I think that's clear.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I appreciate the import and the implication of what Mr. Goodman is saying. I must say that I -- maybe I'd be better off leaving well enough alone. I don't . . .

MR. CHERNIACK: I think so.

A MEMBER: You're darn right.

MR. SHERMAN: . . . I don't particularly feel inclined to the addition of a reverse

(MR. SHERMAN cont'd) onus clause, because if we put that in, we'd only be putting it in because we would be starting from the premise that everybody is presumed to have done it knowingly unless they prove otherwise, and I think that casts an even worse cloud over the publisher and the broadcaster involved. So I perhaps would prefer to leave well enough alone in those circumstances. It seems to me that the addition of the word "knowingly" could be justified on the grounds that I described earlier, but if it's not the Committee's inclination, or interpretation of it, then I would defer and perhaps see how it works out over the course of the next year, and we'll have a look at it again at the next session, and that being the case I'll withdraw my proposed amendment, Sir.

MR. CHAIRMAN: Agreed? (Agreed) Mr. Boyce.

MR. BOYCE: On Section 6, Mr. Chairman, I would move that Subsection 6 (6) of Bill 90 be struck out and the following subsection be substituted therefor: "Exception. 6 (6) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on sex, age, marital status or political beliefs do not apply where sex, age, marital status or political beliefs is a reasonable occupational qualification and requirement for the position or employment."

MR. CHAIRMAN: Any discussion? 6 (6) as amended--pass; Section 6--pass; Section 7--pass; Section 8--pass; Section 9--pass. Mr. McKenzie. Section 10--

MR. McKENZIE: Before you pass this section, and I don't intend to make it a real issue but I did raise the matter in the House of the discrimination of the female sex regarding the credit granting agencies, and I will not pursue the matter today, but I wonder if the Honourable Minister would take it under surveillance and hopefully look at that matter, and maybe bring legislation at the next session of the Legislature, where in the credit granting agencies that the female sex have an equal right with the male.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Well, Mr. McKenzie, I'll certainly review the comments that you made in the House and determine whether there should be any action taken, and I would certainly welcome the opportunity to discuss it with you further.

MR. BALKARAN: Mr. Pawley is covering 7, contracts of different people.

MR. PAWLEY: Mr. Balkaran points out that that would be covered in 7, Section 7, Mr. McKenzie, Discrimination prohibited in contracts. That your problem should be taken care of there.

A MEMBER: . . . and we're doing that constantly, showing an example for the good of the employer . . .

MR. BALKARAN: No, he's dealing with credit . . .

MR. CHAIRMAN: Section 10--pass. Mr. McKellar.

MR. McKELLAR: Mr. Chairman, under Section 8, the word matter is misspelled.

A MEMBER: Where is that? What line?

A MEMBER: Where is it, Earl? Oh, here.

MR. CHAIRMAN: Would you speak into the microphone. We can't hear you . . .

MR. McKELLAR: Under (f), Section (f) or 8 (f) . . .

MR. CHAIRMAN: Typographical error corrected? Agreed? (Agreed) Section 10, Mr. Spivak.

MR. SPIVAK: I have a three-piece amendment, and I wonder if I could have the agreement of the committee to give this to the Chairman and to have it included in the Hansard so that the amendment itself will appear, and, if I may, just to indicate very simply what the amendment is, but it follows a logical sequence, and as I say has 18 sections. And I do that in order to . . .

MR. CHERNIACK: You don't expect it to succeed then?

MR. SPIVAK: Well, it's not a question of succeeding because I know the principle involved, and we've already discussed it in the House, I'd place it in here; if the Minister's prepared to accept it, I'd be prepared to read it. But I can indicate that the intent of the amendment is to apply for the purposes of the establishment of the commission and for the appointment to the commission, the same procedures that follow in the selection of the Ombudsman, with the same provisions that follow in the Ombudsman Act, so that the Human Rights Commission would not be appointed--would be appointed by the Government as the Ombudsman is, but would be selected from a committee of seven of the Legislature, and be responsible to the Legislature in the same way that the Ombudsman is, with the provisions

(MR. SPIVAK cont'd) being the same with respect to all matters.

Now, there's one additional section that is contained in the amendments that I'd like to refer to in a few moments, and that has to do with the question of the Commission's hearings, and I've already spoken to Mr. Pawley and there may be another amendment coming in on the other section, and there may be an explanation on that particular matter. But I can follow the procedure and I'm quite prepared to read it in, but I'm trying to facilitate the position of the Committee, and I would like to indicate that it contains, with the suitable alterations to refer to the Human Rights Commission as opposed to the Ombudsman, all the sections as I understand it that are contained within the Ombudsman Act, and I would like to be in the position to have introduced that as tabled, and then be in a position to talk on the principle itself.

MR. CHAIRMAN: Does Committee agree to have the amendment written into the record?

