



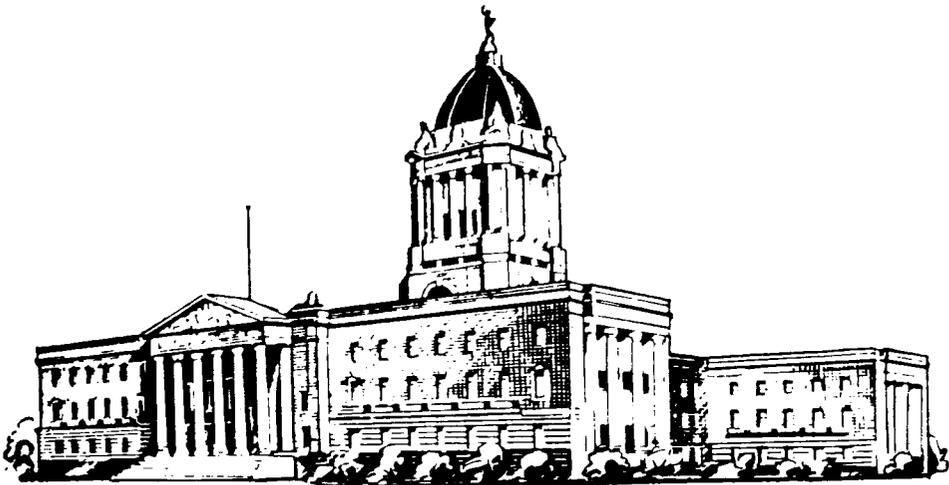
Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMENDMENTS

**Chairman
Mr. William Jenkins, M.L.A.
Constituency of Logan**



8:00 p.m., Thursday, June 10, 1976.

THE LEGISLATIVE ASSEMBLY OF MANITOBA
STANDING COMMITTEE ON LAW AMENDMENTS
8 p.m., Thursday, June 10, 1976

CHAIRMAN: Mr. William Jenkins

MR. CHAIRMAN: Order please. Will the committee come to order please. I will call out the bills that are here before Law Amendments Committee, the numbers and names of the bills and then I will ask if there are any representations by members of the public.

No. 20 - An Act to amend The Trade Practices Inquiry Act

No. 80 - An Act to amend The Municipal Act (2)

No. 81 - The Milk Control Act

No. 84 - An Act to amend The Real Estate Brokers Act

No. 89 - The Statute Law Amendment Act (1976).

No. 91 - An Act to amend The Queen's Bench Act and The Petty Trespasses Act

No. 94 - An Act to amend The Queen's Bench Act (2)

Now are there any members here from the public who wish to make representation on these bills? Will you come forward to the microphone and give me your name and the organization that you are representing.

MR. DON LYNCH: My name is Don Lynch, manager of the Manitoba Dairy and Poultry Co-op, in discussion on Bill 81.

MR. CHAIRMAN: Thank you. Any other members of the public wishing to make representation on the bills before the committee?

MR. D. A. SPEIRS: Mr. Chairman, my name is D. A. Speirs, I am Vice-President of Modern Dairies, I would like to speak - I would like to comment, not speak, but comment on Bill 81.

MR. CHAIRMAN: Thank you. Are there any other representations by members of the public? Hearing none, then I suggest we start with Mr. Don Lynch representing the Manitoba Dairy and Poultry Co-operatives on Bill 81.

MR. LYNCH: Mr. Chairman, gentlemen, first I would like to say I represent the Manitoba Dairy and Poultry Co-op. We do have three members of our executive here. I would like to say that this bill in regards to our firm, we did not have any prior notice so we did not have the length of time to go over it thoroughly, but we did go over it and do have some questions.

On Page 3, Section 5, item (a), the last two words in this clause are "other products" and it is referring to the allocation of direct and overhead costs. What does "other products" mean? Our company is involved in processing and the merchandising of many products other than fluid milk. Is the procedure here that I receive answers or do I just keep going?

MR. CHAIRMAN: No, you just keep going.

MR. LYNCH: On the same page, Section 3, item (g); this section is in regard to reconstituting milk. The reconstitution of milk is done mainly in the north country. If it was illegal to reconstitute milk, the fresh milk would have to be hauled, and we speculate out of the Dauphin area, which would hurt our operation there. We have a plant located in Dauphin. Also the cost of hauling whole milk to The Pas and Flin Flon is very high, this could reduce the pool total to be distributed to the producers.

Page 4, Section 5, Item (4): This item deals with requests of a consumer for a breakdown of results from producers and processors. What does "presentation to the Board" mean? Is this at a public hearing or by individual request or letter by a consumer? We suggest that the consumer should be entitled to these figures on a base of total industry figures or total producer figures.

Page 5, Section 10, Item (1): This section deals with the records of the licensee to be made available to the Board. Our suggestion is that the records for the fluid milk operation be available to the Board but not for the complete operation. Section (b) we agree with this type of record, that is milk be available to the Board. Page 5(10)(2). Offence and Penalty. The licensee should have the right to appeal directly to the Minister.

Page 5 and 6 Section 13 Items (a) to (c) inclusive, we believe that these sections are unnecessary. The Milk Control Board should be concerned with the adequacy of supply

(MR. LYNCH cont'd)and price. The new Act appears to be going into the health issue. Item (e). This item prescribes the records, books and accounts to be kept by the licensees. Does this mean that the Milk Control Board would have the power to change the accounting system of the licensees? Item (f), the report should be on the milk operations only. Item (g): This item deals with the requirement of a bond. This would cause double bonding and double licensing since we already carry a bond in favour of the Manitoba Milk Producers Marketing Board.

Page 8 Section 18, Item (2) Penalty: This item states "any officer, director or agent of the corporation in connection with offence is liable to the penalties." We would like to have clearance of this clause. Page 8 Section 20: What does this Section actually mean? We would like clearance on this item. Could this clause mean restricting the Manitoba Milk Producers Marketing Board, or does this mean Manitoba Milk Producers Marketing Board will be taking over the duties of the Milk Control Board?

MR. CHAIRMAN: You don't have copies of your brief before the committee, Mr. Lynch?

MR. LYNCH: No, I haven't. I do have some . . .

MR. SPIVAK: . . . I believe that there are probably three or four pages, I wonder if it's possible to have his report photostated so the members of the committee will at least have the sections. If not now then during the questions, certainly when we deal with it clause by clause.

MR. LYNCH: I do have some copies.

MR. CHAIRMAN: You have some copies there, do you?

MR. LYNCH: I just have three extra copies here, Mr. Chairman.

MR. CHAIRMAN: Well perhaps one could be given to the . . . and one to the Minister, I guess. Thank you, Mr. Lynch. Just a moment, there may be some questions some members of the committee may wish to ask you. Are there any questions that committee members have on the brief that Mr. Lynch has made before the committee? Mr. Einarson.

MR. EINARSON: Mr. Chairman, through you to Mr. Lynch, how long since you received notice that you were aware of this legislation coming before this committee?

MR. LYNCH: I can speak for myself. I did receive it Wednesday morning; but I was away Monday and Tuesday and I speculate that our office either received it Monday or Tuesday this week.

MR. EINARSON: Have you been aware that there was legislation forthcoming in recent months or since the time when the Throne Speech was delivered to the Legislature?

MR. LYNCH: I can speak for myself, and I think for our Board, no, we were not aware.

MR. EINARSON: Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions members of the committee may have? Hearing none. . . Mr. Spivak.

MR. SPIVAK: Mr. Chairman, just as a matter of course, I know there's another brief and I gather we're going to have copies of the brief itself, I wonder if it's possible to be able to call the gentleman back after we've had an opportunity of examining the particular clauses. Sorry? --(Interjection)-- Yes, as a matter of fact I did listen, but I have to tell you that there are interrelated sections to what the witness was talking about, and I think for the purpose of understanding - unless we're just going to pass the Act because it's been introduced by the government and that's all, but I think if we're going to actually give a review of it that it is important if we can have it and at least examine it. I'm not saying there will be any questions but I think it's fairly important that we go through that exercise.

MR. CHAIRMAN: I don't know what the will of the committee is. Mr. Uskiw.

MR. USKIW: Mr. Chairman, I don't know that there is a problem. I suspect by the time we are down to the clause by clause consideration of this bill that we would have before us some time before then the copies of the submission for the purpose of members who would want to pursue the various points. I don't know that it's necessary at this point to have copies.

MR. CHAIRMAN: Mr. Einarson.

MR. EINARSON: Yes, Mr. Chairman, I'd like to suggest to committee that in view of the fact that the comments that we heard from the witnesses here . . .

MR. CHAIRMAN: We don't call them witnesses, we call them delegations.

MR. EINARSON: Pardon me, delegations here, that the questions that were put to us were seeking information in regard to qualifying an explanation of the various sections of the Acts that had been explained in the brief. And I think, Mr. Chairman, because of the lack of time, that not only this gentleman, but I think all aspects of the dairy industry, whether they be producers, whether they be consumers or whether they be processors, the time has been very limited, and as a result of this I think that these people here tonight are probably seeking information and are going to be interested in hearing what the Minister has to say in regard to clarification of the various sections of this Act.

MR. CHAIRMAN: Well, I'm in the hands of the committee. This Chair does not make decisions for this committee I can assure you. Mr. Uskiw.

MR. USKIW: Mr. Chairman, on that point of order, I simply want to indicate that I have no objection of illuminating for anyone here the provisions of this bill, although I would have to assume that that is contrary to the way the committee normally proceeds, as I understand it.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, on that particular point that the Minister made, he may be quite correct, but I think he also has to understand that we are in a position of speed-up at this particular time, that lack of notice is something that we have to consider and at this time I think there is a degree of willingness on the part of everyone on this committee plus those that are making representations to elicit information, and I think that the Minister probably should give us full explanation for everything that has been requested in this particular aspect.

MR. USKIW: Do you see a problem of precedent? I've never done it. Well, Mr. Chairman, I think the approach that we should undertake here is to deal with those questions when we get to the clause by clause consideration of the bill. Otherwise we will be doing it twice.

MR. CHAIRMAN: Mr. Jorgenson.

MR. JORGENSEN: Had the Minister presented this bill in proper time and had he presented it in such a way that there would have been ample opportunity for those who were interested in presenting briefs to prepare those briefs, to study the legislation that is now before us, and to comment on the various items in this legislation, there would have been no problem. The Minister is a victim of his own incompetence, that although indicating early in the session and indeed during the Throne Speech debate that the legislation was going to be presented, he waited until the dying moments of the session before this legislation was presented. And I can only conclude that he's doing it for one reason, and that reason is to make sure that nobody is going to have a proper opportunity to present briefs before this committee; he doesn't want advertising of his legislation and what he proposes to do.

I know that there are sections in this particular bill that are repulsive to the dairy industry, and the Minister knows that as well, and for that reason he brings it in in the dying moments of the session hoping that because of the urgency to get the session over, that nobody is going to say anything, nobody is going to comment, and his suggestion right now is that we forego any suggestion of commenting on his legislation so that it can be rammed through without any proper consideration. That's a typical attitude on the part of the Minister, one that he continuously adheres to, and I suggest that this legislation be held over, at least until somebody has an opportunity to examine it properly and make proper comment on it. The delegations that are now before us have not had an opportunity to examine this legislation, to examine it to the extent that they're able to comment on it and point out the weaknesses and the flaws in the legislation, and the intentions of the Minister, which are more important.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Well, Mr. Chairman, I want to take issue with the Member for Morris. . .

MR. JORGENSEN: I'm sure you would.

MR. USKIW: . . . on that point of order, if it was a point of order . . .

MR. JORGENSEN: No it wasn't, it was just a comment.

MR. USKIW: . . . and indicate to him that if his statement was to apply on this bill then it would apply in spades to a number of other bills. And I understand from the record that the opposition voted second reading on all of these bills, which they didn't have to, which they could have delayed in the House for another two weeks if they so chose to, and there was no closure. . . Mr. Chairman. . .

MR. CHAIRMAN: Order.

MR. USKIW: Mr. Chairman, I want to make the point that there was no closure on debate, there was no time limit on debate on second reading, as a matter of fact the House had to adjourn early on a number of occasions because the members of the opposition were not prepared to debate bills --(Interjection)-- And, Mr. Chairman, the government did not . . .

MR. JORGENSEN: You're a lying little bastard.

MR. CHAIRMAN: Order please. Order. Order please. Order. I ask the honourable member to withdraw that remark. ORDER PLEASE! Will the honourable member withdraw that remark? All right. Committee rise, call in the Speaker.

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MR. CHAIRMAN: The Honourable Minister of Agriculture.

MR. USKIW: Mr. Chairman, I was in the midst of trying to relate to the committee that at no time during the second readings was there closure imposed or limitation on debate, and at the time that I was interrupted I was trying to indicate that we did indeed adjourn early on a number of occasions to accommodate the opposition who were not ready to debate a number of bills, and not through any fault of their own, but because they didn't have time to peruse them, and that we had indicated that there was no urgency or rush on either of those bills at that time; that no-one has forced the bills through the House at any time during this session, in fact the session could last another month or two as far as I am concerned. Now there is a willingness on the part of all of the members obviously to try to bring the session to an end, otherwise they would not be willing to sit longer hours and hold three sittings per day, but that was a mutual agreement, and since that was a mutual agreement then I don't believe there is any question with respect to any bill that is now before us.

MR. SPIVAK: Well Mr. Chairman, . . . with the delegation that was before. . .

MR. CHAIRMAN: I don't believe that Mr. Lynch had been excused by the Chairman before we had our slight interruption. Mr. Lynch. Is Mr. Einarson on the list. Sorry.

MR. EINARSON: Mr. Chairman, my comment to the Minister, I don't think there was at any time --(Interjection)-- Pardon?

MR. CHAIRMAN: Order please. We're not here for comments between you and the Minister, we're here to ask questions of the delegation, and that's the procedure that we're on right now. After we have finished with hearing delegations you can ask questions of the Minister but not now.

MR. EINARSON: Mr. Chairman, I just thought you gave the prerogative to the Minister to make those comments and I was wanting to reply.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Lynch, you've had an opportunity of looking at the Act, I wonder if you've had an opportunity of reviewing the section of the power of the Board under Section 12 with respect to enquiries. It's not contained in the sections that you outlined, but I wonder if you had the opportunity of reviewing that and are aware that enquiry is not as I said defined in the Act itself. This would mean that an enquiry would be under Section 5(1) dealing with the duties and powers of the Board, that in effect there would be the ability of search and seizure which essentially are police powers given to the Board for any duties and administrative responsibilities it has under 5(1), and whether that would meet with your approval, the ability to be able to search your records and to seize and to search your premises without a . . .

MR. PAWLEY: Mr. Chairman, just on a point of order, because the honourable member doesn't have the Evidence Act in front of him, but I don't believe the Evidence Act in front of him, but I don't believe the Evidence Act in the sections referred to does in fact give the power to seize documents, so that I would think that it would really not be a correct form of question to ask the witness.

MR. SPIVAK: Mr. Chairman, just on that point of order, I discussed this with the Legislative Counsel, and again I question that interpretation. If I'm wrong. . . They will have that right though of inspection of being able to summon witnesses, in effect to be able to subpoena witnesses. Well again I want to deal with the questions of the duties and powers of the Board, because with respect to the one particular item that was mentioned which was (g) under 5 - and the person appearing indicated their concern with respect to that - as I understand it, the Board will have the power to investigate and study systems of distribution of milk and for that purpose to summon witnesses, not to request submissions, but to summon witnesses and further the right of inspection. You know, the right to be able to inspect premises, even if there is a refusal - if I am correct - they will have that power. Now does that meet with the approval of your group, that the Board should be given that kind of power.

MR. LYNCH: Mr. Chairman and gentlemen, as I stated before making this presentation, the presentation is really brief. I know it could have been done in a much more thorough manner, but as I stated we just received the copy of the bill in our office, we had to go and pick it up on Tuesday, and I would say that we could have easily missed some of these clauses.

MR. CHAIRMAN: All the questions, Mr. Spivak? Any further questions of any members of the committee? Mr. Einarson.

MR. EINARSON: Mr. Chairman, first of all I like to ask Mr. Lynch, in Section 5(1)(b): Upon being satisfied the person meets requirements of the Act, grant a licence to a person to engage in or carry on the business of supplying. The word "supply," would you say that refers to a producer? I wonder what your interpretation of that would be.

MR. LYNCH: Which page is that on?

MR. EINARSON: Page 3, Section 5(1)(b). This comes under the duties and powers of the Board in case of problems when we deal with other sections later on, but granting a licence to any person to engage in or carry on the business of supplying, distributing, processing or selling fluid milk, and may fix the security to be given by the licensee. I'm wondering how you interpret the words "one who supplies", could that be a producer in your view?

MR. LYNCH: Well the way I would interpret it personally would be a distributor not a producer.

MR. EINARSON: This would then not relate to a producer at all.

MR. LYNCH: In my way of thinking.

MR. EINARSON: I see. Thank you, sir, then. Going on then to Page 5, Mr. Chairman, 10(1): Every licensee shall keep such records and make such returns to the Board as may be required by the Board in respect of its operations. I wonder if you'd like to explain just what type of records and what those records would consist of as far as the demand of this board is concerned.

MR. LYNCH: What. . . ?

MR. EINARSON: That's Page 5, Section 10(1)(a) and (b).

MR. LYNCH: Our thinking, and once again I'm speaking as a employee, which I haven't cleared with my Board. ". . . keeps such records and makes such returns to the Board as may be required by the Board in respect of its operation." Well I don't think we worry about giving them the returns on the basis of the control product or fluid milk, but I think we do object to giving the returns of our total business because we are in a very extensive business and we sell many many items, hardware, gas and everything, this is a total business, and that's the way I interpret "operation".

MR. EINARSON: Then do you understand it, Mr. Lynch, that this may be required of you as an individual business rather than the total industry insofar as granting information is concerned?

MR. LYNCH: Yes, we understand it as an individual business.

MR. EINARSON: Individual business. Well, insofar as the consumer is concerned then, I was wondering if you'd like to comment on that, where the consumer has the right to ask for information in regards to when a price increase is asked for for milk, I am given to understand the consumer can ask for this kind of information from the industry.

MR. LYNCH: What page are you on there, Mr. Einarson?

MR. EINARSON: That's on Page 4, Information to the Consumer. 5(4).

MR. LYNCH: Well I think I covered that in the brief. The way it reads to me, and maybe my interpretation is wrong, or reads to us, I should say, that a consumer can ask for the operating report of an individual business or the operating report or records of an individual producer.

MR. EINARSON: Mr. Chairman, I would like to ask Mr. Lynch another question then in regards to this same subject matter. To your knowledge, is this the kind of information that the consumer in the Province of Manitoba is asking for?

MR. LYNCH: I can't answer for the consumer, I haven't heard of any, somebody else may be able to answer.

MR. EINARSON: Mr. Chairman, one final question then in Section 20, investing assets and liabilities. I think you mentioned this, Mr. Lynch in your - yes, Section 20. Oh I see, you were wondering what this really meant, so you were not sure of that yourself then.

MR. LYNCH: No.

MR. EINARSON: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Ferguson.

MR. FERGUSON: Mr. Lynch, I expect that you're not probably familiar with the bill that is just going through the House, which is the Corporation Capital Tax Act, anything over \$100,000 is listed and taxed. --(Interjection)-- The questions is . . .

MR. CHAIRMAN: Order please. Would you make your questions to the brief that's before the committee and to the bill that's pertinent to the committee.

MR. FERGUSON: Yes. I'm coming to that, Mr. Chairman. Do you not feel that the records and the returns would be filed and consequently these two clauses would be redundant? What I was trying to explain, Mr. Chairman, is the fact that the witness is . . .

MR. CHAIRMAN: Delegation.

MR. FERGUSON: The delegation is not familiar with An act that is going through the House with a limit of \$100,000 on any corporation, so these two clauses are automatically redundant.

MR. CHAIRMAN: You're not obligated to answer, Mr. Lynch, if you don't . . .

MR. LYNCH: No. Well I mean my position as an individual, I am not aware of that Act going through.

MR. FERGUSON: Well I know you're not, this is what I was trying to explain to the Chairman.

MR. CHAIRMAN: Any further questions, Mr. Ferguson? Mr. Graham. Use the microphone please.