MR. PAULLEY: . . . have we copies of the suggestion, and I think it would be advisable, Mr. Chairman, for our perusal to have, at least, in addition to the recording in Hansard. I have no objections to the approach, but I do think that some of us don't read Hansard any more, and that we should have these suggestions before us for contemplation.

MR. CHAIRMAN: Agreed?

MR. SPIVAK: Mr. Chairman, the Minister has been given a copy, so that he's had the opportunity, and there is a copy for the Clerk, and the Clerk can give that to Mr. Paulley just at the present time.

MR. PAULLEY: I say, Mr. Chairman, I have no objections to it being recorded . . .

MR. SPIVAK: Yes, I know, but for some . . .

MR. PAULLEY: . . . but at some stage in the game I would like to have a separate paper other than Hansard that delineates this.

MR. SPIVAK: Well, I think if the Clerk will undertake to . . . I should mention that the only addition to the change is the fact that the Commissions hearings were to be held in camera, and this goes back to another point - and I'd like to leave that - this is contained in the amendment, on Section 10, 11 of the amendment, but I would like to leave that issue and just deal with the principle involved here.

MR. PAULLEY: Okay.

MR. SPIVAK: Mr. Chairman, it's a question and a choice as to whether we follow the procedure that has been followed in the past, or we initiate something essentially different at this time and follow the procedure with respect to the Ombudsman. I've indicated before, and I want to indicate again, that I think in this particular area we are dealing in a very sensitive area, an area in which . . . to a large extent has been new ground undertaken in Manitoba, and for that matter in Canada in recent years. But it seemed to me that it's necessary now to adopt a procedure which will ensure that the appointments are made on the basis of qualification, and the appointments are made on the basis - for the lack of a better word - on the basis that there is a consensus as to the ability of the people to be able to execute the responsibility because we are dealing in a very highly sensitive area, one of the most sensitive areas with respect to this province.

As the Human Rights Commission develops and becomes more involved in carrying out its functions, it seems to me that we should be concerned that we have the best people possible throughout all of Manitoba to be representative of the Commission, and in turn to reflect in a very non-partisan way the position of the community in Manitoba. The Lieutenant-Governor-in-Council would still make the appointment, but it would be subject to the agreement within a committee of seven, and I know that following the procedure that occurred with respect to the appointment of the Ombudsman, that the kind of consensus that's arrived at as a result of negotiation is, I think important in trying to establish someone who will become an agent of the Legislature. It would seem to me that the Human Rights Commission in this particular situation should become the agent of the Legislature. This is a semi-judicial body; the implications of its course of action are very important for the people who have made a complaint insofar as satisfying them, and it's also very important to the people who have been complained of in the sense that any frivolous action, or any action that's not justified, can be very damaging if not handled in a proper manner.

I really do not want to get involved in the way in which the Human Rights Commission has operated in the past but albeit to suggest that we have essentially a new Act after three years experience, and the Act has some substantial differences. There was an attempt I think

(MR. SPIVAK cont'd) on the part of the Government to initiate, and I'm not blaming them for it, but to initiate a sort of different course than had been followed in previous legislation in other governments and the previous experience. But the fact is that we're dealing in a very highly sensitive area, and the courts are concerned with that, and will be concerned, because we're talking about civil liberties when we talk about this, and it would seem to me that it would be in the best interest of our society in Manitoba that the appointments be made in the way that I've suggested, with the responsibility being left to the Legislature, so that this administrative body who have, I suggest, the semi-judicial function, even though there is a board of adjudication appointed, or a board of inquiry, to carry on and could reflect realistically an agreement among the groups within the Legislature, and who would have the confidence of the groups in the Legislature, and I think that that would be very important in the long run for the proper functioning and working of the Commission itself.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I think that we've given quite a bit of thought to this suggestion - the Leader of the Opposition raised this first reading, second reading of the bill. The concerns which we have in this respect is first the concern that Lieutenant-Governor-in-Council must always accept ultimate responsibility and accountability for all actions of its boards and commissions, administrative boards and commissions, even if they have a semi-judicial function and there is also the--I was inquiring as to the other provinces in Canada, and I find in going through the comparisons of other provinces I believe that it can be safely said that there is no province that has developed a process of selection of the commission along the lines that the Leader of the Opposition has suggested, not to say that that in itself should be considered as a reason for not so proceeding, it's only I think a reason for proceeding with some caution, if one proceeded in a manner different than that in other provinces. But I think probably there's some fairly sound reasons for doing it in this way, and that a Minister should assume responsibility for the Commission, a Minister should be responsible for representing the Commission in Cabinet, and during estimate review, before Treasury Branch, and insuring therefore that the Commission is not by-passed at times when it should be dealt with with considerable weight during debates within Cabinet or Committee of Cabinet, particularly during estimate review.

Accountability: I think that it's very important, the sensitivity of the Human Rights Commission, that it be very sensitive, and if government fails of course to ensure that the Commission is sensitive, sensitive in its responsibilities and actions, non-partisan in its dealings, then of course government will have to assume that responsibility, or not to assume that responsibility, and the electorate in the final analysis will so indicate; and that is the way that our system works, and I think it is correct.

Insofar as a committee appointed from the Legislature as a whole of seven members, four would be government members in any event, so that in fact in the end result the decision would be made by the government of the day. I can't help but think when one mentions because it's a semi-judicial function of our provincial judges that are appointed by Lieutenant-Governor-in-Council, and I think really that that's an area, if one could just mention in passing, that I have a little bit more concern about at the moment than the Commission insofar as the manner of appointment. I think that possibly in the next little while we should be looking at that manner of appointment to try to remove it from the possibility of partisanship, but here we have an administrative commission, administrative board, that I think is of such a nature that the government ought to assume accountability and responsibility for its actions.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, Mr. Pawley put very well what I would have wanted to say for the major part, because I think he has - and the first thing I wrote down in my note is judges, who are a judicial function, not quasi or semi-judicial - when I think of the Public Utility Board, and the Clean Environment Commission, and the Labour Board, and the Minimum Wage Board, and the Manitoba Hydro, Manitoba Telephone, the Manitoba Development Corporation then I start wondering whether really this would not be, if this principle were accepted, could we not then go on with the principle itself, and go into all the other semi-judicial functions and those that are considered to be removed from the direct carrying out of government policy.

Having named those, I come back to the point that Mr. Spivak has mentioned and that is accountability to the Legislature as compared with accountability to the people who are elected

(MR. CHERNIACK cont'd)to serve as government, and the ones that do come into that category are the Ombudsman, the Legislative Counsel, and our Clerk, and the Provincial Auditor. I don't know if there are any others that I've overlooked for the moment but I can't think of any others at the moment. -- (Interjection) -- Chief Electoral Officer, fine. All these are people whose impartiality in relation to the differences within the Legislature itself must be secure, and that is that their independence from pressure has to be protected, and that is why since they investigate what government is doing - that's the Ombudsman - investigating the Ministers' departments and their activities, that, we agreed from the very beginning, is a role where he reports to the Legislature and is not subject to ministerial or Cabinet control or influence; the same with the Legislative Counsel. I don't think it's only because of the stature of the people that we have, but largely because of their appointment that gives them the confidence of all MLAs who feel they have a right to go and talk to them freely about what they would like to do, knowing full well that they are secure, that that kind of information about their wishes is not disseminated and spread amongst others. The Clerk of course serves all MLAs, and the Provincial Auditor again is like the Ombudsman in that he investigates government operations.

Well I don't see the Human Rights Commission coming into that kind of a group of people, that kind of a class of people, and certainly the point Mr. Pawley made in relation to judges, they come in there more than anywhere else maybe, but the others, the Public Utility Board it's appointed by government, it's a quasi-judicial, makes decisions, which probably have less review outside than the Human Rights Commission. I think to be logical if one says the Human Rights Commission should be appointed in that manner, then so should the Public Utilities, and probably the judges too, and Clean Environment Commission, which make decisions, and therefore I think we're really talking about a much broader thing which could involve a theoretical, philosophical, discussion which I'm sure cannot be settled today in this atmosphere and on this omnibus bill.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Well just dealing with Mr. Pawley's position the fact is that in the cases of the Ombudsman and the Provincial Auditor, the budgets go before the Treasury Branch or Management Committee and have to be dealt with, the Minister has to deal with it, so I think that that argument, you know, is an argument that can be met from that point of view.

Now dealing with what Mr. Cherniack said, and I think, you know, this is a position that may or may not be accepted but it's based on this, that in effect the Human Rights Commission is realistically the Ombudsman for civil liberties and for civil rights in this province. It's both against, with respect to government and with respect to society, outside of government, but in effect they are fulfilling the Ombudsman function, and I think that a very strong argument could be presented and, you know, I'm concerned - we really may not have the time to persuade the government on this - but I think, you know, this is the bill in which we should be persuading the government on, that in effect the need for the independence - now I made the reference to a semi-judicial body, and I recognize of course provincial judges are appointed by the Cabinet and, you know, I would accept that what Mr. Pawley is saying is correct that there is a need for possibly some additional improvement in it, but I'm not sure that I know what it is. But in dealing with the question of the Commission, recognizing that the Commission does in effect fulfill the Ombudsman function, because it examines very clearly the rights of the individual to determine whether there have been some action by individuals, or by government, that have altered or trampled on their rights, and on their liberties, that recognizing that there is a necessity . . .

MR. CHAIRMAN: Order please. Can you keep the level of conversation down a little bit or do your talking outside. Mr. Spivak.