MR. GRAHAM: Thank you, Mr. Chairman, through you to Mr. Lynch. I would like to ask Mr. Lynch this question. If there are numerous records that have to be kept in compliance with the regulations that are set out by the government in this particular bill, will the cost of that keeping of records and the providing of the records whenever they are required by the government, will that cost be absorbed by the particular organization of which you are a member or an employee, or will that cost be charged against the producer or passed on to the consumer in an increased price?

MR. LYNCH: Well that cost would be absorbed by the firm involved in keeping the records - well, it's an expense that has to be covered. In regards to passing on the increase to the consumer, those prices are set by the Milk Control Board.

MR. GRAHAM: At periodic times there is a review of the existing prices, would that be one of the determining factors that would be used in an argument for an increased price when you make a submission to the Milk Control Board?

MR. LYNCH: That would be an added expense. It wouldn't be that great, but it would be an added expense and would in all fairness be added into your expense of operating.

MR. GRAHAM: A supplementary question, Mr. Chairman. If the Milk Control Board felt that it was not in the public interest to pass that on to the consumer, would you then make any attempt to try to reduce the price that was paid to the producer so that you would not be operating under deficit?

MR. LYNCH: No, we do not make any attempt to reduce any prices to the producers.

MR. GRAHAM: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Einarson.

MR. EINARSON: Mr. Chairman, I would like to ask one further question of Mr. Lynch. Page 4, Section 7(2) which states, Exemption from Licensing. I'm wondering, have you any idea why this section is in and just who the Board may exempt from licensing.

MR. LYNCH: Well we did discuss that, and we weren't quite sure, I mean our directors and myself. We came to the conclusion that this would allow a producer to sell direct to the consumer if they called on the farm, which is legal.

MR. EINARSON: Well this, Mr. Lynch, can be done now at the present time.

MR. LYNCH: That's right. That's what I think it's covering but I'm not sure.

MR. CHAIRMAN: Any further questions? Hearing none, thank you, Mr. Lynch. Mr. D. A. Speirs, representing Modern Dairies.

MR. D. A. SPEIRS: Thank you, Mr. Chairman.

MR. CHAIRMAN: Before you proceed, Mr. Speirs, do you have a copy of your brief? It's just a verbal brief, is it?

MR. SPEIRS: I'm sorry, Mr. Chairman, I could hardly even call it a verbal brief.

MR. CHAIRMAN: Now I don't want to be involved in the same argument we had before.

MR. SPEIRS: No, I'm not trying to become involved in that.

MR. CHAIRMAN: That's fine. Thank you.

MR. SPEIRS: Mr. Chairman, the company that I represent, Modern Dairies, is probably the largest dairy processing company in Canada, and certainly in Manitoba. We received the first inkling that this bill was before the House on Tuesday morning at 8:30 this week, and quite frankly, Mr. Chairman, we have not had time - many of our senior people that we would want to discuss this with are in our plants in Manitoba, on their spring operating tours, and we are just not prepared to present a brief at this moment. We do know from the cursory examination that we have given to it today that there are sections and paragraphs in the proposed bill that you could drive a horse and cart through, and are totally out of all reason insofar as the producers, the consumers or the processors in Manitoba. And I do know from conversation that I had late this afternoon with the consumers who were tied up at their annual meeting all day yesterday and only themselves received notification of this on Tuesday, are quite annoyed, because there are sections in there that have great effect upon them as well.

I am sorry, Mr. Chairman, our company does not normally, in fact never comes before a meeting of this nature unprepared, but on 24 hours' notice it is simply impossible. My brother who is Chairman of the Board of the National Dairy Council, is in Ottawa looking after National Dairy Council business down there. He is the President of our company and I think that he should have been consulted on this, then I could talk to him about it and we could come to a logical conclusion and submit a proper brief to you. I'm sorry, Sir, that we were unable to do so; it's the first time I think that we have ever had to do that. I am very sorry.

MR. CHAIRMAN: Before there are any questions, just for the sake of our recording, I have spelt your name S p e e r s, is that correct?

MR. SPEIRS: No, we spell it the Scottish way, S p e i r s.

MR. CHAIRMAN: Thank you very much, Mr. Speirs. There may be some questions now that members of the committee may wish to ask you.

MR. SPEIRS: I would like to suggest, Sir, in that regard, that insofar as questions I will do my best. However, with the lack of liaison that I've had with other officers in our company, I would not like to make some statements that could be controversial insofar as our company is concerned. We would like to lay it out properly rather

(MR. SPEIRS cont'd)than give you information off-the-cuff.

MR. CHAIRMAN: Well, you realize you're here as a delegation, free and voluntarily, and if you feel there are questions that you are not able to answer, you are not required to answer. You are not subpoenaed here, and you're not here under oath.

MR. SPEIRS: I understand, Mr. Chairman.

MR. CHAIRMAN: Are there any questions any members of the committee may wish to ask? Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, Mr. Speirs indicated that even with the cursory reading of the bill there were a couple of areas which he indicated had particular weaknesses. I wonder if Mr. Speirs would be prepared to elaborate to the extent that he can on what are the most obvious problems or difficulties with the bill as he has been able to examine it thus far.

MR. SPEIRS: Unfortunately I didn't bring my inked-in copy of the bill with me tonight, I picked it up here just prior to this meeting. I do feel, and in fact I know that our company feels, that the Milk Control Board should have no jurisdiction whatsoever over any products that are not under their direct control, which is fluid milk, 2% milk and skim milk; it should not take into account profits, losses or otherwise on any unrelated products. We even sell acetylene from our plant at Thompson, our sales on frozen foods will amount to millions of dollars a year; has that anything to do with the Milk Control Board? That is one.

I also feel, Sir - on Page 4, paragraph 5, subsection (4) - that it is certainly not in the best interests of processing companies that their individual profit and loss statements or otherwise be made public in any way, shape or form. We think that that would be unfair to our competitors and to ourselves.

Under Section 20 - these are just some of the most obvious ones - under section 20 on Page 8, to be very honest with you, I know it off by heart, but I cannot understand it. I don't know whether or not the intent of that is that it is a phasing out of the Milk Control Board as we now know it, or a phasing in of the Manitoba Milk Producers Marketing Board. I just can't understand it, and believe me we have had some pretty high level discussions on this. Those are just some little points.

MR. AXWORTHY: Mr. Chairman, I just wonder, going back to the first point raised by Mr. Speirs about the control over additional products, do you mean products that aren't . . .

MR. CHAIRMAN: Please, Mr. Axworthy, I can't hear you, and I'm sure the members at the end of this table can't hear you. Order please.

MR. AXWORTHY: Mr. Chairman, the question I was trying to raise was, asking Mr. Speirs if he meant, that in respect to the other products, did he mean just products that were unrelated to dairy products or just those dealing with fluid milk products. Could you be a little bit more specific as to which ones you think shouldn't be included.

MR. SPEIRS: I would suggest, Mr. Axworthy, that the Milk Control Board has no jurisdiction over our sale of bread, and we sell hundreds of thousands of dollars worth every year. I don't think that that has anything to do with them whatsoever. I don't think, as I said, our sale of gasoline, our sale of acetylene, our sale of Wilkinson razor blades - we're the agents for the north country for it, I think we make 20 percent or something like, whatever it happens to be - I don't really feel that that has anything to do with the Milk Control Board and yet it's spelled out here "other products". Well the way it is written now it means all those things, and we don't think that that is right.

MR. AXWORTHY: So, Mr. Chairman to Mr. Speirs, your interpretation is then that the powers under this bill would enable the board to apply itself to a range of products totally unrelated to the dairy business itself.

MR. SPEIRS: That is correct, that is exactly what the Milk Control Board is doing now.

MR. AXWORTHY: Mr. Chairman, to elaborate, you mean the Milk Control Board is presently exercising that kind of power and jurisdiction.

MR. SPEIRS: That is correct. They have complete access to our books, records, financial statements and audited financial balance sheet at the end of the year, which naturally encompasses all of these things in the operation of our company.

MR. AXWORTHY: Pursuing that a little bit further, Mr. Chairman, under Section 5(1) the one we're talking about, information to consumers, the intent of the bill obviously is to ensure that the consumer is able to make a representation that would be on an equal basis to those of the producers, based upon similar information, what kind of information should be given to consumers in order to allow them to be able to present their case on an equal basis say to Modern Dairies?

MR. SPEIRS: In that regard, I think that paragraph 5, subsection (4) the addition of three or four words would cover it completely. The way it now stands I as a consumer, and not necessarily an officer of Modern Dairies, could go to the Milk Control Board and ask for the last audited financial statement of one of our major competitors and I feel that would be unfair to him to ask that, and we would not want him to ask the Milk Control Board and have that information divulged to him. I think that the addition of a couple of words to say that on an industry-wide basis that would be satisfactory and that information is presently available to the Board. As this is written right now, I could go to the Milk Board and ask for a profit and loss statement of Mr. John Doe at Stonewall who happens to be a milk producer and they would have to give it to me the way it is written - but on an industry-wide basis, the producer-wide basis, then I would say no.

MR. AXWORTHY: Mr. Chairman, if I might ask Mr. Speirs about that further, on an industry-wide basis, do you mean broken down in some sort of regional arrangement? Would there be variations from one region to the other in milk pricing policies?

MR. SPIERS: No, I do not think so. Our company submits a consolidated financial statement to the Milk Control Board, it encompasses 19 operations in Manitoba, and it comes on one audited balance sheet and obviously our competitors do likewise - so we add them all up, add up the total sales, add up the total expenses, add up the total losses or profits or whatever it happens to be, and you've got it on an industry-wide basis. There are only five companies to deal with. There are only five companies, that's all.

MR. AXWORTHY: Just one final question, Mr. Chairman, to Mr. Speirs, going back to this issue of the provision of information and statements concerning profits and losses. If the Milk Control Board is presently requiring a full assessment of all products sold, how would it be possible to divide out those products that are not dairy products and still be able to judge the profitability or requirement say for an increase in milk prices in order to provide for increases in cost, because I assume that your administrative marketing distribution costs cover both lines of products and that therefore there would have to be some basis of determining what the component of those would be in relation to non-dairy products and the dairy products.

MR. SPEIRS: To be very honest with you, Sir, I am not a chartered accountant or an accountant, but I do know that those things could be provided if it was required by the Board.

MR. CHAIRMAN: Mr. Speirs, would you please speak up. It's very difficult for . . .

MR. SPEIRS: I'm very sorry. Can you hear me now?

MR. CHAIRMAN: Yes.

MR. AXWORTHY: Mr. Chairman, it might also help if there was less noise in the room.

MR. CHAIRMAN: Yes, I think the point is well taken, Mr. Axworthy. If we could just have a few less private conversations going on, we might be able to hear what the delegation and what the questions are. The Chair is in a very difficult position here because I don't know if the questions are in order or out of order. Proceed.

MR. AXWORTHY: Mr. Chairman, that was the end of my questions. Thank you, Mr. Speirs.

MR. CHAIRMAN: I would ask the members of the press also if they would just cut down the tone of conversation, please. Proceed, Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, that was the end of my questioning.

MR. CHAIRMAN: Mr. Einarson.

MR. EINARSON: Mr. Chairman, I wanted to pursue one question following the questions posed by Mr. Axworthy. I would like to ask Mr. Speirs if he has any

(MR. EINARSON cont'd) knowledge of the consumers in this province asking for the kind of legislation that we see in Section 5(4) on Page 4. Have you any knowledge that the consumers really want that kind of legislation? Are they asking for that kind of protection?

MR. SPEIRS: That information has never been requested to my knowledge by any consumer organization?

MR. EINARSON: Has never been requested by any consumer?

MR. SPEIRS: No.

MR. EINARSON: Thank you, Mr. Speirs.

MR. CHAIRMAN: Are there any further questions of the delegation? Hearing none, thank you, Mr. Speirs.

MR. SPEIRS: Thank you very much, Mr. Chairman.

MR. CHAIRMAN: That completes the delegations before the committee. In view of the fact that we have people here who have made representations on this bill, is it the will of the committee that we proceed with Bill 81. Agreed? (Agreed) What is the will of the committee, how do you wish to proceed with the bill? Order please. Do you wish to go through the bill clause by clause? Order please. I hear about a dozen different answers here of how you want to deal with the bill. Do you want to deal with the bill clause by clause?

A MEMBER: Clause by clause.

MR. CHAIRMAN: Clause by clause. Clause 1(a)--pass. Mr. Jorgenson.

MR. JORGENSEN: I wonder who, just to follow through, presently are the members of the Milk Control Board of Manitoba.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Mr. Chairman, Paul Phillips is the chairman of the Milk Control Board; a farmer member is John Vis; another member is Jessie Vorst; Mr. Matheson; there are five, there is one vacancy.

MR. CHAIRMAN: 1(a).

MR. JORGENSEN: Now you've named John Vis who is a producer, what do the others do?

MR. USKIW: There are two who are professors of economics, Mr. Vis is a farmer; Mr. Matheson is the trade union representative, and we did have a consumer interest from northern Manitoba but that has been vacated and will be filled.

MR. CHAIRMAN: 1(b)--pass; (c)--pass; (d)--pass; (e)--pass; (f)--pass; (g)--pass; (h)--pass; (i)--pass; (j)--pass; (k)--pass; (l)--pass; (m)--pass; clause 1--pass. Clause 2(1)--pass.

MR. USKIW: Mr. Chairman, I'm wondering whether it wouldn't be appropriate at this point to make one clarification. I've been advised that Mr. Matheson is now the manager for Modern Dairies.

MR. CHAIRMAN: 2(1)--pass; 2(2)--pass; 2(3) - Mr. Graham.

MR. GRAHAM: Mr. Chairman, on a point of clarification on the statement made by the Minister of Agriculture, we have the Vice-President of Modern Dairies here, perhaps he could confirm the statement made by the Minister regarding Mr. Matheson.

MR. CHAIRMAN: Order please. Order please. We have heard the delegations, we are not hearing more delegations, I'm sorry, Mr. Speirs.

MR. SPEIRS: Oh, I thought you were going to ask me a question.

MR. CHAIRMAN: 2(2)--pass; 2(3)--pass.

MR. GRAHAM: Mr. Chairman, then perhaps I can ask the question of the Minister of Agriculture. Can he confirm that Mr. Matheson is the manager for Modern Dairies?

MR. CHAIRMAN: The Honourable Minister of Agriculture.

MR. USKIW: My understanding is that he is in a management position with the company of Modern Dairies.

MR. GRAHAM: Well, Mr. Chairman, that's a vastly different thing than the statement made by the Minister a moment before.

MR. CHAIRMAN: Order please. 2(3)--pass; clause 2--pass; clause 3--pass; clause 4(a)--pass; (b)--pass; clause 4--pass; clause 5 - Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I wonder if the Minister can indicate here the

(MR. SPIVAK cont'd) essential differences between the duties and powers under the Milk and Dairy Products Control Act.

MR. USKIW: Yes, there's a removal of (b) in the old Act which reads as follows: Adjust and settle disputes arising between producers, consumers, processors and distributors of milk and dairy products or between any two or more classes of such persons engaged directly or indirectly in the milk and dairy products industry or any branch thereof. There are other differences too.

Now the one on reconstituted milk is an additional provision establishing the order of size of containers. While it has been done in the past, it was considered that the Act was too weak and that is strengthened in clause (h).

MR. SPIVAK: I wonder if I can ask now, under 5(1)(a) which in wording is not identical but appears to be similar in this Act, was there ever any inquiry in which Part V of the Evidence Act was used?

MR. USKIW: I'm not aware of any, Mr. Chairman.

MR. SPIVAK: Is it necessary for Part V of the Evidence Act to be made available for the purposes of (a)? --(Interjection)-- Well I'm asking, because we'll come back to it when we . . .

MR. USKIW: Well only to the extent that the Board was unable to get this information on a voluntary basis would they use that section.

MR. SPIVAK: You see, what we're now talking about is not a hearing at this time, what we're talking about is research, which can be conducted by one researcher, by the Board, by a consultant, in which the Board would have the capacity, and it did have the capacity under the old Act - and will have the capacity in the new to in effect provide the research with a conductor in Part V of the Act, which would mean that witnesses could be summoned and documents would have to be produced, and the right of inspection. Now that was never used for that purpose. Is it necessary to be used for that purpose now?

MR. USKIW: Well we think it's a safeguard, we don't know that we'll ever have to use it. It's in the old Act, and it's simply put in the new one, it's not a deletion.

MR. SPIVAK: Mr. Chairman, I realize in one sense that I am dealing with a section to come, but it relates directly to this part and I want to be able to interrelate it, not because I'm objecting to this part, but I will be talking about it before. . . but if we can sort of resolve it. It's a power that exists by Order-in-Council by the Executive Council that any time a Commissioner could be appointed. But it would seem to me that we are faced with a situation where with respect to the function of the Board to have responsibilities similar to - well, not similar, but the kind of responsibilities that the Utility Board would have, the Securities Commission would have, in adjudicating in matters. At the same time it has in this particular item the same kind of power that a department of government would have in dealing with research on a particular matter that it would be concerned with, and yet the researchers in the department do not have the power to summon witnesses or to collect evidence under The Evidence Act; and in principle it would seem to me that if in fact such an investigation was needed in which such a researcher would require that, that it should be conducted by an Order-in-Council through the Executive Council rather than through the Milk Control Board; the principle being that the researcher should not have that capacity to essentially have police power in the exercise of the researcher's responsibility, and that could be collectively many people, or it could be one person, or it could be a group of people, or it could be people under the structure of the board, and it would seem to me that that power which is given for future study as well as current examination may result in something happening, and as a matter of principle should be accepted for that purpose.

MR. USKIW: Well, again, I would go back to suggest that it was deemed advisable in the existing legislation which has been on the books for a number of years - not put there by this government, I may add. Secondly, if there is need of power of enquiry, it's more in need now than before, in that we have now converted the operation into a utility concept. So that if it's a utility industry, then the powers of enquiry are important.

MR. SPIVAK: The powers of enquiry are necessary, but the powers to be able to compel under The Evidence Act which effectively give police powers should be exercised

(MR. SPIVAK cont'd) judiciously and there should be some control and check and balance of it.

MR. USKIW: Mr. Chairman, I agree with that, and I think the record speaks for itself, that this section has never been abused for a decade that I'm aware of. I don't believe there has ever been a complaint with respect to abuse under this section in the existing legislation, nor do I anticipate complaints with respect to the new bill which embodies some of the same provision.

MR. SPIVAK: Well, Mr. Chairman, I can cite if it's necessary certain commissions of government now who are in the process of conducting enquiries who dearly would love this power, and who fortunately do not have that power and therefore are not in a position to act in what I would consider an abusive way for the determination of certain matters that would be of interest to them in terms of future planning, but not necessarily consistent with the needs of the moment. It may very well be that a time would arise where in fact that determination should be made and that would be then an act of government clearly known and determined and declared by Order-in-Council for which the government would take responsibility in which there would be a Cabinet decision.

It would seem to me that regardless of whether this had been in the Act before, in principle, with respect to the total use of police power and lacking in Administrative Practices Act which we do not have in this province for all the administrative boards who have some semi-judicial function, that it would seem to me that there should be a curtailment rather than a continuation of those powers where it's not necessary. I would simply say to the Minister, because it would seem to me that (a) specifically would include future planning in addition to examination of present or immediate situations, and for the purpose of future planning in which documentation may be necessary, particularly - well, in a variety of different ways, and it may not have been used - that that power should not exist. If an enquiry is needed because of an alleged abuse or a concern for an abuse, then the government I think should exercise that responsibility.

MR. PAULLEY: Mr. Chairman, might I ask the honourable member . . .

MR. SPIVAK: Well, Mr. Chairman, if in principle there was an agreement about it, I think the Legislative Counsel could draw the amendment when we get to the other section. That's all I'm saying. I don't know the exact wording. I've discussed it with him and with the Attorney-General, but in principle all I'm saying is that for the purposes of (a) in which there is the investigation in study, that there should be some restrictions.

MR. USKIW: I can sympathize with the point that the Member for River Heights is making, but I would hesitate to want to weaken the legislation that is now on the books in that particular area in that the Milk Control Board has been undertaking and is continuing to undertake studies with respect to the distribution and processing of milk throughout the whole of the province and in particular Northern Manitoba. It could very well be that they may want to acquire information which otherwise would be withheld with respect to those studies, and therefore, it would require another measure to be able to allow them to continue to do what they may be doing in any event.