MR. SPIVAK: . . . the necessity to see that the appointment is made independent, and independent to that extent in that they are in effect agents realistically of the Legislature rather than the Government. But albeit the Lieutenant-Governor still appoints them as he does the Ombudsman, he's still responsible, the Minister is still responsible for the budget, as in the case of the Ombudsman, that in effect there has to be contact with the Attorney-General's office, and that in effect there is an investigatory group that they're entitled to have, which is what the Ombudsman is entitled to have, and I would suggest that a very strong case can be made, in fact I think a case that is persuasive, and I say that recognizing the problems of trying to deal with it in this arena, but I say that very persuasive argument could be made, that in effect it is in the interests, in the long-term interest for recognition to be given to the Human Rights Commission in the concepts that I've talked about, and to place it in the position, and to allow that

(MR. SPIVAK cont'd) that change be undertaken.

Mr. Chairman, you know, at the time I spoke in the House while there was some indications that there could be a change of the Act, I wasn't aware that there was going to be a new Act at the time that I mentioned them, so that this is not something that I thought necessarily that we were going to be dealing with at this session but the fact is we are. I would think, and I would really believe, that the government should give serious consideration to this and I think this is a natural evolution of the experience of the Ombudsman, and of the growth and development of the Human Rights Commission and its experience, and the sheer necessity, the sheer necessity of insuring that the people who are appointed are free completely from any - and I don't think that government particularly wants this; I'm not suggesting that they do - but free from any involvement or limitation that could be exercised by a government who would be unhappy with any course of event, or with some course of event that could occur as a result of the actions of the Commission. And I'm not suggesting that could happen; I'm not suggesting it has happened with respect to the present government; I'm not doing this on the basis of a particular attack on the government - it has nothing to do with that - but I think there is a concern that should be expressed now, and there is a way in which it can be corrected to the best extent that we know, and I would think that that procedure on the Ombudsman Act is one that really should be followed.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: I find the Leader of the Opposition's suggestion very interesting in attending to the argument presented by the Attorney-General and Mr. Cherniack, and rather than just briefly brush it aside, I for one would like some time to think about it, and, you know, when Mr. Cherniack makes the point, I don't think this is the time or the place to consider it because I just don't think we have the, you know, that we can address the proper attention to it. You know, I can't support it at the present time because I really haven't got time to consider all the nuances, but I don't want to give the Leader of the Opposition the impression that I'm just going to brush it aside because it is a very interesting idea.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, my answer to that, and I appreciate that, and I appreciate that in the spirit in which the statement was given, but, you know, we are going to right in this arena deal with significant and major legislation, some of which will be changed by way of amendment and, you know, we are dealing with a new Human Rights Act and I think this is the proper time for the matter to be debated. I accept what the honourable member says, but at the same time I think that the consideration of it is as important now before this is passed as are many other bills and clauses that we're going to be dealing with in this next 24 hours.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Spivak, one could say though that there are so many different commissions, as Mr. Cherniack pointed out, that are sensitive, and in so many different respects, whether it's the Public Utilities Board, whether it's the Labour Relations Board, or many other different commissions and boards, that if one is going to deal with the concept and the principle, that this should be dealt with in reference to a number of boards and commissions, that the same argument could possibly be presented. If one accepts the position that is advanced, one surely would not restrict it to the Human Rights Commission alone but would want to relate it to a number of other boards and commissions, if one accepted that position. As I say, I still have concern about ultimate responsibility and accountability. We have gone a long way to attempt to remove the politicization that was inherent within the former bill, for instance, I don't know whether the members have noticed, under 21 subsection (2). In fact let me say that I was very anxious that the Minister not be left with permissive responsibility but that he shall be required to appoint a board of adjudication after the receipt of a request. I think that was very important because previously it was left permissive with the Minister having that control, or that power, right there to prevent a matter being dealt with, and certainly we're dealing now with a new area of quite broad concept that I think relates to more boards and commissions than this one, if one was to accept the position advanced.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: When the Attorney-General was presenting his position he, you know, referred to what is going on in other jurisdictions, and he took pains to point out that this shouldn't necessarily be a fundamental argument, that because nothing is being done there that we should use that as a basis for voting against it at this time. Doubtless as things become more complex,

(MR. BOYCE cont'd) as we move down the road, we will have to shift some of our relationships. You know, as was pointed out in McRuer's Report the quasi-judicial, the tribunals, the division of power between the executive, and all the rest of it, and, you know, really I think, as I said earlier, it is a very interesting concept but nevertheless I don't think we can do the service necessary to it at the present time because it involves so many other aspects. It is a very complex principle involved and setting a precedent at this time, I really couldn't support it.

MR. CHAIRMAN: Are you ready for the question?

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

Yeas 9; Nays 13.

MR. CHAIRMAN: The amendment is lost.

(Sections 10 to 15 were read and passed.) 16 -- pass? Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I wonder here whether - I'd like to just make reference to 16 (1), and that is the question of the confidentiality of the information. I wonder whether it's possible, whether there can be some teeth put into this clause. I indicate very directly that I am concerned that in this area again of what I consider an extremely sensitive area where the Commission as opposed to a board of adjudication, which will be holding a public hearing, in which case information then is made available as a result of the case itself, that there be something more than what the clause has to indicate without question the penalty that would occur if confidential information, or in the course of a commission inquiry or investigation, information is either leaked out or is passed on that should not be. Because I think the point that has to be made in the importance on this, is that in the case of any kind of frivolous action - and it could occur - that if any information is passed on and there is public dissemination of it, that in itself, the fact that there is an investigation, has the same effect as if there had been a conviction, and it's not necessarily the same thing. I think again it relates to the responsibilities of the people involved, including the responsibility of the commissioners, to know that there is not just a prohibition but there is some additional penalty - and I don't know what that would be but I wonder if one that can be agreed to on this.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I wonder if I could just ask Mr. Spivak if - my understanding is if somebody did in fact disclose confidential information they'd be subject to a penalty under 33 (1)(b) which states, "every person who contravenes any provision of this Act is guilty of an offence and liable on summary conviction of an individual to a fine of not less than 100 and not more than 1,000" - whether Mr. Spivak is satisfied with that penalty section, or does he feel it should be stiffer in relationship to the - because that would be the penalty that would apply.

MR. SPIVAK: Yes. Are you suggesting that 33 (1) would apply to a contravention under 16 (1)?

MR. BALKARAN: It would be an infringement of a Section of the Act, Mr. Spivak, and therefore 33 (1)(b) would apply. It would be dissemination of information contrary to the Act.

MR. SPIVAK: Well I didn't realize that that interpretation could be made. You're suggesting that if a commissioner disseminated information which was confidential at the time, in the course of it, that they would have contravened the Act and it is liable to an offence. Well, that's fine.

MR. BALKARAN: The Act prohibits that at any time.

MR. PAWLEY: I would just like to add one other point because Mr. Spivak had mentioned - I think you said that the question of the Commission having a hearing when you were dealing with this subject matter, and I would like to simply indicate that it's our intention to insure that the Commission cannot have a hearing, and when we get to that section we could discuss this.

MR. CHAIRMAN: (Sections 16 to 21 were read and passed.) 22 -- pass? --(Interjection)--

MR. PAWLEY: Mr. Chairman, on 22 we want to insure that it's quite clear that the Commission will not have a hearing, but in fact a board of inquiry will exercise - any hearing that's involved the Commission's responsibility will be restricted to investigation, and just to insure there is no doubt we are proposing to delete - if we could have leave of the Committee - delete in the second line of Section 22 the words "of the Commission and" which follow "member".

MR. BOYCE: I would so move, Mr. Chairman.

MR. CHAIRMAN: So moved. Agreed? Mr. Spivak.

MR. SPIVAK: I understand the intent, and that should take care of it. But then if we go down to line 5 "applies to any investigation being made by the Commission", that means that they still can take evidence under The Evidence Act, but that means that they are not holding a Commission hearing.

MR. BALKARAN: If you relate that back to Section 20, Mr. Spivak, it says, "The Commission shall as soon as reasonably possible investigate and endeavour to effect a settlement." I think the intention is an informal sort of inquiry to . . .

MR. SPIVAK: Yes I appreciate that. That's in camera though, that's not a public inquiry?

MR. BALKARAN: I wonder if I could ask the Committee to make one technical change. There's a reference to Section 87. That should be Section 88.

MR. CHAIRMAN: Fourth line of 22.

MR. SPIVAK: But again to make the point. The Commission based on this section, and I appreciate the change has been made, still can have the powers of a commissioner under Part 5 of The Manitoba Evidence Act.

MR. PAWLEY: Only in respect to investigation, and the powers are to its investigatory role only.

MR. SPIVAK: I'm sorry. Only to?

MR. PAWLEY: To its investigatory roles only, not in respect to a hearing.

MR. SPIVAK: That's fine.

MR. CHAIRMAN: 22 as amended -- pass; 23 -- pass; 24 -- pass; 25 -- pass - Mr. Spivak.

MR. SPIVAK: Now here I'd like to find out what is the intention of the Government? Is it the intention of the Government that a board of adjudication will be a public hearing?

MR. PAWLEY: Yes. My own view is that any board of adjudication should be public.

MR. SPIVAK: Well then I think there should be an amendment which should say, "upon the appointment of a board of adjudication the board shall without undue delay hold a public hearing".

MR. PAWLEY: Yes, I would be prepared to accept that amendment, Mr. Spivak. Could we have that formally, or is there leave of the Committee to . . . ?

MR. SPIVAK: I'll move that.

MR. CHAIRMAN: Agreed? (Agreed) 25 (1) as amended -- pass; . . .