MR. SPIVAK: Well, just the words of the Minister alarm me. Because you see, if an enquiry is being made and by that an investigation, which is just a research portion, not a hearing particularly, but a concern in a research study, it would seem to me that they should not have police powers, I don't care whether it's on the books or not. What I'm simply saying is, that if you feel that Northern Manitoba requires a study then that should be taken by the power that exists within government simply by Order-in-Council. All I'm concerned about is that at that level there should not be the ability to be able to, in effect, exercise those powers. I haven't a particular example in this situation with respect to the Milk Control Board, but I do have examples in other boards, in other commissions within the government, and I would say to you that it's a very good thing that those who want to do the research can't get at it through that way, because if the government decides as a matter of policy to do it, they can. If that is a position that they're prepared to take - there are political consequences to it - they can do it, and that's their responsibility. But it should not be to any level of a director or lower who is doing research to have that power, I think it's a mistake. It would seem to me that for that purpose there should be some limitation and I would hope that the Minister would consider it.

MR. USKIW: Mr. Chairman, on that point I simply want to object to the term "police powers," because really the powers could not be exercised without reference to a court if there was refusal to give up of information, so that it's not as if they had unilateral powers of police action.

MR. SPIVAK: I think the Legislative Counsel would have to explain what I'm referring to. They would have the ability to summon witnesses and ask to have the witnesses produce records.

MR. USKIW: That's right. And recourse to the courts if the records are . . .

MR. SPIVAK: Well it would be an offence under the Evidence Act if they didn't proceed. So in effect they would be prosecuted.

MR. USKIW: That's correct.

MR. PAULLEY: Mr. Chairman, on the point raised by the Honourable Member for River Heights . . . (no mike)

MR. CHAIRMAN: Would you use the microphone, please.

MR. PAULLEY: But if the points raised by the Honourable Member for River Heights are valid, and I'm not suggesting that they're invalid, rather than just an inter-course between the Minister of Agriculture and the honourable member based on sup-position, if there is a conviction on the part of the Member for River Heights, I suggest in all due respect, to the conduct of the meeting, there should be a precise indication or a precise recommendation from the member in order that the business of the committee may be expedited.

MR. USKIW: Mr. Chairman, maybe we can settle this this way. I think what I should do here is take the matter under advisement as between this stage and third reading. I would like to consult with the Board whether they have views on that before I make up my mind.

MR. SPIVAK: I would then indicate that I would want to discuss with the Legislative Counsel if we can before third reading of it, and be in a position to be able to file an amendment for consideration of that issue.

MR. USKIW: Well, we would hope that we would have that opportunity.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: I'd say between now and third reading, I think probably even hoisting the bill would even be better. I can't help but comment in looking at the powers of the Board and the fact is if there's such an important bill before us, could the Minister explain this vacancy that how long has this vacancy taken place and why isn't there a full slate?

MR. USKIW: Mr. Chairman . . .

MR. CHAIRMAN: Order please.

MR. WILSON: And how much does the . . .

MR. CHAIRMAN: Order please. We're not dealing with the insinuation of the quorum or the make-up of the Board right now, we're dealing with duties and powers of the Board. Questions should be pertinent to that section.

MR. WILSON: All right.

MR. USKIW: Mr. Chairman, I think that if members of the opposition are concerned with the powers in this bill that one should be appalled at the lack of their ignorance of the powers of the existing legislation which are much broader, which indicates to me that they haven't studied the old legislation and compared it with the new. The powers are much less in this bill in many of those sections. Only the former Leader of the Opposition is on to it and he is looking at the old Act.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, this section starts out by saying: "The Board has such powers and duties as are specified in this Act and is responsible for the administration of this Act and the regulations for those purposes made." It goes through all of these from (a) to (i). Just to add insult to injury, it adds in (i): "Supervise the industry for the purpose of enforcing its orders and regulations," and if you go through the previous ones the first one starts out with "investigate"; the next one is "meet the requirements"; the other one is "establish by order". A further one is "inspect the books and premises". The next one is "prohibit by order;" and the second last one is "establish by order". You know, what do we need to do in a democratic society? All you have to leave here is put

(MR. CRAIK cont'd)the rank in order on the officers of this Board that are going to regulate an industry that has done a reasonably good job in a democratic society.

This is another example of the dictatorial legislation that this government is hell-bent on passing in this session more than they've ever done before, and this isn't the first bill we have. But not only is section (i) of that No. 5 redundant, it just adds insult to injury. Everything you said in the introduction to that, all the powers are specified in (a) to (h), but to just make doubly sure that some person ordered and placed there by the Minister has the absolute power to tell everybody exactly what to do, they have to ask this section (i). The Minister can say all he likes about having read a previous Act, you can say all you like about 1935 legislation, 1958 legislation, this is 1976 legislation, this is the legislation we're looking at, and it's dictatorial legislation. We're dealing with this legislation and nothing else, and it is dictatorial.

MR. CHAIRMAN: Order please. Order please. Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I'm simply amazed at the speech just concluded by the Honourable Member for Riel. He suggested it was powers which were typical of this government, he referred to it as being dictatorial, and I turn to the existing Act which I gather was passed during his period of government, and these powers and provisions, and yet I read reference to "investigate and study", "adjust and settle", "fixed by order", "prohibit by order", "supervise the industry"; "supervise the industry for the purpose of enforcing its orders and regulations;" "make provision for the determination of;" "prescribe the records to be kept by licensees". Then I go on to find the very same powers that are being questioned now in the old Act, and yet the Honourable Member for Riel --(Interjection)--

MR. CHAIRMAN: Order please. Order please. The Honourable Attorney-General.

MR. PAWLEY: . . .the Honourable Member for Riel was trying to suggest that these new provisions were in some sort of way exclusive to this government, exclusive to this party, and hadn't been heard of before.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Well, Mr. Chairman, I simply . . .

MR. CRAIK: Mr. Chairman, we heard here tonight . . .

MR. CHAIRMAN: Order please. Order please. I recognized Mr. Uskiw. I'll put you on the list.

MR. USKIW: Mr. Chairman, it's obvious that the members of the opposition are in somewhat of a quandry. Having launched an attack on sections which they deemed to be not fitting for legislation, as being too dictatorial, but which are repetitions of legislation that has been on the books for decades, and some of which is their own doing, so obviously the members of the opposition are looking for some means of drawing a headline hoping that no one would understand that these are repetitive positions and sections of an Act simply replacing existing legislation in many areas and many sections of this bill.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, nobody here is looking for a headline. --(Interjection)--

MR. CHAIRMAN: Order please. Order please.

MR. CRAIK: Mr. Chairman, we're just wanting to take the Minister at his word. We're dealing with his legislation, we're not dealing with anybody else's legislation. We're not dealing with Ontario legislation, B. C. legislation, Maritimes' legislation, former governments' legislation, we're dealing with his legislation. We've had a person stand up before us tonight that says this not only applies to the milk he's distributing, the Act applies to the other products he's distributing as well. The Minister has said that he would be more than happy and would welcome other representations on this bill; we've had all of 48 hours now to have this bill made public, Mr. Chairman, and I think we should take the Minister at his word. We should look at the bill a little further. We should hold it in committee right now, and if tomorrow there are other representations we should hear that; and if tomorrow we wish to hold it over another day or two we should do exactly that. And Mr. Chairman, I would move that the committee now move to hold this bill in committee at least until tomorrow.

MR. CHAIRMAN: We have a motion before the committee, that this bill be held

(MR. CHAIRMAN cont'd)in committee until tomorrow. Is there any discussion on the motion? Call for the question.

QUESTION put.

A COUNTED VOTE was taken, the result being as follows: Yeas 10; Nays 13.

MR. CHAIRMAN: I declare the motion has been defeated.

MR. CRAIK: Mr. Chairman, now that the motion is defeated, I . . .

MR. CHAIRMAN: Order please. The Chair is going to rule that we will deal with the bill as we do by the House rules; this committee is the same as other committees of the House, we deal with the sections pertinent to which we are dealing with. Now with 5(1)(a) . . .

MR. CRAIK: Mr. Chairman, on a point of order.

MR. CHAIRMAN: Order please. Wait till I get finished and then you can make your point of order. Not only are you out of order but you're being damned rude.

5(1)(a). And as I said, this is the rule of the House. "Speeches in the Committee of the Whole" - that applies to committees outside the House because they're ruled by the House rules - "must be relevant to the item or clause under discussion." Now the Honourable Member for Riel, the Leader of the Opposition, a point of order.

MR. CRAIK: Mr. Chairman, my point of order is that now that that motion has been put and defeated with the assistance of the Minister, I think the Minister should be given an opportunity to explain his statement that there would be every opportunity for anyone wishing to make representation on this bill to make it, because his opportunities as of now would appear to be cut off.

MR. CHAIRMAN: Order please. That is not a point of order.

MR. CRAIK: Mr. Chairman, are you saying that it's not a point of order, that the public should be able to make representation on the bill.

MR. CHAIRMAN: Order please. You are now putting words in my mouth, and that is not what I said. I quoted you the rules, and the rules of the committee here are the same rules as we have in the House. You debate the clause, an item under discussion, and the point of order you raised has nothing to do with this section here whatsoever. If you want to make that motion or make that discussion or point of order, you make that on the report of the bill, not in the clause and item discussions.

5(1)(a)--pass; 5(1)(b)--pass. The Honourable Member for Rock Lake.

MR. EINARSON: I would like to ask the Minister just to clarify, to make certain, 5(1)(b), in the granting of licences to persons who engage in or carry on the business of supplying, distributing, processing - the word "supplying," does it not pertain to a producer?

MR. USKIW: Mr. Chairman, fluid milk in the definition is not supplied by a producer.

5(1)(b)--pass; 5(c) - Mr. Burtniak.

MR. BURTNIAK: I would like to move an amendment to this section: That clause 5(1)(c) of Bill 81 be amended by striking out the words "by a producer or a distributor to a consumer" in the 2nd and 3rd lines thereof.

MR. CHAIRMAN: The motion as moved. Is there any discussion on the motion? Motion as amended--pass. 5(1)(d). Mr. Burtniak.

MR. BURTNIAK: I move that clause 5(1)(d) of Bill 81 be amended by adding thereto, immediately after the word "milk" in the 2nd line thereof, the words "to be processed for fluid milk."

MR. CHAIRMAN: The motion as moved. Is there any discussion on the motion? Mr. Craik.

MR. CRAIK: Yes, Mr. Chairman, you should also add razor blades in that.

MR. CHAIRMAN: Any further discussion on the motion. The motion as amended--pass. 5(1)(e)--pass. Mr. Einarson.

MR. EINARSON: Mr. Chairman, I would like to ask the Minister, the last two words in clause (e) it states "other products". I would wonder if the Minister would explain what those other products are?

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Mr. Chairman, I think this is the point that was made by both of our delegates here this evening where they object to the control board having information

(MR. USKIW cont'd)with respect to the totality of their operation and that of course is a policy question and the policy decision in that regard is that a utility board cannot determine the price of producing or transporting or handling a commodity over which they have jurisdiction within a company framework that has other products unless they are able to separate and to know the costs that are imputed to each particular product handled by the company. So in this instance it is required for the purpose of serving the common good and the general public that they have access to all of that information.

MR. EINARSON: Yes, Mr. Chairman. Then is the Minister telling me this Board has got complete control of asking for information on the sale of say Manco if they were engaged in the business of not only selling dairy products but maybe selling bread and other commodities that this is involved under these regulations and under their powers and duties of the Board.

MR. USKIW: Yes, the Board would have the right to break down the costs of the company's operation in order to determine which of those costs truly belong in the area of milk production, distribution, retailing or whatever the investigation happens to entail, whatever it is that they are investigating whether it be a processor, a distributor or a retailer.

MR. EINARSON: Mr. Chairman, I plan to take note and will have some further comments later on this.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: I want to understand exactly - what you're referring now in terms of investigation of distribution, you're talking about a retailer, any retailer. In other words, the Board if it wanted to could investigate the T. Eaton Co., who may sell milk, and ask for information related to every other . . .

MR. USKIW: If the retailer happens to be a processor of milk licensed under this authority or this Board, if that was part of their total operations it could be that they would have to determine the costs or the component costs in the milk area, but to determine that they may have to have access to information in the other areas.

MR. SPIVAK: No, but then you're saying, you're talking about the processor being a distributor and a retailer as well.

MR. USKIW: That's right.

MR. SPIVAK: Well I wonder if the Legislative Counsel, because as I read it you're saying requires persons who supply or distribute processed milk, you're suggesting that the restriction is for processing and retailing and distribution really as strictly one operation.

MR. USKIW: If there is such a thing.

MR. SPIVAK: If it's an integrated operation. Well I wonder if the Legislative Counsel can indicate that that wording on (e) really is only applying to an integrated operation at this point, or does it not apply to all distributors.

MR. HENDERSON: Mr. Chairman, it's very hard to hear down here. I know that. . .but can the mikes be turned up, can the sound be turned up or something, it's very difficult to hear. You can't tell what's going on.

MR. CHAIRMAN: The Chair is informed the volume is up to maximum. Members would help by co-operating and keeping their voices down or caucusing outside.

MR. USKIW: Mr. Chairman, I wonder if I could elaborate here. In the absence of all of the information on costing, it is very difficult for the Board to decide on the setting of prices at the producer level or the processor level. So that it really is an advantage to both if they truly want the Board to consider their requests for price increases or price changes, that the Board has this facility. They are unable to carry out their responsibility without it.

MR. SPIVAK: Again, I'm coming back to the question of (e). (e) doesn't, as I read it, only refer to the integrated operation, it refers to any distribution or any retailer, and if that's the case then my example to (e) would apply and if the Minister's intention is what he suggested, then I would think that there would have to be an amendment here to at least restrict it to those operations for investigation.

MR. USKIW: Well isn't that redundant?

MR. SPIVAK: No, I don't think so.

MR. USKIW: If you don't handle more than just the one, then it doesn't apply.

MR. SPIVAK: Again I go back to the question of the police power or the power of investigation, requires persons who supply, distribute process, keep for sale or sell milk or dairy products to provide the Board - now you're saying that they must do all of those things to be investigated.

MR. USKIW: No.

MR. SPIVAK: Well then I'm saying to you that that means that a retail outlet could be investigated whether it's a processor or not.

MR. USKIW: Is that in the existing legislation?

MR. SPIVAK: Well it's in the existing legislation.

MR. USKIW: It's the same as in the old Act, is it? I'm advised that these powers are contained in the existing legislation. While the intent of the Milk Control Board is to set prices after public hearings and really in terms of setting the maximum price, it's irrelevant as to a particular cost of production of a particular retailer.

MR. SPIVAK: I think we're confusing . . . I have the duties and powers here and I don't see those duties and powers contained in the Act that I have in front of me. And the second thing is, what you are now talking about is the processor in his operation and the possibility of a vertical integrated operation in which case you are trying to allocate costs. Now I'm saying that that wording would now indicate that any retail outlet could in fact be investigated.

MR. CHAIRMAN: 5(1)(e) . . .

MR. USKIW: No, I wanted to speak, Mr. Chairman. I just want to point out that it is evident that all of these powers are within the framework of the existing legislation and while they may be there, they may not be used. Now we don't know whether there will be occasion to use the broadest of the powers that are contained in this Act so we're not adding to the powers of the existing Act, we still end up with a net reduction of powers.

MR. SPIVAK: Mr. Chairman, I have the duties of powers under 7(1) of the Act that is being repealed. I don't see those powers there and if they are, I'd like to understand how they are.

MR. USKIW: Yes. Under the old Act the retailers were also subject to licensing.

MR. SPIVAK: I'd like you to indicate the section so that I can understand what you are referring to in the old Act that is being replaced by this.

MR. USKIW: Well it may not follow clause by clause in that way but there are many sections in the old Act which cover this point.

MR. SPIVAK: Let's understand what the Minister is saying. You are saying that under the old Act these powers were there, not necessarily under duties of powers, but not necessarily in the same order, and it's now in this Act and that's all that's intended. But I suggest to you that wording of (e) means that the Board may investigate, supply, distribute, process, keep for sale or sell milk or dairy products. That means they can investigate any retailer and ask for information, and they have the power under The Evidence Act, relating to the cost of producing, transporting, storing, processing, packing and marketing of milk and dairy products, including the allocation of direct and overhead costs to fluid milk and other products, that in effect they are entitled to get the full retail picture. In the example I said of T. Eaton Co. they could ask for all the details.

MR. USKIW: If T. Eaton Co. asked for a price increase it's possible I suppose, yes.

MR. SPIVAK: Well again this is a thoroughly wide-ranging power and again in terms of the administrative responsibilities of the Board, I understand the concern with respect to vertically integrated operations, and I understand the necessity of determining information from a retail outlet but I don't understand the necessity of determining from a retail outlet if costs are related to other products, because surely the Board will set the price that will be sold.

MR. USKIW: Well I don't know of a situation where they would want to do that.

MR. SPIVAK: Well then I don't think you should have the power.

MR. USKIW: But we do know that the powers that are in the existing Act have

(MR. USKIW cont'd)been there for a long time - whether they've been used or not I don't know, and I don't know whether they would be used under this Act.

MR. SPIVAK: That's not a good enough reason for us to pass it now.

MR. USKIW: Well, Mr. Chairman, the Member for River Heights says that is not good enough. The fact of the matter is that the Board has looked at it with legal counsel and decided to retain a number of powers which they deem necessary to function. They have deleted some of their powers.

MR. SPIVAK: One of the functions that I think we have to perform in this Legislature is the constant review of legislation. When this legislation was passed, and I recall it being passed, I believe, in 1970, if I'm correct, we were concerned with other sections. I don't know what the experience has been and I'm not in the position to suggest otherwise but it would seem to me that if as a result of our review we find something that I think is inherently wrong, notwithstanding the fact that the power . . . well I wonder, is it not inherently wrong that the Board should have power to go beyond its scope and be able to deal with other products?

MR. USKIW: Mr. Chairman, just on that point - and this is hypothetical but it could happen - if a retailer or a retail association were to appear before the Board asking for an increase in the handling charge for milk, then obviously the Board would have to make a determination whether their request was warranted in that case. They may want to go deeper into the question and want to ascertain the cost of handling milk in a retail outlet. Now that has not happened because the retailers traditionally have never asked, as I understand it, historically speaking, for a price adjustment to cover their handling, they've always accepted the ruling of the Board. But it's conceivable that they may.

MR. SPIVAK: Mr. Chairman, we have 5(1)(e) in front of us. I'd like to move that "and other products" be deleted.

MR. CHAIRMAN: We have a motion before the Committee that the last line thereof "other products". I imagine if you want to move that properly it would be "and other products".

MR. USKIW: Mr. Chairman, I would like to speak to that motion. If we were to eliminate those three words, then really what we are doing is creating a helpless authority in determining the cost of these various items in order to determine the price that they must set. And that would be fair neither to the processor or whichever group wishes to make representation for a price increase, in that the Board would not be in a position to either grant or not grant such an increase without having that knowledge. And we have had that experience to date where the Board has decided not to consider an increase because of lack of information. This is why those words are in there.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, my reason for moving the motion is I have a suspicion that - and I think that if it's ever tested in a court of law, what will happen is that he will be interpreted as only dealing with milk products in any case, and that "other products" is really going to be interpreted as only referring to milk products. But that will only happen when it's referred to a court of law, and rather than leave this I think it should be excluded to that, simply again because the power of the Board is pretty substantial and the power of the government is pretty substantial in being able to investigate those rare situations . . .

MR. USKIW: It happens twice a year.

MR. SPIVAK: I know but this has never happened though. You've never had to impose (e) at this point.

MR. USKIW: Excepting we've had to deny an increase on requests because they couldn't get the information.

MR. SPIVAK: Yes, but again you're talking from processors.

MR. USKIW: That's right.

MR. SPIVAK: You're not talking from retail outlets because that's what we're really talking about.

MR. USKIW: Well no, we haven't had any . . .

MR. SPIVAK: But this does apply to retail outlets.

MR. USKIW: And it did before.

MR. CHAIRMAN: Mr. Johnston.

MR. FRANK JOHNSTON: I have a hard time understanding the Minister's argument, other than this is another bit of a bill like we had earlier this week, that wants to have control over business. Why? Well we're dealing with a bill that has the heading on it The Milk Control Act, but you have a statement in it requiring persons who supply, distribute or process that product, which could be a corner grocery, it could be a Dairy Queen. And at the end of it you say "and other products." This is The Milk Control Act, not the Campbell Soup Act, and I would really wonder why the Minister would want the power of "and other products."