A MEMBER: What was the amendment?

A MEMBER: Public hearings.

MR. CHAIRMAN: It is to insert the word "public" before the word "hearing" in the second line of 25 (1). Agreed? (Agreed) (Sections 25 to 33 were read and passed.) 34 -- pass; 35 -- pass; 36 -- pass . . .

MR. SPIVAK: I'm sorry, can we go back to 34?

MR. CHAIRMAN: Thirty-four. Mr. Spivak.

MR. SPIVAK: I make mention of this again. It's one of the other - I haven't mentioned this specifically. In the question of the injunction the reference is to the "source of the income of the person". Again I come back to the question of enforcement of the Act, and the ability for the Act to be executed, and the ability for it not to be frustrated. I wonder - and I assume that this is essentially new, it was not in there before - you know I just wonder whether you're going to be in a position to be able to enforce this, or to be able to determine it, not a question of enforcing it but be able to determine it really.

MR. PAWLEY: Well I suppose it's a matter that will depend upon the judicial consideration of the courts. I do think that when it comes to human rights legislation that we will always have some degree of difficulty in respect to enforcement under any of these subjects. I think the intent is clear, and it's hoped and trusted that through the courts that there can be a proper determination made. I don't want to minimize the difficulty in respect to any of these items in enforcement, there will be difficulty. I make no representation in that respect but I think that it's capable of enforcement.

MR. CHAIRMAN: 34 -- pass; 35 -- pass - Mr. Pawley.

MR. PAWLEY: I just want to make a brief comment on 36 because I just want to mention that this is an area that had caused me a little concern, but you will note that 36 states that, "Where the Commission has commenced a hearing into any complaint filed with the Commission prior to the coming into force of this Act, the hearing and disposition of the complaint should

(MR. PAWLEY cont'd) be concluded in accordance with the provisions of the Act for which this Act is substituted." In other words the old Act will still apply for a complaint prior to the new Act. I would have preferred to have been able to deal with a complaint even prior to the coming into being of this Act, under this Act, because we're going to be dealing under some pretty defective legislation. But I think on balance that it would not be . . .

MR. CHAIRMAN: 36 -- pass . . .

A MEMBER: You can't change the rules in the middle of the game.

MR. CHAIRMAN: (The remainder of Bill No. 90 was read and passed)

A MEMBER: Does that complete . . .

MR. CHAIRMAN: I have had one request to consider Bill 74 next. What's the will of the Committee? We have 20 minutes left. Bill No. 24.

BILL 24

MR. CHAIRMAN: Bill No. 24. Page by page? Bill 24, The Mount Carmel Clinic Act. 24. Bill 24, The Mount Carmel Clinic Act, page by page.

MR. BOYCE: Mr. Chairman, a couple of technical amendments. I would move an amendment on Page 1, That clause 1 (e) of Bill 24 be struck out. The bill was written defining "officer" and the word "officer" doesn't appear in the bill. --(Interjection)-- That clause 1(e) of Bill 24 be struck out.

MR. CHAIRMAN: Agreed?

MR. BOYCE: They don't use the term "officer".

MR. CHAIRMAN: Page 1 -- pass - Mr. Boyce.

MR. BOYCE: On Section 3, it's just a typographical error. It's amending "person" to "persons". That Section 3 of Bill 24 be amended by striking out the word "person" in the first line thereof and substituting therefor the word "persons".

MR. CHAIRMAN: Agreed? (Agreed) Page 1 -- pass; Page 2 - Mr. Jorgenson.

MR. JORGENSEN: Mr. Chairman, on Page 2, clause (9) at the bottom of the page. My understanding is this is a private corporation. It says, "The affairs of the corporation shall be managed by a board of directors consisting of 25 persons elected in such manner and to serve for such term as may be prescribed by by-law, but such by-law shall have no force or effect until approved by the Lieutenant-Governor-in-Council." Pray tell me why a by-law has to be approved by the Lieutenant-Governor-in-Council?

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: I think, Mr. Chairman, that this is not unusual, that in many instances, in many private Acts there is the desire, or the requirement, of the approval by the Lieutenant-Governor, and I would suggest without attributing this to the Mount Carmel Clinic the general premise is so there can't be loading, or at least the Lieutenant-Governor-in-Council is aware of what is going on in organizations such as this. --(Interjection)-- Yes, the Teachers' Society my colleague the Minister of Education points out has it somewhat similar because of the involvement of the public treasury in the financial operation of these similar corporations.

MR. JORGENSEN: Now, would that apply to all by-laws or just certain ones that may affect the public treasury?

MR. PAULLEY: I believe that it would be --(Interjection)-- It's only dealing with, affairs shall be dealt with by the board of the managers which are elected, or who are elected, with the approval of the Lieutenant-Governor-in-Council, not that the Lieutenant-Governor-in-Council will say who they are. I think that is correct, Mr. Chairman.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: You're talking about the election to the board itself.

MR. PAULLEY: Yes.

MR. JORGENSEN: "By-laws relating to the election."

MR. PAULLEY: That's my understanding.

MR. JORGENSEN: All right.

MR. SPIVAK: Well I wonder just in terms of the drafting, whether the drafting is correct for the interpretation that is given, or is there . . .

MR. PAULLEY: Mr. Chairman, if you take a close look at it, it says "elected in such manner and to serve for such term as may be prescribed, but such by-law shall have no force or effect"; that is, the by-law dealing with the term of office and the manner of election. I think that's clear.

MR. CHAIRMAN: Page 2 -- pass; Section 10 - Mr. Boyce.

MR. BOYCE: Mr. Chairman, there are a couple of small corrective amendments to this also.

That subsection 10 (1) of Bill 24 be amended,

(a) by relettering the second clause thereof as clause (b); and

(b) by striking out the word "Services" in the second clause thereof and substituting therefor the word "Sciences" --(Interjection)-- It should be the Health Sciences instead of the Services.

Then (c), by adding thereto immediately before the word "Jewish", in clause (d) thereof, the word "Winnipeg" - Winnipeg Jewish Community Council.

And the same kind of amendment is the next one. By adding thereto at the end of clause (e) thereof, the word "Winnipeg" - the "Social Planning Council of Winnipeg". These are just small technical changes. And by adding thereto at the end of clause (h) thereof the words "or their successors duly elected or appointed in accordance with the by-laws of the corporation" - which are the directors under clause (h) of the . . .

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: . . . housekeeping or is this, at this point -- or is it really a change? I don't know.

MR. PAULLEY: Until varied by the provision of No. 9, this is the ongoing -- as I understand it, Mr. Chairman, this would be the ongoing board.

MR. BOYCE: I would suggest, Mr. Spivak, that it is housekeeping in the sense of giving continuity to the corporation, that since in Section 9 it prescribes a board of 25 members, should some of the present people succumb, then it would be necessary under the existing Act to have provisions to appoint the full complement of members, and it's in that sense it's housekeeping at the present time. But it would still necessitate a by-law being passed under Section 9 to take care of the eventuality.

MR. TALLIN: Could I speak to that?

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: The solicitor for the corporation was concerned that the way it was worded now it looked like the people mentioned in Clause 8 were directors in perpetuity, and he just wanted to make clear that they would flow in the normal course of changing offices.

MR. CHAIRMAN: 10 (1) as amended -- pass? (Passed) Section 10 --

MR. BOYCE: There is just another correction here - by adding a quorum: That Section 10 of Bill 24 be amended by adding thereto at the end thereof the following subsection:

Quorum. 10 (3). Until varied by by-law, eight members of the board constitute a quorum of the board.

MR. CHAIRMAN: Agreed? (Agreed) Section 10 as amended - passed. Balance of Page 3 -- pass?

MR. BOYCE: I'm sorry, Mr. Chairman, there's another slight amendment in Section 13 -- it's continued over on Page 4 so I guess it's 3. Section (f) on Page 4. Change "of" in the second line thereof to "or" - to "the board or any committee" instead of "of".

MR. CHAIRMAN: Pass? (Pass). Page 4 -- passed. I have a report from the Legislative Counsel, by the way. This is a private bill and it is a nil report on the bill. Preamble passed. Title passed. Bill be reported.

BILL 41

MR. CHAIRMAN: Bill 41, Sinking Fund Trustees of the Winnipeg School Division. You all have the bill? (Bill 41 was read by sections and passed.)

BILL 56

MR. CHAIRMAN: Bill No. 56. Mr. Tallin.

MR. TALLIN: As required by Rule 110 of the Rules of the House, I report that I have examined Bill 56, an Act to incorporate United Health Services Corporation, and I draw to the attention of the Committee sections 4 and 10 of the bill.

Section 4 of the bill would authorize the corporation to carry on a business which is essentially insurance, but Section 10 would exclude the corporation from compliance with the Insurance Act. Also, Section 10 appears to provide that other insurers who have policies with persons insured by the corporations cannot receive any benefits in the way of co-insurance.

MR. CHAIRMAN: I have an amendment indicated for Section 7, Page . . .

MR. SPIVAK: I'm sorry. Would you just explain just the last sentence again, that you . . .

MR. TALLIN: The blending of co-insurance provisions; if there are two insurance policies covering the same item they prorate it. Section 10 would exclude that, so that the other insurance company would always pay first and up to the amount of theirs, and if there was any balance payable then UHI would pay it; so that they don't participate in co-insurance. They have a benefit that other insurers wouldn't have.

MR. CHAIRMAN: Page 1 -- pass; Page 2 -- pass. Page 3 . . .

MR. BOYCE: On Page 3, Mr. Chairman.