MR. CHAIRMAN: Mr. Uskiw. Order please.

MR. USKIW: Mr. Chairman, I've always had the impression that the Member for Sturgeon Creek was a fairly knowledgeable businessman.

MR. JOHNSTON: Mr. Chairman, on a point of order, I'm not here to discuss my knowledge of business, I'm here to discuss this bill and I'm sick and tired of the Minister's sarcasm nonsense. Does he want us to talk about the bill or doesn't he?

MR. USKIW: And I would suggest, Mr. Chairman, if I have the floor . . .

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: . . . that he is indeed knowledgeable and he knows . . .

MR. JOHNSTON: Well, Mr. Chairman, on a point of order again, I'm not here to be told whether I'm knowledgeable or whether I'm not, I'm here to talk about this bill.

MR. CHAIRMAN: Order please. Whether the member is knowledgeable or unknowledgeable is not a point of order. We don't have a criteria for entrance into this Chamber whether a person is knowledgeable or unknowledgeable; in some cases I wonder whether there is any knowledge.

MR. JOHNSTON: Well, Mr. Chairman, could I at least then ask the courtesy of the Minister to answer a question without sarcasm.

MR. USKIW: Mr. Chairman, I want to answer the question. . .

MR. CHAIRMAN: Order please. Proceed.

MR. USKIW: . . . by indicating to the Member for Sturgeon Creek that he knows full well what he is suggesting. What he is suggesting is a weakening of the legislation so that the Board could not get the information that it requires and therefore cannot do a job in the public interest.

MR. JOHNSTON: Mr. Chairman, I made the statement that the Board should have every right to get the information regarding dairy products, not "other products".

MR. CHAIRMAN: Any further discussion on the motion?

QUESTION put, AMENDMENT lost.

QUESTION put, MOTION lost.

MR. CHAIRMAN: 5(e) . . . order please. 5(e) is passed, the motion is lost. There's no other way that you can do it now unless you can think up some other amendment.

MR. SPIVAK: Mr. Chairman, the amendments are lost.

MR. CHAIRMAN: All right. We're now calling for 5(e) - Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I don't know whether there is any agreement on it. I know my motion was defeated, but I want to come back to one of the statements that were made in argument to the motion, and that was the question whether a Dairy Queen could be included. Mr. Janssen says that a Dairy Queen would not be included, and my reading of it would be that it would be included and that's what the Honourable Member for Sturgeon Creek mentioned. If in fact the intention is that a Dairy Queen was not to be included, then I think the wording has to be changed.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Well, Mr. Chairman, the whole principle of the bill is the question of setting prices at two levels, the consumer level and at the producer level, that's the operation of the Milk Control Board, and the only thing they would be looking for is what is relevant to that function.

MR. SPIVAK: The question that was put by the Honourable Member for Sturgeon Creek was that a Dairy Queen would be included, and the statement made is that it wouldn't be included. Now I ask the Legislative Counsel if, on the wording of (e),

(MR. SPIVAK cont'd)a Dairy Queen would not be included?

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: Yes I would think that they would require a Dairy Queen to provide this information.

MR. SPIVAK: And so, Mr. Chairman, if that is the case, then I think that there should be an amendment which would clearly spell out what the government wishes, not just Dairy Queens.

MR. USKIW: Mr. Chairman, to accommodate the situation I suggest we hold (e) in abeyance until we consult further with the Legal Counsel. In the meantime we may have an amendment prepared.

MR. CHAIRMAN: All right. 5(1)(f)--pass; 5(1)(g)--pass; 5(1)(h)--pass - Mr. Einarson.

MR. EINARSON: I wonder if the Minister could explain the reason for this section (h) Container Samples. I'm sort of at a loss to wonder what he means by that section, Mr. Chairman.

MR. USKIW: Mr. Chairman, as I understand the operation of the Board, they have from time to time regulated in that respect, that it has come into question, so this simply confirms that they have the authority to do so. In 1964 they passed a regulation in that area.

MR. CHAIRMAN: Order please. 5(1)(h)--pass - Mr. Wilson.

MR. WILSON: Do you mean to say that under this section, that if somebody was in the manufacture of containers and had sort of a monopoly in the field that the Board or the government could change the rules of the game and regulate a different sized container and put that person out of business?

MR. USKIW: They have done that for example with the question of bottle caps in 1964.

MR. WILSON: In other words the people that are shipping out the milk are at the mercy of the Board.

MR. USKIW: Well I think the relevance at the moment is the metric system that's going to come in and there'll have to be some decisions made on the size of containers in the metric sense.

MR. WILSON: Will there be any government compensation for this change, or is it part of the cost passed on to the consumer?

MR. USKIW: It will happen in the way that all other changes are taking place with respect to metric.

MR. CHAIRMAN: 5(1)(h)--pass; 5(1)(j)--pass.

MR. USKIW: Can we now go back, Mr. Chairman?

MR. CHAIRMAN: Back to 5(1)(e) - Mr. Burtniak.

MR. WILSON: Mr. Chairman, you said 5(1)(j), where's that?

MR. CHAIRMAN: I said 5(1)(e), we're going back to (e).

MR. WILSON: Sorry, I might have heard wrong.

MR. BURTONIAK: Mr. Chairman, the motion THAT clause 5(1)(e) be amended by striking out the words "milk and dairy products" in the second line thereof and substituting therefor the words "fluid milk".

MR. CHAIRMAN: Can I just have that motion. I think that that should be "milk or dairy products". With that correction then.

MOTION presented.

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

MR. GRAHAM: Mr. Chairman, could you read that amendment again please?

MR. CHAIRMAN: Yes, I will. The motion before the committee is this: THAT clause 5(1)(e) be amended by striking out the words "milk or dairy products" in the second line thereof and substituting therefor the words "fluid milk".

MR. GRAHAM: Mr. Chairman, would that include reconstituted milk?

MR. USKIW: Yes, Mr. Chairman.

QUESTION put MOTION carried.

MR. MINAKER: Mr. Chairman, then could I ask a question, that if a local grocery store or Eaton's decided not to sell milk in fluid form but sold cheese and butter and so on, that the Dairy Board would have no access to their books? Is that correct?

(MR. MINAKER cont'd) I would suggest, Mr. Chairman, that possibly we're encouraging local stores and Eaton's and such to discontinue the carrying of milk with this type of legislation. With the amount of money that they make off it, I know that many will be saying well, it's not worth it to open our books to another Board in this manner.

MR. USKIW: If that were true it should have applied 30 years ago under the existing legislation.

MR. CHAIRMAN: Clause 5(1)--pass; Clause 5(2)(a)--pass; (b)--pass; (c)--pass; (d)--pass; 5(2)--pass; 5(3)--pass; 5(4)--pass - Mr. Spivak.

MR. SPIVAK: Mr. Chairman, on 5(4), this I gather is a new section, this section did not exist before if I am correct.

MR. USKIW: Yes that is correct.

MR. SPIVAK: I think the question of what information would be provided to the consumer is fairly important, because regarding costs and profits of producers and processors, I'd like the Minister to explain exactly what information would be furnished.

MR. USKIW: Well the intent here is that the consumers' associations or individual consumers who may want to present a brief to the Board should at least have access to information on costs, whether it be producer costs, processor costs, distributor costs, not in any particular way with respect to a particular firm but at least in a general way so that they can make their presentation with some degree of accuracy.

MR. SPIVAK: And so the information is not to be related to any particular firm, but general information. I ask the Legislative Counsel whether the wording really covers that intent and whether there shouldn't be a restriction with respect to the information supplied so the information realistically relates to the industry as opposed to individual producers, because I think this is more wide-ranging in its application.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: The problem is centered on the question of how they could get information from the Board with respect to a plant operation without having to name the plant. In other words they would be anonymous figures but they would be real figures in terms of costs.

MR. SPIVAK: My understanding is that a consumer group or a consumer - and the consumer in the definition section is any one person.

MR. USKIW: Yes.

MR. SPIVAK: So that in effect any consumer can request information, which is really statistical data for the basis of understanding the industry. I think that's what we're really talking about, and not the private affairs of the companies that in fact have had to file their information for the purposes of the Board's responsibilities. It would seem to me that what you're talking about is general information, not specific and that it should be in effect part of this, so that it's understood to be that.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: On this section too, I would like to see general information. I remember that the wording of this: Information to consumers where the Board may provide information it considers necessary for the consumer to adequately protect their interests regarding cost and profit. During the Minister's Estimates he had talked about pouring a good deal of milk down the drain, and this to me is a cost, and I wonder if he could state how many gallons were poured down the drain and where a consumer could go to get this information. So that's why I think that general information should be put in there, because if they're pouring gallonage down the drain while costs are going up, that's the type of thing I'm sure the consumers are interested in, and I wondered if that's the type of information - with that amendment, of general information.

MR. USKIW: Mr. Chairman, the purpose of that section is to give any consumer the right to make a presentation based on knowledge, in terms of costs, because they're talking about a price adjustment and whether it is required or not required to keep the industry afloat. At the moment the consuming public has no way or no access through the association or otherwise of getting that information, so we would want them to have it but we don't want to put any company in a position of having to have its costs publicized. That's the intent.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: Well I could agree that no one particular producer should have his costs publicized, but I wondered if the Minister for general information to the public as a consumer, like, would the consumer be able to find out like in your Estimates how many gallons were poured down the drain while prices of milk were going up. I mean, could you give us some indication when you mentioned that in your Estimates as to why and how?

MR. USKIW: That has nothing to do with the Board function, Mr. Chairman...

MR. WILSON: I see.

MR. USKIW: . . . in terms of holding hearings to consider price changes.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I wonder if the Minister could indicate to us whether and how he consulted with the consumers' groups to determine the particular details of this section of the bill. Because of the shortness of time they obviously were not able to appear and tell us, and I wonder if the Minister could indicate whether in fact they did consult and if they did so, what requests they might have received from the consumers who are involved in this area and to what degree the question of general information versus specific information was raised and how this bill reflects us?

MR. USKIW: Mr. Chairman, if the Member for Fort Rouge would read Section 5(3), it does indicate there that the Board have to give notice with respect to a public meeting.

MR. AXWORTHY: Mr. Chairman, if I can interrupt the Minister. It's not what's in the bill. I would like to know if the Minister in preparing this bill met with different consumer's associations in the province to discuss with them what they felt would be required in a way of information and to what degree it would be sufficient to have the kind of aggregate in regional-wide industry information as opposed to specific costs, profit, losses of audited statements of different companies. And I'd really like to know whether in fact there was any consultation that did go on and if so, perhaps the Minister would be kind enough to indicate what the nature of those discussions were.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: I'm advised, Mr. Chairman, that at the last hearing of the Board that there was quite an uproar about the fact that information was not available to the consumer groups. So that this emanates from the last round of hearings.

MR. CHAIRMAN: Mr. Spivak. . .

MR. AXWORTHY: Mr. Chairman, that really isn't a sufficient answer. The fact that there was an uproar at the board I would think would be a fairly insufficient base upon which to build a piece of legislation, and I would have assumed that if there was an uproar then the next step would have been to sit down in a calmer way and work the problem out and determine what in fact should have been done to solve the problem instead of simply reacting to it. That's what I'm trying to determine. I mean, Mr. Chairman, the point about this whole bill is that it seems to have been concocted inside the material labyrinth of the Department of Agriculture without any access to outside people, and that's what I really want to know is, in an important piece of legislation how far has the Minister gone to ensure that there's been fair and open discussion and consultation with all the interested parties including the Consumers Association, which again I gather from the Minister's remarks that have been responding to a dispute, and that according to the Board there has been no consultation with the Consumers Association as well as the producers and others. I'd like the Minister to tell us why he didn't go about undertaking those kinds of consultations and discussions, because after all I don't think you go about doing legislation that way, frankly.

MR. USKIW: Well, Mr. Chairman, I again want to tell the Member for Fort Rouge that this bill has been in preparation for some time and it's based on our experience under the old Act. This is one of the shortcomings that was pointed out to us by a number of people, including the members of the present board in the drafting of new legislation. This is one of the things that they centred on that there was a need for better consumer information in order to have better and more open consideration of any price increase for any particular group or person. So all this does is accommodate that. There's nothing cumbersome about this section.

MR. AXWORTHY: Well, Mr. Chairman, finally, because I think the Minister has answered the question, that there was no consultation and I would simply suggest to him that I don't believe that that is the proper way to proceed with a bill of this kind, and that if there was a concern based upon your experience with the lack of information for consumers, it would have been a fairly logical step to talk to the different consumers' bodies representing them to determine what kind of parts of the legislation would have been sufficient to cover their needs and their interest. But to base a piece of legislation purely upon the internal examination without any outward consultation with the public, whether producer, distributor, processor, retailer or consumer, I think is one reason why this bill is running into so much trouble, that they just simply didn't take the time to involve people as they should have and therefore the bill is not a good bill.

MR. USKIW: Mr. Chairman, I'm rather surprised at the Member for Fort Rouge who usually professes to support the other concept of openness and rights of the individual, including the consuming public, having to question a section which opens the door for that kind of information to be made available in a general way.

MR. AXWORTHY: Mr. Chairman, I don't want to let that remark pass because I believe I'm being totally consistent with everything I said before, and the primary requirement in openness and accessibility is to talk to the people who are going to be affected by legislation, to consult with them and to find out what they want.--(Interjection)-- If the Minister has conceded that that has not been done, that the consumers themselves have not been consulted in any way in this legislation, and therefore haven't had an opportunity to express their concerns or their needs, and it is simply a bill that's been created by his department, I think that is the first premise, and the kind of philosophy I have is that you first consult with people who are affected before you go about deciding what you're going to do for them.

MR. USKIW: Mr. Chairman, I think I should draw to the attention of the Member for Fort Rouge that there have been very dramatic changes in the operations of the dairy industry of this province over the last two years, one of which was a restructuring of the Milk Control Board to indeed give them a consumer-oriented role as opposed to a producer-oriented role which they had historically, and that came about as a result of setting up a producer-marketing board to look after the producer interest. So this being a consumer-oriented board it would be illogical not to have a section giving the consumers an opportunity to find facts and information in order that they could make their representations properly before this Board.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I'd like to move an amendment to 5(4). I move that 5(4) be amended by adding after "information" in the 4th line thereof the words "in statistical form without identifying the cost and profits of any producer or processor by name."

MR. CHAIRMAN: On the motion, moved by Mr. Spivak, is there any discussion on the motion? (Agreed)

MR. AXWORTHY: Mr. Chairman. . . motion again please?

MR. CHAIRMAN: That 5(4) be amended by adding after "information" in the 4th line thereof the words "in statistical form without identifying the cost and profits of any producer or processor by name." Agreed? (Agreed). 5(5)--pass; 5(6) - Mr. Jorgenson.

MR. JORGENSON: Mr. Chairman, I wonder how much has been paid to the Board in grants in the past.

MR. USKIW: Somewhere in the neighbourhood of \$60,000, Mr. Chairman.

MR. JORGENSON: \$60,000 the Minister has said. Is that grants to school boards, etc., for the school program?

MR. USKIW: No, no. This covers the cost of the operations of the Milk Control Board, their hearings. . .

MR. JORGENSON: For a period of how many years?

MR. USKIW: This is for a one-year period.

MR. JORGENSON: \$60,000 in the one-year period.

MR. USKIW: And this includes all of their activities with respect to the Northern Milk Programs, as I recall it.

MR. JORGENSON: Yes. Well that does cover a milk program then in the north?

MR. USKIW: No, no. In terms of their role in it, whatever administrative role they played the board meetings and so on, the public hearings, the advertising.

MR. CHAIRMAN: 6--pass; 7(1)--pass; 7(2)--pass. Mr. Einarson.

MR. EINARSON: Mr. Chairman, I'd like to ask the Minister if he could tell us who could possibly be exempted from this, if he'd explain that section.

MR. USKIW: Section 7(1). Is it 7(1) or 7(2)?

MR. EINARSON: 7(2), Mr. Chairman.

MR. CHAIRMAN: Right, 7(2).

MR. USKIW: Well, really it's anyone that your Board chooses to exempt. It may be individuals or classes of businesses. They could exempt retailers as an example.

MR. CHAIRMAN (Mr. Walding): Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, just on that point. Again in trying to make the legislation a little more precise and usable, shouldn't the legislation set out the kinds of the classes that would be considered without excluding it necessarily rather than leaving a pillage of discussion aboard. . .

MR. USKIW: Well, I'm advised in this connection, Mr. Chairman, that the Board does require flexibility for the practical application of its regulations. They may want to exempt certain classes of people or businesses, or even individuals, depending on the role that they play in the industry. You can't write it in in advance.

MR. AXWORTHY: Again, Mr. Chairman, the point is that I can't understand a tribunal wanting that flexibility. I'm not so sure legislators should be prepared always to give it to them in the sense that it really is delegating an awful lot of power and responsibility again that primarily will go unexamined. I again think that that is a poor principle upon which to base this legislation.

MR. USKIW: Just as an example, Mr. Chairman, if the Board was to licence all retailers and we found that there were retailers who had volumes of business that were totally insignificant in terms of the community or that particular operation, that it was really cumbersome and expensive to carry on that kind of surveillance and not in the public interest, that they would want to exclude those groups, they would only have to make that judgment on their own evaluation. We couldn't predetermine that in legislation.

MR. CHAIRMAN: Section 7(2)--pass; Section 8--pass; 9. Mr. Spivak.

MR. SPIVAK: I think just for the matter of the record, and I realize that this is in the other Act, the previous Act as well, there is no appeal from the refusal to grant a licence. --(Interjection)-- I know, but I just want to talk about the principle. There is no appeal on the refusal to grant a licence.

MR. USKIW: I know, but I wonder whether there shouldn't be one. This could be a valid question.

MR. SPIVAK: Again we're examining the Act again, I think the right of appeal should exist.

MR. USKIW: The question is, who the appeal would be to. You're dealing with a board here that has considered hidden information and evidence. The question is who would you appeal to?

MR. SPIVAK: The County Court.

MR. USKIW: The County Court.

MR. SPIVAK: Yes. You see the problem here is the reasons for the refusal to grant a licence are set out specifically, they're mandatory in the sense that the Board cannot grant a licence if these conditions are not met. They're really a question of fact. If anything frivolous ever occurred there still should be the right of the individual to have the appeal and the appeal would have to be based on the mandatory conditions that have to be met. Again, if we're talking in the principle that this is a utility, which is really the point that the Minister's making, then I think we have to look at it then from that point.

MR. USKIW: I'm just wondering though, by way of example, utility boards with respect to gas, for example, don't work in that way. There's no appeal provision that I'm aware of.

MR. SPIVAK: That has to do with costing. We're not talking about the granting of a licence for the planning of doing business.

MR. USKIW: This is a new business. Now the reason for this is, as I recall it historically, is that this is a controlled industry and there may be a limit on the number of licences granted for any particular function within the industry. Now if you had Rights of Appeal then you would be taking away from the Board that discretionary right to determine.

MR. SPIVAK: Then, in effect, then . . .

MR. USKIW: The processing industry, those that are in it vis-a-vis those that want to come into it and whether or not if licences were handed out indiscriminately, whether that wouldn't render the industry unviable or whatever . . .

MR. SPIVAK: Then you're saying that the Board may refuse to grant a licence for reasons other than specified in 9.

MR. USKIW: It's not in the public interest. It talks about the public interest here.

MR. SPIVAK: Really, again, that discretion of the Board I think still should be subject to review for the simple reason that there could be a frivolous action on the part of the Board or there could be any number of reasons why the Board would refuse.

MR. USKIW: Mr. Chairman, I don't think I could accept this one because of the nature of the industry. It is a controlled industry. I think we could find ourselves in courts all the time with respect to an application for a licence.

MR. SPIVAK: The area (b) is a controlling industry as well. The (a) (b) is controlling profits and wages. I think that's the best example that I could suggest of the needs for appeal. I think that there's a degree of consistency that's required in our thinking. You know, I put this to you without understanding the operations of the Board, and I'm not professing to, I'm only concerned in terms of its application with respect to legislation, and the kind of concerns I think we have to express for rights of individuals, people in any organized form to be able to do what they want, and it would seem to me that that provision should be there.

MR. USKIW: Mr. Chairman, I would compare this operation with that of the hotel industry, with that of the CRTC operations in granting licences to TV and radio stations, and so on. It's in that realm that I would view this particular section. I think it would be unworkable if we were to allow an appeal to a court.

MR. SPIVAK: Well, let me just ask the Legislative Counsel with respect to the Licencing Board of the Liquor Commission. Is there no. . . ?

MR. TALLIN: No, there's no appeal.

MR. SPIVAK: No appeal whatsoever. Are the grounds set in the Licencing Board hearing on the conditions under which the licence is to be granted or is it totally discretionary on that board, discretion with no mandatory provisions?

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: I'm speaking from memory now. But my understanding of the Liquor Control Act is that the Licencing Board doesn't issue licences, all it does is give advice and its opinions and recommendations to the Commission. The Commission makes a decision in its absolute discretion as to whether or not a licence will be issued; and as far as I'm aware there is no appeal from that decision.

MR. SPIVAK: No appeal.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: We have a Liquor Commission legislation. What other legislation do we have?

MR. USKIW: I referred to CRTC on licensing, TV and radio, it's the same thing. You'd be forever in the courts if you would allow that . . . Just to give an illustration . . .

MR. SPIVAK: But let me then put it to this point. We go back I guess to the Clean Environment Commission and the appeal at least to the Minister: Should there not then be an appeal to the Minister or to the Executive Counsel?

MR. USKIW: Well, again that would make it, Mr. Chairman, if I'm allowed the floor, much more dangerous in that you are then going to render a decision on political considerations and I don't think that would be advisable.

MR. SPIVAK: Let me then ask, Mr. Chairman, how many occasions have there been a refusal to grant a licence in the last three years? Have there been any?

MR. USKIW: I'm not aware of any.

MR. SPIVAK: You're not aware of any?

MR. USKIW: Other than under the Dairy Board, which is under the Dairy Act. There have been refusals to license plant expansion or new plants coming into being or the acquisition of existing plants for expansion of other plants, and that is not appealable for the same reason.

MR. SPIVAK: Well Mr. Chairman, again I'm not sure when we're going to be into third reading, but I'd like to just indicate and I give notice with respect to this, that I think consideration should be given to this bill; I'm not sure what form it would take, and I may very well introduce that amendment in third reading then.

MR. CHAIRMAN (Mr. Jenkins): 9--pass; 10(1)(a)--pass; (b)--pass; 10(1)--pass; 10(2)--pass; Mr. Spivak.

MR. SPIVAK: I wonder if the Minister can explain why we have to have a \$5,000 fine or imprisonment of a term of one year in jail, or both.

MR. USKIW: Not exceeding, it's the maximum.

MR. SPIVAK: Well I know, but the reference of \$5,000 as a maximum I think is a . . .

MR. USKIW: It's really up to the judge, Mr. Chairman, it's not setting the amount.

MR. SPIVAK: No but there's a maximum here and I think that it's an ominous figure to have a \$5,000 figure as a fine and a possibility of one year in jail, or both. What I'm saying is, first of all, was this section, the \$5,000 fine, in the other Act?

MR. USKIW: They were penalty sections, but they were . . . the

MR. SPIVAK: They were in the other Act.

A MEMBER: Is it not in this section?

MR. USKIW: No, Section 22 in the old Act.

MR. SPIVAK: In the same amounts?

MR. USKIW: No, they're lower.

MR. SPIVAK: What were the amounts in the old Act?

MR. TALLIN: \$100 and \$500.

MR. SPIVAK: 100 and 500, so now we've gone to \$5,000 and one year in jail, up to 5,000. I wonder then if you can justify the need for such an increase. And if the answer is inflation . . .

MR. USKIW: Well it's really up to the courts in my opinion, Mr. Chairman. If the charge is serious, then of course the judge will have the discretion; if it's a minor charge, I'm sure the judiciary is not going to impose a maximum fine. We certainly don't want a fine to be a license to violate the regulations or the Act.

MR. SPIVAK: Well again, what I'd like to find out, is there any uniformity for similar provisions in similar provinces for this kind of penalty and have you a uniformity or consistency with any other Acts in which you have provisions similar to this? This is substantial, and I think that one of the reasons is because one of the major producers happens to be a very large concern, but I don't think that justifies any kind of penalty being placed in here that would in effect reflect any particular bias at this time, so therefore I really would want to see justification for this amount.

MR. USKIW: Mr. Chairman, again I'm somewhat in a quandry here. The judge makes the decision as to the amount of the penalty. All this does is puts a ceiling on the amount so that it's from zero to that level, and I would rely on the courts to make that decision.

MR. SPIVAK: Was there a jail sentence provided in the other clause? Well Mr. Chairman, I would think that the government would have to justify whether there should be a jail sentence. --(Interjection)-- No, I understand, but why is the government now providing a jail sentence rather than a fine?

MR. USKIW: Well the provision is there, it's entirely at the discretion of the judiciary.

MR. SPIVAK: I understand that this provision will leave it to the judge, but the previous Act did not have a jail sentence of a year. Now this Act has a jail sentence

(MR. SPIVAK cont'd)for the year, and I'm just asking how the government justifies the inclusion of the jail sentence for one year at this point, increasing the fine as it has from \$500 to 5,000.

MR. USKIW: All I can indicate to the Member for River Heights, Mr. Chairman, is this was the recommendation of Legal Counsel in granting the Act, I don't mean our Legal Counsel, the Legal Counsel that was involved in the drafting of the legislation.

MR. SPIVAK: Well this is a punitive clause.

MR. USKIW: Not really.

MR. SPIVAK: Well I think it is.

MR. USKIW: Only in the opinion of a judge would it be such, and if it's been before the courts then it couldn't be punitive. It has to have a hearing.

MR. SPIVAK: But every licensee who fails to keep such records and makes such returns as the Board may require, or make those records available, is liable to a fine up to \$5,000, one year in jail or both. Now that's punitive, realistically that's punitive, to be able to provide that penalty at this point. And I'm asking, is it uniformity, does it exist in other jurisdictions for this kind of legislation? Or is it uniform with respect to other legislation that we now have, and if not, how does the government justify it?

MR. USKIW: Well again I simply indicate it's on the advice of the Legal Counsel that we had in the department putting together the legislation. But I repeat, that this is really something that is discretionary on the part of the courts, and I would suspect that if it was a minor offence that a judge would rule accordingly. If it was an offence that led to a fraudulent act, then I would suspect that the judge would be more harsh, but certainly it's not up to me to determine whether or not it should be a dollar or \$5,000. I'm talking about the ceiling, we're not talking whether there should be a penalty.

MR. SPIVAK: I'm quite aware of what you're saying. I wonder whether the Legislative Counsel can tell me with respect to the Consumer Protection Act what the offence and penalty clauses are and what amounts are involved there for people who violate these sections and who do not maintain records.

MR. TALLIN: It would take me awhile to find that.

MR. SPIVAK: Well maybe you'd like to move on to another section, because I . . .

MR. CHAIRMAN: Okay, could we leave that section for the moment and go on to 10(3) --(Interjection)-- Well we're leaving that until we find out some more, then we can hear you on that. 10(3)--pass.

MR. JORGENSON: I notice 10(3) is pretty much related to 10(2), if we may just leave the whole section open for the moment.

MR. CHAIRMAN: Okay. 11--pass; 12--pass - Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I have two amendments and I'd like to introduce the first one, and then if there's an agreement maybe go into the second one.

The first amendment would say "That Section 12 of Bill 81 be amended (a)" - this will be the first one - "by striking out the words under this Act in the first line thereof and substituting therefor the words and figures in any hearing held in the administration of any provision of this Act other than Clause 5(1)(a)".

MOTION presented and lost.

MR. SPIVAK: Well Mr. Chairman, can I then move That Section 12 of Bill 81 be amended (b) by striking out the words "or any person designated in writing by the Board." And I'd like to speak on that, Mr. Chairman.

MOTION presented.

MR. SPIVAK: Mr. Chairman, I do not believe that the Board who have the power should be in a position to provide that a person designated should in fact have the power of summoning witnesses and of being able to hear them and asking for the production of documents; if that's required and it's an extraordinary power, it should be required by the Board and the Board themselves should ask for that directly.

MR. CHAIRMAN: Any further discussion on the motion?

MR. USKIW: Mr. Chairman, we're receiving some Legal Counsel advice on this point. I might point out that that section is identical to the existing Act and

(MR. USKIW cont'd) therefore it was just copied, really not being given consideration in that light.

MR. CHAIRMAN: I wonder if we could leave that section and go on to the next. Agreed? (Agreed) 13. . .

MR. USKIW: Mr. Chairman, I think we can go along with the change in that regard, there's no hang-up on it.

MR. CHAIRMAN: Order please. That Section 12 be amended (c) by striking out the words "or any other person designated in writing by the Board."

QUESTION put MOTION carried.

MR. CHAIRMAN: 12 as amended--pass; 13(1)(a) - Mr. Burtniak.

MR. BURTONIAK: Mr. Chairman, I move, That clause 13(1)(a) of Bill 81 be amended by striking out the word "milk" in the last line thereof and substituting therefor the words "fluid milk" and "milk to be processed for fluid milk".

MR. CHAIRMAN: Motion as moved. Is there any discussion on the motion? Pass. 13(1)(a) as amended--pass; (Sections 13(1)(a) to 17 were read clause by clause and passed.) Mr. Wilson.

MR. WILSON: Mr. Chairman, 18(1), I think under this section that an amendment should be considered that would eliminate the jail term of one year or both. I see the Minister of Corrections is here and he would probably agree with me we have no room for sexual offenders, never mind worrying about people under the Milk Act. I think that it's terrible that this is even in the --(Interjection)-- well I think it's terrible that you have a jail term under something that deals with a summary conviction, where under the Consumer Protection Act you don't send people to jail, and I think there should be an amendment that would wipe out this jail sentence. And also you're treating people different. You're encouraging people to become incorporated, because as a single person corporation they don't go to jail, whereas as individuals they do.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: I guess there's no one around to protect the integrity of the courts, but I wish the Member for Wolseley would listen when I explain to him, as I explained to him before he asked or made the gratuitous remarks relative to my ministry, that the people who are sent to my institutions are as a result of judgments of the court and I think it ill behooves a member to reflect on the judgments of the courts in a committee meeting of the Legislature.

MR. CHAIRMAN: Well I say that the honourable member makes those remarks at his own risk, seeing what happened to one Honourable Minister. --(Interjection)-- On 18(1)? Mr. Spivak. Order please.

MR. SPIVAK: Mr. Chairman, we've looked at the Consumer Protection Act, there is no jail provisions in it. I guess the amounts vary with respect to the fines and I'd be prepared to accept the provisions here with respect to the fines provided the jail term is eliminated here and hopefully eliminated in 10(2).

MR. USKIW: Mr. Chairman, just to end the debate on that point, we have no hang-up on the jail reference so that they can be deleted wherever it's mentioned on any of the sections. --(Interjection)-- Well, wherever it appears.

MR. CHAIRMAN: Will you move that motion, Mr. Spivak?

MR. SPIVAK: I'll move it on 18(1)(a) that - well we had better look to Legislative Counsel to give us the drafting of it.

MR. TALLIN: Strike out the words "or to imprisonment for a term not exceeding one year or both."

MR. SPIVAK: Moved as the Legislative Counsel has read.

MR. CHAIRMAN: Mr. Spivak has moved that everything after the word "1,000" in the second line thereof of (a) be deleted. Agreed? (Agreed)

MR. USKIW: Could we go back to 10(2) then?

MR. CHAIRMAN: Can we go back to 10(2). Mr. Spivak.

MR. SPIVAK: Yes, Mr. Chairman, I move that everything after the word "5,000" in the third line thereof is deleted.

MOTION presented, AMENDMENT carried.

MR. CHAIRMAN: 18(b)(1)--pass; 18(1)--pass; 18(2)--pass. Mr. Einarson.

MR. EINARSON: I'd like to ask the Minister, what constitutes an officer in this section?

MR. USKIW: Mr. Chairman, I think if you read the section, it's self-defining. It talks about the individual who acquiesced in or participated in a commission of the offence, so it's to me self-explanatory, that has to be a conviction before it applies.

MR. EINARSON: I would like to ask the Minister, Mr. Chairman, supposing the manager of a processing plant became involved in absconding the funds or violating this Act, would any one of the directors be held responsible if that be the case?

MR. USKIW: It doesn't say that, Mr. Chairman.

MR. EINARSON: I wanted to make that perfectly clear.

MR. USKIW: Let's read the section, Mr. Chairman.

MR. CHAIRMAN: Could we just have a little less noise, please.

MR. USKIW: It says "Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in the commission of the offence, is a party and guilty of the offence and liable." So that really it's very clear.

MR. CHAIRMAN: Any further discussion on 18(2)? Mr. Spivak.

MR. SPIVAK: The Minister of Consumer Affairs is here, I wonder what similar provisions apply in the new Corporation Act with respect to the liability of the directors and officers of the corporation with respect to a violation of the corporation or an act which is an offence. . . In other words, I think what should happen is there should be some uniformity between this and in The Corporation Act itself. I don't have Bill 37 in front of me but I think --(Interjection)--

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: I take it you're questioning the making of officers and directors guilty of offences.

MR. SPIVAK: No, I'm not questioning that. What I'm simply saying is, I wonder if there is any uniformity between 18(2) and the new Corporation Act, in which there are liabilities of directors and officers for offences committed.

MR. TALLIN: I don't think so because under that Act, as I understand it and I haven't studied it very thoroughly I must admit, but as I understand it the offences under that Act are for actions that the directors took in conflict with the interests of the corporation . . .

MR. SPIVAK: All right then let me then ask in terms of any other Act that we now have in which there. . . First of all, is this provision then new, not just in this Act but new in terms of legislation in Manitoba?

MR. TALLIN: No it's quite a frequent provision.

MR. SPIVAK: All right. Is there uniformity with this in other sections?

MR. PAULLEY: Mr. Chairman, if I may interject. As the Acting House Leader may I suggest that a motion be produced by the Committee that Committee rise and report to the House and the Speaker take the Chair and the House adjourn and the Committee on Law Amendments resume its deliberations as soon as the House has adjourned.

MR. USKIW: Mr. Chairman, just on that point I'm wondering whether we could finish this bill and then - we're on the last page.

MR. PAULLEY: Mr. Chairman, I'm prepared for anything providing that can be expedited, and I'm not trying to impose upon the Committee but I feel that I have my responsibilities as House Leader. I don't want to be dictatorial but if it's felt that the last couple of sections can be done quickly, then I see no problem as far as I am concerned. Outside of that then as the Leader of the House, I was giving my directions.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: . . .we rise, like the House Leader recommends, go in and then come back and finish the bill and anything else we may want to do.

MR. PAULLEY: That is my suggestion. Mr. Chairman, not being a member of the Committee I cannot officially . . .

MR. CHAIRMAN: Order please. Committee rise.

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MR. CHAIRMAN: Bill 81. We were on 18(2). Mr. Spivak. . . Mr. Adam on a point of order. Use the microphone please.

MR. ADAM: I'm just wondering, Mr. Chairman, section 10(2) was held in abeyance.

MR. CHAIRMAN: It was passed.

MR. ADAM: Yes, but the Member for Morris also asked that 10(3) be held in abeyance. I'm just wondering whether that was passed.

MR. CHAIRMAN: 10(3) has not been passed, you're quite right. Can we deal with 10(3)? Passed. 18(2) - Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I think here that there is some explanation needed because my understanding here is that where a corporation is found guilty of the offence, after it has been found guilty of the offence the directors and officers can now be charged under the Act and can be convicted and fined similar to that of the corporation, but where you're dealing with a single family operation, which in effect has the corporation and the family involved, then they are really placed in double jeopardy. And in effect my understanding would be that under normal considerations if officers or directors are to be charged along with the corporation for an offence, they should be charged jointly at one time and should be convicted together rather than have what you have here, which is really two separate actions. --(Interjections)-- Yes, but they could be charged separately under this Section.

Okay I agree that they could be charged together and the hearing could take place at the same time and the conviction would come one after the other. That's fine. But in effect this provision says that a hearing could take place and a conviction and a charge then could be laid against the officer, and I think that's a mistake.

MR. TALLIN: It would be left to the discretion of the judge I expect to determine whether the corporation or the director should bear the brunt of the fine and in which case he could decide that there would be a low fine in connection with one and a high fine in connection with the other or perhaps if he thought it was a serious matter in which both the corporation and the director or officer should both be penalized severely, you might have a high fine in each.

MR. SPIVAK: But that's . . .

MR. TALLIN: And in the case that you speak of, in the family corporation where in effect the penalizing of the corporation would be tantamount to penalizing the director or group of directors already, I suspect the judge would likely take that into consideration in the nature of the penalty that he imposed.

MR. SPIVAK: Well then shouldn't the bill basically say then, that where. . . in the prosecution of a corporation it's determined by the judge that in effect the officers or directors should be included in that inclusion, because in effect right now the initiation is not that of the judge, the initiation is that of the Crown or the Board. In other words, if the Board is the one that initiates it then you're going to have a problem if the judge in terms of his findings finds that as a matter of fact, then surely he should have the ability to make the imposition of the fine.

MR. TALLIN: Are you suggesting, Mr. Spivak, that the courts have a hand in deciding who is to be prosecuted?

MR. SPIVAK: No, no. I realized the error of my ways when . . . even before you put the question because of the tone of your voice. No. But then let's be frank about it: There should not be a question of double jeopardy nor should there be the possibility of a double prosecution. . . well a prosecution which in effect is the same thing. I think that that protection should exist. I don't know how you'd amend this but I think it should be amended.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Mr. Chairman, my understanding is that this is a very standard provision in legislation, especially at the federal level. Virtually every piece of legislation has some relevance in this connection, it provides for this kind of a section.

MR. SPIVAK: Well in Manitoba do we have this section other than in some new legislation?

MR. TALLIN: In some new legislation?

MR. SPIVAK: Yes, other than in new legislation.

MR. TALLIN: Well it's a kind of a clause that's grown up in about the last 15 years and being added to more and more penal sections. . . I couldn't say that I'd recognize it in anything. . . I've never noticed it in anything more than 15 years old.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I would like to make an observation and more or less request the views of the Minister of Agriculture. I believe and I think it was the intent, and I'm just guessing, the intent in this was, in Section (a) I believe the intent was to more or less curtail it to producers and section (b) was in the secondary aspect of . . . but I could be wrong. Maybe that might be one way of making a differentiation here.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: This section does not apply to producers other than in his connection with the selling of milk to the Producer Board --(Interjection)-- rather to the consumer. This is a section that is applicable to the industry but not to the producer.

MR. GRAHAM: It applies to any provision of the Act.

A MEMBER: Yes but the producers are not in the Act. . .

MR. USKIW: If you look at the Act the producers are engaged only in the selling of milk to processors; this Act is really relevant with respect to the further processing.

MR. SPIVAK: . . .I've asked the Legislative Counsel and he's looking at The Securities Act at this point. I wonder if we could maybe move on to another section and then come back to that if that's all right.

MR. CHAIRMAN: Agreed? (Agreed) 19(1)--pass; 19(2)--pass; 19(3)--pass; 20--pass?

MR. EINARSON: Mr. Chairman, I'm wondering if the Minister could explain this section. In the heading it says "vesting of assets and liabilities" and yet when you read the clause, "the Lieutenant-Governor-in-Council may by order vest the assets" and it does not mention liabilities. Could he explain that, Mr. Chairman?

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Mr. Chairman, it does refer to obligations but . . . there is an amendment here so I think we should proceed with the amendment first and then debate it as amended.

MR. CHAIRMAN: Mr. Burtniak.

MR. BURTNIAK: I move, THAT section 20 of Bill 81 be amended by adding thereto immediately before the word "upon" in the third line thereof, the words and figures "as of March 31st, 1975."

MOTION presented.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: No, I hadn't. . .

MR. CHAIRMAN: Well who is it?

MR. GRAHAM: It was Mr. Einarson.

MR. CHAIRMAN: Mr. Einarson.

MR. EINARSON: Well, Mr. Chairman, I can't see this amendment has any relevancy to the point that I made. I'm wondering why it is that in the heading here, "Vesting of assets and liabilities" but yet in the clause as you read it, it makes no mention of liabilities, merely assets.

MR. USKIW: It talks about obligations, Mr. Chairman, it's the same thing.