MR. CHERNIACK: Mr. Chairman, I just wanted to remind honourable members that I . . .

MR. CHAIRMAN: Use the microphone, please.

MR. CHERNIACK: I wanted to remind members that yesterday I had suggested certain changes or additions to the Act, and that the delegates, Mr. Coulter and Dr. Corne, indicated that they agreed with it. I asked Mr. Balkaran to prepare these amendments that have been distributed and I can inform the Committee that Mr. Coulter and Dr. Corne agreed with the form of it, and therefore I've asked that Mr. Boyce should make the amendments.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: I would move that Section 7 of Bill 56 be struck out and the following section be substituted therefor: Board of directors . . . As printed, is that satisfactory?

MR. CHAIRMAN: Mr. Marion.

MR. MARION: . . . Mr. Chairman, I like the principle announced in the way we're appointing here.

MR. CHAIRMAN: Any further discussion? Mr. Spivak.

MR. SPIVAK: I wonder if it's understood with respect to No. (e) that "one from a list of three persons nominated by the Executive Council" - does that include the Minister, the Minister of the Executive Council, as well as MLAs?

MR. CHERNIACK: I should explain that I had suggested the Social Planning Council of Winnipeg, and they -- and I think Mr. Coulter said, "Well, why tie us to that organization? If you want to suggest these others, why don't we just say appointed by the Executive Council and then they can nominate from these various and, in the end, this is to a large extent a self-perpetuating board?" He said, "Well then the board will be able to pick one of the three whom-ever." So the answer, Mr. Spivak, is yes, if the Executive Council wishes to nominate, let's say, three Cabinet Ministers and they have to pick one of the three, then the answer is yes, it could be that. And that is not my intent and I did not suggest the Government of Manitoba. It was Mr. Coulter's suggestion on the basis, well, if you see that the Social Planning Council of one year, or nurses or doctors whatever -- and this is not my suggestion and one I don't really . . .

MR. SPIVAK: Well would you be prepared . . . ?

MR. CHERNIACK: Through the Minister? Yes, I would. Yes.

MR. SPIVAK: through the member of the Legislature.

MR. CHERNIACK: Well I would do that too, Mr. Spivak. May I say that I would, as a matter of interest, not want a Minister to be involved in the Board of Directors of an insurance corporation which is not run, or a responsibility of the government, so I would willingly accept the suggestion. I don't know whether we ought to deny an MLA that, but I have no -- you know, I accept Mr. Spivak's recommendation.

MR. SPIVAK: Well I think, you know, I think without -- there's no problem with this. There's consensus and there's agreement, but one does not know what will happen in the future with any government and I would think that it would be wise at this point to exclude members from the Legislature and in which case . . .

MR. CHERNIACK: None of which may be . . .

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: Mr. Chairman, by leave, I would . . .

MR. BALKARAN: Supposing it can be set up to persons other than a member of the Legislative Assembly?

MR. BOYCE: In Section (e) of 7 (2) of the amendment, that one from a list of three persons other than members of the Legislature nominated by the Executive Council of the Government of Manitoba.

MR. CHAIRMAN: Can I have the agreement of the committee? Mr. Paulley.

MR. PAULLEY: Well, Mr. Chairman, I wonder if a better place to put that, if you are going to put it, is at the start of the paragraph: "five of the directors, none of whom may be members of the Legislative Assembly". That would clear up the whole picture. And while I have the microphone, I don't agree with Mr. Spivak that we have agreement. I disagree with this particular principle most vociferously, or as vociferously as I can, because it creates discrimination in my opinion between other groups such as the Indian and Metis Federation, and you can name a heck of a lot of organizations who are precluded from being directors of this under the terms of this legislation, but I'm not going to oppose it.

MR. SPIVAK: Well you and Mr. Marion should get together, I think.

MR. PAULLEY: Pardon?

MR. SPIVAK: You and Mr. Marion should get together.

MR. PAULLEY: Yes, I know, because Mr. Marion and I disagree vigorously in this particular area, not only in this bill but other bills as well. However, Mr. Chairman, I do suggest that the "five of the directors, none of whom shall be MLAs, shall be appointed as follows". I think that's the place to tidy it up.

MR. CHERNIACK: Mr. Chairman, now we say that even the Federation of Labour or the Union of Manitoba Municipalities, even they may not nominate an MLA.

MR. BOYCE: That's right.

MR. CHERNIACK: I don't care particularly, but now we are denying them the right to nominate.

MR. SPIVAK: I would think it would apply just to the Executive Branch . . .

MR. CHAIRMAN: What is the will of the committee? Is that agreed?

MR. BOYCE: As I moved.

MR. CHAIRMAN: Section 7 as amended -- passed? (Passed) (The remainder of Bill 56 was read page by page and passed.) Bill be reported. Committee rise.

MR. PAULLEY: We meet in the House at 8:00 o'clock.