MR. EINARSON: You mean the liabilities are termed as obligations?

MR. USKIW: Yes.

MR. EINARSON: I wonder further, Mr. Chairman, if the Minister could explain the reason for this section being written the way it is.

MR. USKIW: Mr. Chairman, this is the whole administrative section which is transferred over from the Milk Control Board to the Producers Marketing Board and there were physical and financial assets as well at that particular time. This legalizes that transfer. It's now held in trust. The assets, the physical, not physical, the financial assets are held in trust at this point in time.

MR. CHAIRMAN: Mr. Jorgenson.

MR. JORGENSON: Well, Mr. Chairman, what the Minister is doing is suggesting to the Committee that the words "obligations" and "liabilities" are one and the same

(MR. JORGENSEN cont'd)and I don't think they are. An obligation is one that can be interpreted as being a responsibility of some kind, but the liability I would assume to be a financial liability or a physical liability, or a legal commitment.

MR. USKIW: That's right.

MR. TALLIN: Well the word "liabilities" in the subheading woundn't, it's the word "obligations" that would govern it. Obligations I think would only be referred to legal obligations in the way of having to perform contracts of one kind or another, whether it was a monetary obligation to pay money or to perform a service or anything else. An obligation which could legally be enforced. --(Interjection)-- That's right it covers the liability.

MR. JORGENSEN: Such as a check-off for Crocus or something like that I suppose.

MR. USKIW: Mr. Chairman, I'm familiar that members are searching for . . .

MR. TALLIN: An obligation as yet unpaid is a liability.

MR. CHAIRMAN: Any further discussion on the motion as amended? Pass. . .

MR. HENDERSON: Mr. Chairman, that amendment, doesn't it read wrong? Shouldn't this here amendment come after the word "before" instead of . . . You know it doesn't read right if you put it in there. Your own amendment.

MR. CHAIRMAN: The motion before you is this: THAT section 20 of Bill 81 be amended by adding thereto, immediately before the word "upon" in the third line thereof, the words and figures "as of March 31, 1975".

MR. TALLIN: Obligations of the board as of March 31st, 1975.

MR. HENDERSON: Yes, it should be after then.

MR. TALLIN: It's before the word "upon". The reason I didn't put it after the word "board" is that board appears twice and it just lengthens it out, that's all. It comes after the word "board" where it appears the second time in the line.

MR. HENDERSON: Okay.

MR. CHAIRMAN: 20 as amended--pass; 21(1)--pass; 21(2)--pass; 21--pass; 22--pass; 23--pass. Mr. Spivak, back to 18(2).

MR. SPIVAK: Mr. Chairman, going back to 18(2). Now I understand its intent and it can only apply after conviction, so that I accept that in terms of . . . but I wondered . . . well I guess we're finished all sections.

MR. CHAIRMAN: Well we have to have 18(2).

MR. SPIVAK: Well, I agree to 18(2).

MR. CHAIRMAN: 18(2)--pass - Mr. Jorgenson.

MR. JORGENSEN: Mr. Chairman, I'm still not clear on that particular section, where a corporation is guilty of an offence under this Act, any officer, director, agent of the corporation who directed, authorized or assented to, acquiesced in, or participated in the commission of the offence, is a party to and guilty of the offence. Should that not read that he can be charged as a party to and guilty . . . In other words you're convicting him before he even . . .

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: This is the normal language of all, pretty well all penalty offence sections throughout Canada. And it says when a person does this he is guilty. The problem is proving that he did that and until you've proven that he did that, he is presumed innocent. In this case you must prove first of all that the corporation was guilty of an offence; and second, that the person you're charging authorized, assented to and acquiesced in, and when that is proven beyond a reasonable doubt he is then guilty.

MR. JORGENSEN: I see.

MR. CHAIRMAN: 18(2)--pass; Preamble--pass . . .

MR. SPIVAK: Mr. Chairman, I just wonder if I can ask the Minister one question, and whether he would be prepared to deal with it now and possibly in agreement. I indicated before that I felt that an appeal should be allowed on Section 9. Can I just refer him to The Consumer Protection Act and can I refer him to the refusal to grant a license, which is section 78(1) and one of the grounds for refusal to any person under circumstances where the director is of the opinion that it would be injurious to the public interest to grant a licensee. Which is essentially the intent of this last line and the fact that there is an appeal section from the decision of the directorate to the Court of Queen's

(MR. SPIVAK cont'd) Bench and the grounds for the appeal are laid out very clearly, in which they have to allege some material, as a matter of fact which is not correct, and not allow or constitute a reason for refusing to grant or renew of licence, and I wonder whether he would consider that appeal section now.

MR. USKIW: Well, Mr. Chairman, if you read the section it says that the Board shall not grant a licence unless it is satisfied that all of the requirements are met in the public interest. So it deemed that the Board will determine the public interest. Now the suggestion is that somebody else should determine the public interest. Now the purpose of this Board is to serve the public interest. I think it's a double application of the same section if you have an appeal provision.

MR. SPIVAK: Well then I'll leave that and I'll argue it in the House.

MR. USKIW: Okay.

MR. CHAIRMAN: Preamble--pass; Title--pass; Bill be Reported --

A MEMBER: Ayes and Nays, Mr. Chairman.

MOTION that the Bill Be Reported presented and carried.

BILL 20 - AN ACT TO AMEND THE TRADE PRACTICES INQUIRY ACT

A MEMBER: Page by page.

MR. CHAIRMAN: Page by page, or what is your will and pleasure? Page 1--

MR. CRAIK: Mr. Chairman, I understand that there is a delegation here to speak on the Trade Practices Act who became aware of the bill this morning, and would suggest at this time that if there is representation to be made that the party be able to make it now.

MR. CHAIRMAN: Is it the will of the committee that the delegation be heard? (Agreed) Will you come forward and give me your name and who you represent. Bill 20.

MR. G. R. HUNTER: Mr. Chairman, members of the committee, my name is G. R. Hunter of Pitblado and Hoskins and I'm representing Imperial Oil Limited as well as other plants who are directly affected by Bill 20. Unfortunately we did not have an opportunity of seeing this bill until yesterday and realizing its implications. I appreciate the privilege that is being granted to me to appear before you to express certain views which I trust will be accepted in the spirit in which they're given, namely one of understanding and co-operation.

Bill 20 is a very far-reaching bill in respect to the amendments suggested to the present Act, particularly with respect to the amendments to the preamble which in paragraph 1(b) says, by adding thereto immediately after the word "them" in the fourth line thereof the words "and for regulating the prices charged for any article or product sold or provided in connection with any trade, business, industry, pursuit, occupation, calling, profession or activity."

And then if you would direct your attention to the amendment to 11(2) which is on Page 2, regulations respecting prices, where it says "where any article or produce is the subject of an inquiry under this Act, or any trade that is the subject of an inquiry under this Act is involved in the sale or distribution of any article or product to the public, and the Board conducting the inquiry recommends in an interim or final report that the price of the article or product be controlled, if in the opinion of the Lieutenant-Governor-in-Council the article or product (a) is essential in the day-to-day activities of a significant number of people in the province." Now pausing there, there is no definition or directive as to what is a significant number. We go to (b), "is available only from a single distributor or from a limited number of distributors so that effective competition is inhibited." Limited number, how is one to determine what's a limited number? And then "so that effective competition is inhibited," what is effective competition?

In the Combines Investigation Act which is a Federal Act which has been recently amended, and phase two is just going in on July 1st, there are boards, there are certain tests and so on, and I suggest that this legislation is double-banking existing federal legislation.

"(c) is not an article or product for which a reasonable substitute can be easily and widely obtained." Now the Lieutenant-Governor-in-Council with all his wisdom, is he an economic arbiter who can say what's a reasonable substitute which can be easily and

(MR. HUNTER cont'd)widely obtained?

Now then (d), "is sold at a price which has increased by more than 10 percent in the previous 12 months." Well there is the Anti-Inflation Board Act and regulations and this seems to be double-banking federal legislation again. Then "the Lieutenant-Governor-in-Council may by regulation prescribe the maximum price that may be charged for the article or product, whether by way of sale, price, service charge, commission or otherwise." I'm suggesting, Mr. Chairman and members of the committee, that this legislation may be ultra vires - and you can well say, well if it is and one of your clients gets hurt, you've always got the right to take it to court. On the other hand, I think as legislators and lawmakers, you should not frivolously - not frivolously, but by inadvertence dash into something that may be ultra vires. You may have good reasons for this amendment to the Act, but I suggest that the present federal legislation adequately covers it, that is through the Anti-Inflation Board Act, the Anti-Inflation regulations and the Combines Investigation Act; and I think you're just going to confuse people, because many of the clients that I represent deal in interprovincial and international trade, and I think that if the Lieutenant-Governor-in-Council by regulation purported to fix prices under this that it might be contrary to what they can do under federal legislation and all it's going to do is give us lawyers more business - and we're not here asking for business. We think we are getting the business.

Mr. Chairman and members, we question the necessity at this time, and the desirability of this legislation, and my submission is that the bill should be stayed until it's had further consideration and an opportunity because this bill only came into our hands on Wednesday - I think it had first reading on Monday, but I know Mr. Tallin will know when it had first and second reading. I do suggest that this is not a national emergency, it's not a provincial emergency, there is existing federal legislation, and I suggest this be stayed until people have had an opportunity of making representations. I apologize for not being here earlier and requesting permission to speak to it, but it's all been done so quickly that we haven't had and our clients haven't had an opportunity of studying and considering the problems involved. And again I reiterate, there is federal legislation in the Combines Act, the Anti-Inflation Board Act and the Anti-Inflation Board regulations which does exactly what this says. Thank you very much.

MR. CHAIRMAN: Thank you, Mr. Hunter, there may be some questions members of the committee may wish to ask. Mr. Turnbull.

MR. TURNBULL: Mr. Chairman, I have a question for Mr. Hunter with regards to the Combines Investigation Act. Does that Act setting out powers of inquiry into combines enable anyone, the Lieutenant-Governor, the Governor-in-Council or any agency of the Federal Government, to set the price while the investigation is being undertaken?

MR. HUNTER: The Combines Investigation Act does not give anyone the power to set prices.

MR. TURNBULL: So you would say then that this Act is different from The Combines Investigation legislation in that respect.

MR. HUNTER: No, but this is similar to the Anti-Inflation Board Act and its regulations, whereby the price can be controlled, but in the Combines Investigation Act if somebody is combining, if you look at Section 11(2), a significant number of people and so on inhibiting competition or lessening competition, and there's a whole flock of cases on jurisprudence.

MR. TURNBULL: Yes. One further question. The Anti-Inflation Board statutory powers and the regulations under that statute really are powers to determine profit margins rather . . .

MR. HUNTER: Profits and prices.

MR. TURNBULL: Rather than prices as this bill is directed at. And doesn't the federal legislation as well really enable the companies who cannot purely allocate costs for any product line, doesn't it allow them to charge what they will with particular product lines if their total income over the previous five years is not in excess of 95 percent of what it had been over those five years.

MR. HUNTER: Well I think throughout Canada with the accountants and the lawyers, financial analysts and everyone else, there is a problem in understanding the regulations. But it's not just profits, it's also prices, and the prices and the wages and

(MR. HUNTER cont'd)what you can pay in compensation are controlled by areas, that is certain sectors, so that the regulations as presently drafted - I heard of one company that had to hire extra people to make sure they stayed within the guidelines, and it's going to cost one company alone \$250,000 to do the monitoring to report monthly. So that there is no question that as prices, wages and profits under the Anti-Inflation Board are being strictly monitored and will be controlled, and there are penalty sections in there.

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

MR. SPIVAK: Mr. Hunter, you're here representing Imperial Oil.

MR. HUNTER: Yes, as well as others.

MR. SPIVAK: I want to, if I can, because I think that this particular Act has some significant application to what's happened in the past here in the province. There was a price freeze put on oil products in Manitoba for a period of time even though the Federal Government and Provincial Governments had in fact increased the taxation to be paid. Under normal practice, because it is in fact a utility, the oil companies I gather would have had the opportunity of applying to the Public Utilities Board for an increase within a stipulated period of time. There would have been costs, a hearing - and if I'm wrong I want to be corrected on this because that was my understanding - and the hearing then would be based on the presentation, the presentation would have been based on the fact that the Federal Government and other governments had imposed taxes on them which had to be paid and this was simply passing on the costs. Am I correct at that point?

MR. HUNTER: My understanding, Mr. Spivak, is that when the price freeze was put on it was done under an Order-in-Council as an emergency measure, I could be wrong, but I don't think that there's any legislation. I mean taxation, yes, certainly, but I think that the. . .

MR. TURNBULL: Pardon me, Mr. Chairman, I'm not sure what Mr. Spivak was getting at, but the gasoline price freeze was imposed in this province by passing an Order-in-Council declaring distribution of gasoline to be a public utility under the Utilities Board Act.

MR. SPIVAK: The point I am trying to make is that by declaring the oil companies to be a public utility, by placing the freeze, then the right existed for the oil companies to go to the Public Utilities Board for an increase or for justification of increased prices, and of course in their presentation they would have been bringing in a very obvious fact that new taxes had been imposed on them and they were trying to in fact pass them on. Now there would have been costs to that, but I think it would be very clear from the history of the Public Utilities Board at this point that the increase probably would have been given, the taxes having been imposed on the federal level.

Now my point is, that under this procedure, as I understand it, if the same circumstances were to arise, the oil company would have its prices frozen, an inquiry could take place and there would not be the ability for a hearing to take place on the specific price increase but rather on the industry industry itself. And my concern at this point in reviewing it, in directly asking you, because I think we've gone through the circumstances once where it was deemed in the public interest for a price freeze to take place, that in effect this measure really substitutes the action of the government in the oil case as taking the position that the only way that they could control pricing was to in fact declare it to be a public utility, whatever the item would be. And the point that I am trying to ask with respect to yourself, is that in terms of other jurisdictions where the oil companies were involved, was there any course of action taken similar to Manitoba with respect to its course of action, or are there similar statutes in other jurisdictions which would give the power of any enquiry and the ability then to be able to freeze it during that period?

MR. HUNTER: I'm not in a position to answer that, Mr. Spivak, but my partner Mr. Jessiman is here and I think he's prepared to address himself to that question. So with your permission I would like to leave that for him to answer.

But the whole thing is that this legislation - you see there's no review, there's no appeal from this - there's a penalty. I mean I've reviewed Section 11(2), but then when you get into 11(3), if you do any of these bad things you're a crook. Yet there is no right of hearing, there's no provision for a right of hearing in this legislation, or representations to be made. There is no appeal to a review or regulatory authority. There's

(MR. HUNTER cont'd)no appeal to a court. It's just whatever the Lieutenant-Governor-in-Council decides. So I can only reiterate what I said earlier, I think that this matter should be stayed until you've had an opportunity of hearing from the industry and the services, because this includes services. I mean the medical profession, the architects, the engineers, the lawyers, they might all have something to say about this. But there's been no opportunity in this short time since the first reading for these people to come before you. As I say, I know Mr. Jessiman is going to speak to you and I think he'll deal with Mr. Spivak's question. Are there any other questions?

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I wonder if Mr. Hunter would answer some questions based upon the statements he made. Mr. Hunter, you suggested that you saw a contradiction between the provisions of this Act and the Combines Act in respect of the fact that many products are sold on an interprovincial or international basis. Now would it be your understanding that The Combines Act . . .

MR. CHAIRMAN: Would you use the microphone please?

MR. AXWORTHY: I'm using it.

MR. CHAIRMAN: But you're talking the other way. You're not using the microphone. Put the mike over on the other side of you . . . (no mike)

MR. AXWORTHY: All right. Can you hear now, Mr. Chairman?

MR. CHAIRMAN: Very very distinct.

MR. AXWORTHY: Good, I'm glad to hear that.

MR. CHAIRMAN: Order please. Just speak up and you'll have no problem.

--(Interjection)-- Order please.

MR. AXWORTHY: Are you finished, Tom? Mr. Hunter, could you tell us what you meant by the contradictions between The Combines Act and the application of this Act, particularly in these matters? Which Act would supersede or take paramount importance in relation to the particular activities that are being regulated?

MR. HUNTER: Well in my opinion, Mr. Chairman, Mr. Axworthy and gentlemen, The Combines Act has been upheld as intra vires legislation of the Federal Government on many occasions, and the jurisprudence that has been established does deal with these very matters. But even if you were tracky, but the draftsman didn't track the same words as The Combines Act, but it's not necessary as far as Manitoba is concerned because The Combines Act effectively covers these various points mentioned in (a)(b)(c), not (d) - but that comes under anti-inflation - and it doesn't say that the Governor-General by regulation can fix prices, but The Anti-Inflation Board Act and Regulations has done that for a period.

MR. AXWORTHY: Mr. Chairman, this is what I'd like to get clear. Under the definitions, under 11(2)(a)(b) and (c), particularly (b) where it says: "The Act would apply where there is a limited number of distributors," that is almost by definition under The Combines Act an anti-combine action I believe. Now the question I'd be asking is: Would The Combines Act not be available for use inside the Province of Manitoba in those cases, even if the matter was not interprovincial or international itself?

MR. HUNTER: Oh, absolutely, absolutely. I'm sorry if I gave the impression that the Combines legislation only applied to the interprovincial. No, no, it applies . . .

MR. AXWORTHY: Across the board.

MR. HUNTER: Oh, yes, because there have been many occasions in the City of Winnipeg, in the Province of Manitoba where - well I was acting for the coal distributors here several years ago which was purely local, where they had a price-fixing thing. And I've acted for the Government of Canada as their Counsel in a bread-fixing war, and that was purely local. So that The Combines Act, while it's a federal legislation applies where there is interprovincial or international, it's available.

MR. AXWORTHY: Mr. Hunter, I wonder if you could just then explain that if The Combines Act could apply to all the cases enunciated under this bill, the major difference is the means by which The Combines Act works. It does not set prices, it simply breaks up monopolies or trusts, and you work with the courts as opposed to having the Lieutenant-Governor-in-Council.

MR. HUNTER: That is right.

MR. AXWORTHY: I wonder if you would be prepared to speak to that point in

(MR. AXWORTHY cont'd) terms of the particular effectiveness of those two alternative methods of approach in terms of breaking a restraintive trade in this.

MR. HUNTER: I think that in this inflationary period obviously the Government of Canada and the provinces by-and-large have supported its action in The Anti-Inflation Board Act, and its regulations have said, "We go along," and the machinery is there to control prices, wages, profits, the works, but I suggest that giving the Lieutenant-Governor-in-Council the power by regulations to set prices is something a little foreign to the free enterprise system.

MR. AXWORTHY: Mr. Chairman, I wonder if Mr. Hunter could answer - I believe there is an Act of similar scope in the Province of British Columbia - whether he has had experience or understanding on how it applies there.

MR. HUNTER: No, I haven't.

MR. AXWORTHY: So you can't speak to that particular one.

MR. HUNTER: I'm sorry I can't, Mr. Axworthy.

MR. AXWORTHY: One other question, Mr. Chairman. You indicated you were here on behalf of Imperial Oil and last year we went through a fairly extended series of representations by the small retail distributors of gas products in the City of Winnipeg who claimed that there was a restraintive train by the major oil companies, and that The Combines Act didn't apply. Now could you speak to that point in terms of why in fact The Combines Act couldn't have been brought into force in that particular case or in fact was it brought in the case and there was no evidence shown?

MR. HUNTER: I'd be happy to give you a legal opinion that I have drafted, but I don't think it's relevant to this bill.

MR. AXWORTHY: Maybe it's the cheapest way of getting it for us, Mr. Chairman. The point I'm trying to raise, Mr. Chairman, is that I'm trying to discern exactly where this particular Act would apply in respect to the other kind of statutes, federal and otherwise, that wouldn't be in the books, and to determine its requirement.

MR. HUNTER: Well, frankly, Mr. Axworthy, I think that the Federal Statutes are covering this matter except, as I say - and I think this double-banks it, and I think that you can well get into a question that maybe it may be ultra vires.

MR. AXWORTHY: Yes.

MR. HUNTER: But your protection is there under the present Federal Statutes. Now if The Anti-Inflation Board Act and Regulations were dropped and there was still a need for similar legislation in Manitoba, then I think that's the time to put it in. But put it in with a provision for representations to be made and a board to consider and an appeal and review procedures, rather than just the Lieutenant-Governor-in-Council may by a regulation fix a price and bango, you get fined. There's nothing in here to say you can be heard or no appeal.

MR. AXWORTHY: Mr. Chairman, I would just simply ask then, without going into the details of the other parts of the bill, but if there was a provision for hearing or review or some appellate activity, then that would in part satisfy your objections.

MR. HUNTER: Well, I think it would, except if you look at Section 11(2)(a)(b) and (c), there's no jurisprudence to establish what's a significant number.

MR. AXWORTHY: Yes.

MR. HUNTER: Or a limited number of distributors, so that effective competition - and there's no jurisprudence under this Act, so what's effective competition?

MR. AXWORTHY: Yes.

MR. HUNTER: Then when you get into (c) a reasonable substitute can be easily and widely obtained. There's no jurisprudence.

MR. AXWORTHY: Mr. Chairman, if I could just ask Mr. Hunter this then: Your feeling is that it's not the provisions of the Act per se it's how they're being implemented; and if there was an opportunity through a tribunal of some sort to build up a series of precedents that could then be used as a basis for judgment as opposed to an Order-in-Council, then that again would take some of the particular onus off the legislation. Is that correct?

MR. HUNTER: Yes, it would. It would. But again I suggest that you're double-banking and there is machinery. But on the other hand if the Government of Manitoba wants to do that, then I agree that's what I would like to have, an opportunity for representations and a review.

MR. AXWORTHY: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: Thank you. Mr. Hunter, assuming that the Minister wants to ram through this bill, I wondered what type of make-up of the Board, what do you think the Board should include if there's no appeal or hearing, what type of personnel?

MR. HUNTER: Well, there's no provision for a board in this Act, Sir.

MR. WILSON: I see. Aha. The government's the board. I would assume that the government was going to set up a Board. I'm sorry to crystal-ball them. But I want to thank you for your statement, the statement foreign to the free enterprise system. I thought that was very good.

MR. CHAIRMAN: We're not here for statements, Mr. Wilson. We're here for questions. Mr. Turnbull.

MR. TURNBULL: Yes. Mr. Hunter, the faith you put in The Combines Investigation Act I suppose is justified. But I wonder how you would answer this question. Let us assume that all the combines sold in Canada are all sold at the same price.

MR. HUNTER: I beg your pardon?

MR. TURNBULL: Let us assume that all the combines sold in Canada are all sold at the same price . . .

A MEMBER: They are.

MR. TURNBULL: . . . does that mean that The Combines Investigation Act and the powers in it and the enquiry that's set up under that statute, will consider that the identical pricing is in fact collusion? Or has it been the jurisprudence, which you have cited so often, is it the jurisprudence under that Act that identical pricing does not mean collusion? If that is the answer then, you know, what does that jurisprudence mean for the protection of the consumer?

MR. HUNTER: No. If you study the jurisprudence you'll find identical pricing which has been arrived at by collusion and arrangement. On the other hand you will find that people in the same market area, manufacturers, have to import the same steel; they have to employ labour at the same wage rates; they have to pay the same tax rates; they have to pay the same freight rates, and they try and get a return on their investments. Now, sure they will be selling at the same price because the man that sells a little lower may sell more combines in the first week or two and the other fellow is going to drop his price to meet it. This is true.

MR. TURNBULL: I was making an assumption. We can move to other industrial products, such as cement or wiring cable, or, you know, there are a number of commodities where representations have been made to The Combines Investigation Branch and they're rather trite - it's becoming trite in my opinion, the reply that comes back from them is that: So what, so there's identical pricing. That doesn't mean collusion. That's . . .right.

MR. HUNTER: No, that is not in fact the case. In many . . .

MR. TURNBULL: It's an idea.

MR. HUNTER: In fact, if you wanted to buy International Nickel through a stockbroker, you're going to pay the same price in Winnipeg, Toronto, New York or Montreal because it's a free market, and the free market is a price meeting.

MR. TURNBULL: Well, that's an interesting analogy compared to the stock market with the price of combines or the price of cement. I wouldn't think the analogy was very good.

MR. HUNTER: Well, with due respect. . .

MR. TURNBULL: Well, I mean you're familiar with the Barber Commission report I'm sure, given . . .

MR. HUNTER: Yes, I am, and I've been engaged on about 12 combines cases or 15 combines cases in the last 14 years, both for and against.

MR. TURNBULL: Mr. Hunter, are you familiar with Bill 16, the Anti-Inflation Measures Act of the British Columbia Legislature?

MR. HUNTER: No, I am not.

MR. TURNBULL: Have you heard then that the Lieutenant-Governor-in-Council in B. C. may make regulations defining for the purposes of regulations, price, commodity, services and any other word or expression used in the regulations?

MR. HUNTER: No, I am not familiar. Is that the precedent?

MR. TURNBULL: No it's not the precedent. It came to me after my bill was drafted. But that's establishing the maximum price that may be charged for the supply of a commodity or service.

MR. HUNTER: As I said, Mr. Minister, I have not seen a bill. I only saw yours yesterday.

MR. CHAIRMAN: Are there any further questions? The next delegation.

MR. HUNTER: Thank you very much.

MR. CHAIRMAN: Thank you. Order please. There's no other delegations. That was my understanding, there was one delegation, not two.

MR. JESSIMAN: Mr. Chairman, I'm sorry. I'll then on request - you can vote, the Committee will vote whether they'll hear me or not. It's true that I am a partner of Dick Hunter. I also represent another client. I'll try not to repeat what Dick has said.

MR. CHAIRMAN: Your name?

MR. JESSIMAN: I'll be somewhat similar, there's no question about that.

MR. CRAIK: In the case of delegates there wasn't any restrictions put on the number of delegations.

MR. CHAIRMAN: Order please. That is not the way it came through to the Chair. The Chair was requested to hear one person who was here.

MR. JESSIMAN: Mr. Chairman, I then request. My name is B.J. Jessiman. I act on behalf of Gulf Oil.

A MEMBER: Gulf Oil.

MR. JESSIMAN: Gulf and others.

MR. CHAIRMAN: Gulf Oil.

MR. JESSIMAN: Yes.

MR. CHAIRMAN: Proceed.

MR. JESSIMAN: I just can thank you, Mr. Chairman. I can just reiterate some of the things Mr. Hunter said. But I'd like to say them in a different way if I may.

Notwithstanding what Mr. Tallin might say to you, I suggest that this legislation may well be ultra vires on two counts. First, under 91, subsection 2 of The British North America Act which gives exclusive legislation to the Federal Government in relation to the regulation of trade and commerce. And second of course under 91, where peace, order and good government is the determining factor, where the residual power lies with the Federal Government, and that we'll all find out about I assume before the Supreme Court recesses this year or this summer. I would think that notwithstanding what the Supreme Court does, that if the Supreme Court does hold in favour of those that are opposing the legislation - that's the Anti-Inflation Legislation - that there will be legislation passed by the Federal Government that will say in fact there is an emergency; and I think that this Legislature, the members on both sides of the House, certainly from anything I've read, have indicated to me at least, and I'm sure to most of you, that there was in fact an emergency and that I would think that most of you would want that legislation to be intra vires to the Federal Government. And if it is intra vires, as I suggest that it is, then I don't think that the legislation that you're proposing to pass this evening is intra vires, I think it's ultra vires, this legislation.

Certainly I can suggest to you that if the Anti-Inflation Board should rule that the price of oil, the price of steel, the price of bread, or whatever, should be a certain price, that I don't think it's within the competence of this Legislature to say that the price should be otherwise. If the Federal Government under its jurisdiction should rule that a certain price should be an increase of 12 percent, which would be contrary to your particular legislation, that I don't think it's within the competence of this Legislature to pass legislation that would be contrary to the legislation passed by the Federal Government.

Now I think that goes to the root of your legislation and I think for that and that alone, that you should refer this matter back, and maybe the government already has that opinion, that it is intra vires. I would be very much interested in reading it. But let's assume for the moment, which I do not, that it is intra vires. Surely there should

(MR. JESSIMAN cont'd)be something in this Act if it's passed, that would allow for the rules of natural justice. As my good friend, Dick Hunter, and partner, said, there is no provision, whatsoever in this bill - and as I understand it, and I apologize as Dick did, that we haven't had the opportunity to study as well as we ordinarily would have - that I don't think there's any provision for the setting up of the Board. But notwithstanding that, let's assume that you do amend your bill and set up a Board, it will be a government board, it will be one that will be determined by this government. There should certainly be a Right of Appeal from such a Board, I think, to a body that would be independent of government, and I would suggest that such an appeal should be to the courts that deals with the Board. But there certainly isn't anything in this bill or any other legislation that allows for a hearing of the companies or persons whom are going to be governed by the arbitrary decisions of the Lieutenant-Governor-in-Council, and I just think that that's unfair. I don't think that any government, be they NDP or otherwise, would want to pass legislation that would be that unfair.

And some remarks made about the difficulty that persons had with the enforcing of The Combines Act did not seem to me to be relevant; it seemed from the questions that were asked at least, that because there was some difficulty with the courts upholding some of the charges that had been laid and then heard on a proper basis, that this government was saying in effect, well you can't do it through the courts in a proper and fair way, so let us be the determining factor, let our Cabinet decide on the circumstances. It's interesting for me, and it's obvious for whom we act, and obviously may be contrary to some members here, but this deals with prices and prices alone. There is no suggestion that the government wants the same authority in the event that wages are got out of hand by the Anti-Inflation Board; if they allowed wages to go to 14 or 15 or 16 or increased by a certain amount, that the government would have - from something I read just recently, I see this government allowed something like 54 percent increase, which may well be justified, I do not know. But I say, I've reiterated both of the things that Mr. Hunter said, but in another way, and I'm prepared to answer questions, not in regard to the Combines Investigation Act but with this Act and its unfairness.

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: I always like to try to get some free legal opinion, Mr. Jessiman. You've been good enough to come down here at this late hour. You cited the Trade and Commerce power in the constitution. . .

MR. JESSIMAN: Yes.

MR. TURNBULL: . . .one of the reasons why this amendment would be ultra vires to the province . . .

MR. JESSIMAN: I said 'may be', Sir.

MR. TURNBULL: You said 'may be'. I was wondering if you could render an opinion for me and the committee as to how the province was able to proceed to regulate the prices of natural gas, the wholesale price of beer, the price of milk and other commodities, which in my mind would be trade and commerce, when in fact this power as you use it. . .

MR. JESSIMAN: But not in the arbitrary way in which you are setting these prices.

MR. TURNBULL: So the province does have the power, and it would be intra vires to the province to regulate some aspects of trade and commerce. . .

MR. JESSIMAN: There have been cases, like the milk, like the bread, yes, where it has been held that it's intra vires to the province, but not in the arbitrary manner in which you try to do it here. I would like the opportunity to look at the cases that I know exist and see under this legislation how it varies from the manner in which you set prices previously. And I don't think you set prices, you in fact set up a Board that would set prices.

MR. CHAIRMAN: Any further questions?

MR. JESSIMAN: And they were specific prices, not just any that you decided arbitrarily yourselves.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Well Mr. Chairman, I just have a couple of questions to Mr. Jessiman. When you stated that you believed that the AIB Board already has the

(MR. AXWORTHY cont'd)power to set the price level and that the actions under this Act would be either duplicating that or in fact may be again ultra vires because of the superseding power.

MR. JESSIMAN: Yes, I think if the Supreme Court holds that under Section 91(2) there is in fact an emergency in existence, or was, or that they hold under Section 91 that it comes within the words that say "to make laws for peace, order and good government of Canada" - if the Supreme Court holds that an emergency does in fact exist, or in the alternative, if they hold otherwise and legislation is then passed, which I suggest will happen, that's something we will find out in the next week or two, then I say that right is given exclusively to the Federal Government and I don't think this Legislature has the authority to pass legislation in the same light.

MR. AXWORTHY: Mr. Chairman, the question I would then have is, is the power of the AIB simply to set an upper level of price, 12 percent, 11, whatever it may be, but not necessarily say that that has to be the price; and that if such an inquiry was instituted under this Act would determine that the price should be lower than the 10 percent, is there anything in the AIB that would prevent them from saying it can be below the upward level of pricing set by the AIB Board?

MR. JESSIMAN: My understanding of the AIB is, if they set a price that the AIB is unhappy with, the AIB has the right to roll the price back, it has the right to roll back wages to a price or to a figure, and then the company is bound by that; if the prices have been increased by 20 percent and the AIB rolls them back to 15 percent, I suggest to you, Mr. Chairman and the members of the Committee, that the Legislature has then the right to say, we'll roll them back that much further. I say the AIB overrules, they have exclusive jurisdiction under 91, however it's come about, but I suggest that it will be under "peace, order and good government" as interpreted by the Supreme Court or by legislation.

MR. AXWORTHY: Mr. Chairman, one other statement that Mr. Jessiman made which I thought was interesting, and that is that one of the objections to this Act is that it doesn't provide for a proper system of hearing representation, an appeal, and that this contradicted the sense of natural justice, I believe were your words.

MR. JESSIMAN: Yes.

MR. AXWORTHY: Could you tell me, has there been any jurisprudence in the Canadian Combines Law which says that a governmental jurisdiction in taking this kind of regulatory activity should provide those kinds of institutions or tribunals to ensure that there is proper hearing and representation? Have things been challenged on that basis or is that simply a matter of fair play as opposed to legal requirements?

MR. JESSIMAN: No, I think if it's within the jurisdiction to pass this kind of legislation, as you all know - and it must have been repeated to you previously - you can do almost anything within your jurisdiction except change a man into a woman, and I guess maybe there are doctors who can do that. There are doctors that can do that but I'm afraid that you can't. But no, as long as the Legislature has the jurisdiction to pass the legislation, yes, be arbitrary and you're bound by it, but I would think that any government that wanted to stay in government wouldn't pass too many Acts in that way.

MR. AXWORTHY: Mr. Chairman, that was I would think the import, not that there is a theoretical solving of your problem, which I think we all recognize, I'm more interested in terms of the practical experience, in terms of the establishment of such regulatory powers.

MR. JESSIMAN: The courts would go as far as they can, but Mr. Tallin will tell you - and I don't think there's a lawyer, constitutional law or otherwise, that won't be able to explain that if the Legislature or the Parliament or whomever is passing a law, they can be as arbitrary as they want to be, and whether it's contrary to the rules of natural justice or otherwise, the law is the law, as long as it is couched in such language that is clear. Now if it's not clear, then you will find that the courts will bend the words and do what it can to make certain that the rules of natural justice are complied with.

MR. AXWORTHY: Okay, Mr. Chairman. Establishing the right of the Legislature to enact such a sense of arbitrary decision, I'm still interested in the practice as it has evolved in terms of the way in which as part of our legal political structure the pattern has been, in terms of the way in which government has conducted itself in the

(MR. AXWORTHY cont'd)regulation. You suggested that even in those matters of pricing that are presently in the Province of Manitoba there is some form of board or tribunal which you. --(Interjection)-- Well is there, or can you comment in terms of the degree to which there have been exceptions to that standard that you set out? How often is it, or how common is it perhaps for governments to undertake that ability to Lieutenant-Governor-in-Council to arbitrarily set a business activity like this without any form of hearing or responsiveness.

MR. JESSIMAN: I've just heard Mr. Turnbull tonight quote the British Columbia legislation. I don't think that legislation went nearly as far as what you're going here and I'm not certain that it couldn't be challenged as well. But it doesn't go as far as what you're suggesting and I don't think you would say that it does either, from even your own words. You know, I'm sorry, I can't, but I can give you examples, just as you talked of the milk and gas prices recently, whether it was *intra vires* or otherwise, but assuming it was *intra vires*, there was a procedure set up where there was going to be a hearing, so people would have that opportunity.

MR. AXWORTHY: Thank you, Mr. Chairman.

MR. CHAIRMAN: Any further questions? Hearing none, thank you.

MR. JESSIMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: It's my suggestion that we leave this bill till the last. Bill 80, An Act to amend the Municipal Act (3). Page by page? Page 1--pass; Page 2--pass; Page 3--pass; Page 4--pass; Page 5--pass - Mr. Craik.

MR. CRAIK: Mr. Chairman, on Page 5, Item 196(5), can we get some indication here as to this restriction on power to expropriate, what the implications are of this section?

MR. PAWLEY: In the present Act, Mr. Chairman, all it of course means is that we don't have the power to expropriate land unless it's specifically given. Now this is taken straight from the present Act and inserted in the present bill. So the power can be granted to the municipalities to carry out the expropriation procedures.

MR. PAWLEY: That's right. It can be specifically given.

MR. CHAIRMAN: It is throughout the Act.

MR. PAWLEY: Yes, throughout the Act.

MR. CHAIRMAN: Page 5--pass; Page 6. Mr. Adam.

MR. ADAM: I move that the proposed subsection 197(2) of The Municipal Act as set out in Section 5 of Bill 80 be amended by adding thereto immediately after the word "years" in the 4th line thereof the words and figures "where the total consideration payable by the municipality under the lease, option, or agreement, or any of them exceeds \$5,000."

MR. CHAIRMAN: Pass.

MR. PAWLEY: Well do you want an explanation on this?

A MEMBER: Yes.

MR. PAWLEY: Mr. Chairman, the reason for this is that we were attempting to deal with the question of the leasing of graders by a municipality rather than the going into debt, than the purchase of graders, so that there'd be some control on graders and other heavy equipment. Certainly there's no desire to get into the area of approval of the leases for typewriters and office furniture and whatnot. So it's an attempt to exclude leases insofar as the smaller purchases are concerned. --(Interjection)-- No, no. Because there we're dealing with a problem of trying to control the debt that is incurred by a municipality, and the total debts, and if we're going to let a municipality lease without approval then it really compromises the other legislation dealing with total debts of a municipality.

MR. CHAIRMAN: The motion as moved --pass; Page 6 as amended--pass.

A MEMBER: Are you going to pro-rate that \$5,000?

MR. PAWLEY: A good idea.

MR. CHAIRMAN: Preamble--pass.

MR. JORGENSEN: Before the bill passes, may I ask the Minister to what extent was their consultation with the Urban Association and the Union of Municipalities on this particular bill?

MR. PAWLEY: Well, Mr. Chairman, there have been - I'm trying to think of

(MR. PAWLEY cont'd)the various times - certainly at the Urban Association Convention in Killarney two weeks ago, I outlined to them at convention all the specific amendments that I was proposing to make with the exception of this last amendment, which at that time I was not aware of, that one dealing with Piney, but all the others were outlined in a talk that I gave to the Urban Association. At that meeting was Mr. Chapman the President of the Manitoba Union of Manitoba Municipalities and also from time to time there have been, I think, some discussions with people of the Union and the Urban Association by officials in the department in connection with the boundary change area.

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

BILL 84 - AN ACT TO AMEND THE REAL ESTATE BROKERS ACT

MR. CHAIRMAN: Bill 84, An Act to amend the Real Estate Brokers Act. Page by page? There are some corrections that'll be pointed out as we get to the pages. (Pages 1 to 7 were each read and passed).

On Page 8, in section 15(2) before the word "deal" put the word "to". In this section "to deal in real estate means." Just to clarify this item. With that amendment 8 as amended--pass;

(Pages 9 to 15 were each read and passed).

Page 16, in section 45, 41(2) it should be 42(1). Would you make that change. 42(1). Typographical error in first line of Clause 45. Subsection 42(1) instead of 41(2). With that correction Page 16 as corrected--pass.

Page 17. At the bottom of Clause (b) in 52 should be "to trade". With that correction - 17 as corrected--pass; 18--pass; 19--pass; Preamble--pass; Title--pass; Bill be reported.

BILL 89 - THE STATUTES LAW AMENDMENTS ACT (1976)

MR. CHAIRMAN: Bill 89. The Statutes Law Amendments (1976). Clause by clause or page by page? I believe there are some amendments. Before we proceed can I have them distributed.

MR. PAWLEY: Mr. Doern is waiting anxiously to raise a point.

MR. CHAIRMAN: Have the proposed amendments been distributed? Is there any discussion on page 1? Page 1--pass; Page 2 - Mr. Graham.

MR. GRAHAM: I move that number 5 be deleted.

MOTION presented and lost.

MR. CHAIRMAN: Page 2--pass; Page 3--pass; Page 4--pass. There's an error on Page 3. Section 11 should be subsection 3(1.1) instead of 3.1. With that correction, Page 3--pass; Page 4--pass; Page 5--pass; Page 6 - Mr. Graham.

MR. GRAHAM: Mr. Chairman, on Page 6, Section 20, 6(1.1) I believe the Legal Counsel was talking about a possible or he was going to prepare a . . . Perhaps we can leave this section then.

MR. PAWLEY: Excuse me, Harry you said Section 26?

MR. GRAHAM: No, 20, 6 (1.1). Dealing with the Snooper clause in that respect.

MR. CHAIRMAN: Subsection 6(1.1) is that correct? Can we leave that page then?

MR. GRAHAM: Well if you want, I'm prepared to speak again on it at this time.

MR. PAWLEY: Well I would suggest that we skip over it for now, give Legislative Counsel opportunity to examine it and then return to it.

MR. CHAIRMAN: Agreed? (Agreed). Page 7--pass; Page 8--pass.

MR. GRAHAM: Mr. Chairman, I apologize. Going back to the bottom of Page 6, maybe my statutes weren't up-to-date but I had difficulty finding Section 307 in the Highway Traffic Act.

MR. PAWLEY: It hasn't been proclaimed yet.

MR. GRAHAM: That's why I have difficulty finding it then. That's the information, okay.

MR. CHAIRMAN: Page 8--pass; Page 9--pass; Page 10--pass; Page 11--pass; Page 12--pass; Page 13--pass;

MR. CRAIK: Mr. Chairman, on Page 12 I raised the - in speaking on this bill at second reading, I raised the question in Clause 46 on Page 12, subsection 20, restrictions on incurring liability which applies to the universities, as to whether or not we could get some justification for this action by the government.

MR. CHAIRMAN: Mr. Hanuschak.

MR. HANUSCHAK: Mr. Chairman, this section which is common in similar legislation in British Columbia and Saskatchewan and the rationalities that the major source of funding for universities is from the public purse and hence if a Board of Governors of a university should anticipate running into a deficit position, then prior to doing so approval should be obtained from the Universities Grants Commission.

MR. CRAIK: Mr. Chairman, I don't think that we should be concerned about what other provinces have the legislation, the justification for this kind of legislation should be based on the fact that there is a problem, because this is an extraction of one of the rights that is usually delegated to a body such as a university board of governors to exercise their own discretion on matters such as this.

MR. HANUSCHAK: Mr. Chairman, surely the Crown ought to be in a position to anticipate the financial position of those agencies which it commits itself to fund, and hence if the university anticipates running a deficit position the over expending of its budget, then it should seek the approval of the Grants Commission to do so. And it also assists the Crown in its budgeting process.

MR. CRAIK: The universities have more avenues for revenue than just the provincial governments. They have grants from other sources and they have tuition fees which they draw upon, albeit the province is by far the largest financier of their operations, but is there a problem? This is nothing new. That's been the case for decades that the province has been the biggest supplier of money to the universities. But why now? Is there a specific case that dictates or suggests that this sort of thing should be done now rather than having been done at some previous time?

MR. HANUSCHAK: As far as the current fiscal year is concerned, I am not aware of a problem, of being faced with a problem or likely running the risk of being faced with one, but we had been faced with a problem last year with one of our universities.

MR. CRAIK: Faced with the problem, Mr. Chairman, of the university incurring liabilities beyond reason as far as the province is concerned.

MR. HANUSCHAK: The honourable member is using the expression beyond reason, beyond that which it had budgetted for.

MR. CRAIK: But isn't it normal practice for a university to at times develop a surplus and at other times to draw on that surplus to carry it forward into another year's operations?

MR. HANUSCHAK: Yes, Mr. Chairman, that does happen from time to time but when there's no surplus to be drawn upon then that's all that this section says, that the university seek approval of the Grants Commission prior to incurring that excess expenditure.

MR. CHAIRMAN: Page 12--pass; Page 13--pass; Page 14. I believe there's an amendment. Mr. Walding.

MR. WALDING: I move that subsection 47(9) of Bill 89 be amended by striking out the word "creditable" in the second line thereof and substituting therefor the word "credible".

MR. CHAIRMAN: Clause 47(9) as amended--pass.

Page 14 as amended--pass. Page 15. Mr. Graham.

MR. GRAHAM: Dealing with 47(16) and the problem that has occurred in the past and is still presently a problem I think in the province, is the fact that lawyers in the province in the cleaning up of estates are finding a great deal of difficulty on many occasions in getting the proper certificates of death. Now I understand, if I'm correct, that they can get a certificate of death from the municipality immediately after the death occurs, but in many cases that certificate from the municipality is not acceptable in certain legal transactions. But in the transfer of that to the Vital Statistics quite often there is a considerable delay. Will this in fact, these amendments here, further delay the issuance of a certificate from the Vital Statistics Branch.

MR. TALLIN: Are you talking specifically about 47(16)?

MR. GRAHAM: Yes. Mr. Tallin, it should if anything speed it up, because what's going to happen is that the Medical Examiner will issue his Certificate of Death without cause initially, and then when he had completed his examination and determined his opinion as to cause he will then augment his certificate to add the cause.

MR. GRAHAM: Well, I sincerely hope that's the case, because there is a problem at the present time.

MR. TALLIN: But that delay is only in cases where the Medical Examiner is involved, which is a very very small number of cases, the percentage would be less than 1/10 of one percent. If you're talking about the normal delay in the transfer from the Division Registrar, who is usually the Municipal Clerk, to the Central Office in the city, there is no change involved in this at all.

MR. GRAHAM: Then, Mr. Chairman, may I bring it to the attention of the appropriate Minister and perhaps he can investigate and see if there's a possibility of expediting those certificates?

MR. CHAIRMAN: 15--pass; 16--pass; 17 - Mr. Graham.

MR. GRAHAM: Mr. Chairman, in section 47(22) at the top of Page 17, it appears that under certain circumstances copies of certificates cannot be made available from Vital Statistics, and I believe it refers to adopted children or change of name by marriage or dissolution, etc. Can I get an explanation of why there is an exemption for certain cases in giving copies?

MR. TALLIN: Do you mean why there is a restriction on the Director of Vital Statistics from issuing certain information?

MR. GRAHAM: Yes.

MR. TALLIN: The only extended restriction that I'm aware of is the restriction on getting information about adoptions. Generally the tendency in the past, for years, has been to keep the actual birth of the adopted child secret. The only information you get on the birth certificate then is the names of the adopted parents.

With respect to other areas of Vital Statistics, the only restriction is that the Director has to be satisfied that the information is to be used for a legitimate purpose, and if the birth certificate, if the person himself is applying, there's usually no question that he would only use it for legitimate purposes.

MR. GRAHAM: Mr. Chairman, could I have Legal Counsel read out this section from the Vital Statistics Act as amended and see what exclusions there are then with that amendment?

MR. TALLIN: You're talking about 47 . . . ?

MR. GRAHAM: (22) subsection 31(9).

MR. TALLIN: Well the reason for that change is that the Director of Vital Statistics no longer keeps the records of dissolution and annulment of marriage, they're kept in Ottawa.

MR. GRAHAM: That's why you can't get a copy of a change of name then, is it?

MR. TALLIN: No, you can get a copy of a change of name, but not a change of name that depends on an annulment or a dissolution.

MR. GRAHAM: Oh.

MR. TALLIN: Because it's the annulment or dissolution that's recorded in Ottawa, and there is no change of name unless the person applies for it under The Change of Name Act. Then you're entitled to that only for legitimate purposes, that is, if you have some reason that you want to sue a person and his name has been changed and you want to prove it to the court, or something of that nature, or the person himself is involved.

MR. GRAHAM: Okay.

MR. CHAIRMAN: Page 17--pass; Page 18--pass; Page 19--pass; Page 20 - Mr. Walding. Mr. Doern.

MR. DOERN: Mr. Chairman, I was supposed to move the amendment: THAT Bill 89 be amended by renumbering section 56 thereof as section 57 and by adding thereto, immediately after section 55 thereof, the following section:

Subsection 10.1 of Public Works Act added.

56 - The Department of Public Works Act being Chapter P300 of the Revised Statutes (hereinafter in this section referred to as "the Act") is amended by adding thereto,

(MR. DOERN cont'd) immediately after section 10 thereof the following section:

Restriction on heights of buildings.

10.1(1) Notwithstanding anything in the City of Winnipeg Act or any other Act of the Legislature, within an area of the City of Winnipeg bounded on the north by the centre line of St. Mary Avenue, on the south by the centre line of Roslyn Road, on the east by the centre line of Carlton Street and the extension thereof, and on the west by the centre line of Colony Street an extension thereof, except with the approval of the Lieutenant-Governor-in-Council,

(a) no person shall construct, place, erect, enlarge, alter, repair or reconstruct any building; and

(b) no owner of land shall permit the construction, placing, erecting, enlarging, alteration, repair or reconstruction of any building; the roof of which extends above the height line.

Penalty.

10.1(2) Any person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on summary conviction for each day during which the offence continues, to a fine not exceeding \$100.00.

Definitions.

10.1(3) In this section

(a) "height line" means an imaginary straight line commencing at a point at 764.00 feet geodetic base directly beneath the centre point of the dome of the Legislative Building and rising at an acute angle from the horizontal equal to an acute angle prescribed by the Lieutenant Governor-in-Council:

(b) "roof" does not include the roof of any penthouse built above the normal roof of a building for the purpose of housing mechanical and electrical equipment for the building.

Mr. Chairman, by way of a brief explanation. There has been a problem which I think is recognized, that it is important that new developments in the area around the Legislative Building and Memorial Park should not be of such a height that would seriously detract from the aesthetic quality of this area. Not only do we have the Legislative Building which is really a focal point in Winnipeg and in Manitoba but we have other government buildings in the area. We have Memorial Park and we have a considerable investment in the grounds and the land surrounding this particular complex. Hundreds of thousands of people come here every summer and every year to visit this building.

I think it's important that this legislation be passed because if not we will have buildings that will rival or surpass the height of this building in the immediate vicinity. This kind of legislation is in effect in other cities and I recommend it to members of this committee.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, we agree in principle with the idea of retaining some sort of an environment in the vicinity of the Legislative Building and part of the way this can be achieved is to establish some sort of height restriction in the general area of the Legislative Building.

This method of defining it would appear to be the best method of doing it without getting into the business of double-zoning, that is, applying some sort of zoning caveat that would duplicate what the city is doing.

The only reservation that we would have about it at this point is whether or not the city since it will be effective by the legislation, whether or not they have been consulted, because the bill is only a few hours - well, as a matter of fact less than probably an hour old since we've received it here although we had discussions earlier today on it - we want to know that the city has been forewarned of this and had ample time to make representation. In the event that they haven't been advised of it today - I gather that they have been advised of it, but in the event that they haven't been advised of it I wonder if we could in that case hold the bill over until tomorrow and make sure that they have an opportunity to make representation, because it does have some influence on what they may do with regard to what their environmental department may do in the way of putting on zoning regulations.

In principle we agree with the bill. If there's any question about whether they've had ample time to make representation we prefer that they somehow be notified either through the government or through the media that this is going to come up again tomorrow and give them time to get down and make representation on it.

MR. CHAIRMAN: Mr. Doern.

MR. DOERN: Mr. Chairman, just briefly; the reason that we are introducing this amendment is that the city through the Chairman of the Environment Committee informed me that they had decided not to proceed with their by-law which was, in effect, identical or extremely similar.

The Premier I know did speak this morning to the Mayor and to the Chairman of the Environment Committee, and I believe he indicated that he would speak to them also this afternoon to indicate exactly what legislation we had intended; so there really is no basic difference in terms of the fact that both representatives of the Environment Committee and representatives of Public Works had met and discussed a sky-plane exposure by-law. We're sticking to that original principle.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: I just wanted some clarification, because I remember in my days on Municipal Council that we had rejected a 22-storey building, the site of a famous castle over here on Kennedy and Assiniboine and I believe the builders or something threatened the city with legal action. Does this now mean that the Minister will now have to face the legal battles against all these people or is there some - well, could the Minister indicate his opinion as to why the city decided that their sky-plane by-law was going to be unworkable and why would the Minister now be taking over this responsibility because I believe he was in some discussion - I don't want to be unfair - but he was in some sort of disagreement with His Worship the Mayor over the height of the Woodsworth Building and I wondered, is the Woodsworth Building going to be the highest building in this vicinity - what I'm trying to get at is, what does 764 feet - can you give me an idea - is it 10 storeys, 11 storeys?

MR. CHAIRMAN: Order please. I think we're running out of tape. I suggest we just take a recess for a couple of minutes so the recorder gets a chance to change the master tape.

We are ready to proceed? Mr. Doern.

MR. DOERN: Maybe I could sort of start with the last point . . .

MR. CHAIRMAN: I think you were asking a question and waiting. . .

MR. DOERN: And then answer other questions. The figure you're referring to, that 700 something feet, that's a height above sea level.

MR. WILSON: Oh, yes.

MR. DOERN: So I would just take that out of your mind. What basically we're talking about is taking a point above sea level somewhere around the base of this building directly under the Golden Boy, that's that 700 figure, then a line would be drawn out and an angle would be set. That angle will be, you know, approximately the height of the Woodsworth Building but that has yet to be determined as to exactly what that angle will be. But it will, say, go for somewhere between 10 or 15 degrees angle out, and buildings that are close to the Legislative Building will be of a lower height, and the farther of course you extend that angle within the radius that we have set, the higher the building will go. So in other words, close buildings might be 10 storeys and farther out on the Perimeter they might be 20 or 30 storeys.

MR. WILSON: Well, that was my question. The fact that we were dealing with the 22-storey apartment block that we rejected at the Midlands Community Committee and then again at City Council, and obviously he's coming back again.

MR. DOERN: Right.

MR. WILSON: And I'm saying, what do you envision will help you prevent that man from building, first of all that building, you suggest 10 storeys, do you anticipate legal action against your department?

MR. DOERN: First of all, Mr. Chairman, a 22-storey building that close to the Legislative Building would not be allowed. It would have to be smaller in size. Then if there's I suppose legal action, we'll respond to that at the appropriate time.

MR. WILSON: Just in closing then, Mr. Chairman, I want to say I agree in principle with the concept. I think it's a good one.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I'd like to raise a question with the Minister because I am a little disturbed by the Bill itself. I appreciate his concern about trying to improve the quality of the area surrounding the Legislative Buildings, most of which falls inside my own constituency. In fact this bill I think applies - probably about 80 percent of it is in my constituency - but let me raise this question with him because I think it may be time for a trade-off between the Minister and I. That for the last two years we've been asking when, if and how the Provincial Government would take some responsibility for undertaking positive action to do something to improve this area in terms of the unsightly parking lots, the bad lighting, the abandonment of older apartment areas that is taking place, and in each of those cases, Mr. Chairman, the Minister replied that that was a city responsibility. Now it appears that the Minister is prepared to take an incursion into that city responsibility for the sake of improving the quality of the environment in one very narrow respect and that is in the heights of building. And I would suggest, Mr. Chairman, that in this particular amendment it is dealing only with one segment of what should be a much more overall approach to it. And I would think that if the province is going to take what I consider to be a fairly drastic incursion into municipal rights of zoning and by-law control, then it should be prepared at the same time to offer some kind of carrot to go along with the stick, and the carrot should be the preparation to put forward some very definite assistance to improve the area, partially by restricting some of its own actions in the way of its parking lot policies and its parking area restrictions which are becoming extremely unsightly. But perhaps more importantly to do something about the deterioration that's beginning to affect the area, which I think is just as much a detraction to the visitors who come and the general environmental standards that the Minister is concerned about in bringing this bill forward.

So I would say, Mr. Chairman, that while I wouldn't want to say it's a direct trade-off, I simply say that I personally feel that if the Minister feels compelled to take this step then he should almost be honour-bound to take the additional step, and then very soon at least work on his Cabinet colleagues to provide a set of assistances and improvements in the general area so that it is not just the heights of buildings that would provide for better quality but that there could be other measures that would be even more important. And I take some interest for example, when the Member from Wolseley said that the gentleman who owns the buildings on the corner of Kennedy and Assiniboine wanted to build a 22-building, he has just given notices to the tenants because he wants to abandon the building and turn it into some form of development. I think it we're not careful, Mr. Chairman, this area will have serious problems of redevelopment in it which may not be particularly useful or helpful. I would hope that the Minister would take these remarks about a certain degree of trade-off in terms of an overall approach. I know he might not be prepared to go as far as a capital commission but I certainly think that to expect us to support this bill deserves something in return.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I have several concerns that I have expressed privately to the Minister and I think it has to be put on the record and I think it has to be embodied in the amendment. There are buildings that are now presently under construction within the area bounded by this proposal, in the proposed amendment, and I gather the Minister has some information about the height of one but there are I believe two buildings - or the height of two, although I'm not sure that it's been confirmed with the developers. It would seem to me, Mr. Chairman, that there are two or three situations that are important: (1) We should determine that those who are now constructing buildings and have been issued permits, either that it is in conformity with this or they are excepted, the construction having started. And I think that should be determined so that in effect there is no question of jeopardy for them or jeopardy in terms of the government as far as a potential law suit. I think that it should be determined from the City of Winnipeg whether any other permits have been issued where construction has not commenced and then the amendment could be further amended to suggest that it would not apply to those situations and the Minister would be in a position to clarify that and there

(MR. SPIVAK cont'd) would be no problems. Because if there is a problem then I think we better deal with it now rather than later.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, the Member for Fort Rouge is indicating, asking for a trade-off, I want to suggest to him that we traded off today when the Minister of Public Works asked about the possibility of introducing this, you know, at the last minute. We all felt it was urgent that it be done. In addition to that we went to the extent of granting powers beyond what the Minister was going to suggest at the start and that was to tie the angle into the height of the Woodsworth Building, and I think it was on our suggestion that he leave that open to discretion of the Lieutenant-Governor-in-Council and hopefully that the angle that's set will be something less than the Woodsworth Building because I think to protect the east side of the property here it may be necessary to go to an angle somewhat less than that. With regard to buildings under construction or about to be under construction, again we've been more than willing to leave that discretionary power, which is there under clause 10.1(1), to the Lieutenant-Governor-in-Council again to grant exceptions where there are cases where it's absolutely necessary to do it. And quite frankly we're happy to participate in this move which will finally bring to some sort of conclusion the argument, the public argument that's gone on for some time to see that protection is offered in the vicinity of the Legislative Building. Our only caveat is to again ensure that there is no contradiction in direct conflict with what the city may have already decided at this point in time.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: I want to point out I disagree in one sentimental point. The use of executive discretion which is within the amendment is something that I agree the government can be in a position to have but we have noticed at the present time that there is construction under way and as legislators we've got a responsibility at this point to at least ensure for that which we have notice, that what is happening is correct and if it is not to then make whatever adjustments to the amendment that are required to at least satisfy that, and the executive discretion that exercised afterwards is in fact the executive discretion. But I don't think we should put ourselves in the position without knowing and I simply say to the Minister what I would like is - I don't think he has that information now but certainly before we deal with this in third reading I would hope that there would be an undertaking on this that we would have information supplied concerning this and if there is a problem an amendment introduced. If there's no problem then it will be publically announced and that would be satisfactory.

MR. CHAIRMAN: Mr. Doern.

MR. DOERN: Mr. Chairman, in regard to Mr. Spivak's comments I think they are well taken. There are four or five buildings that are presently under construction or about to commence construction. I think we will have to review all of those plans and permits to see just what is planned. I'm aware of a number that will in fact fit in with this without any problem. In fact some of the developers have even respected the proposed earlier by-law and have built within that limit. So we'll review that and see whether there is any need to take any immediate action.

I would also like to say in response to the Member for Riel that I very much appreciate the co-operation of members of the opposition to enable us to introduce this legislation at this rather late stage and to support the principle that there should in fact be some limitation of buildings in this area so that it does not detract from this complex. I appreciate that very much.

MR. CHAIRMAN: The amendment as moved--pass.

MR. DOERN: There's a final . . .

MR. CHAIRMAN: Page 20 as amended--pass; Page 21. . .

MR. DOERN: One final amendment, Mr. Chairman, THAT section 56 of Bill 89, as printed and renumbered as section 57, be amended

(a) by adding thereto, immediately after the figures "50(6)" in the first line of subsection (1) thereof, the words and figures "and section 56";

(b) by striking out the words and figures "subsection 18(1)" in the first line of subsection (2) thereof and substituting therefor the words and figures "subsections 18(1) and 50(4)";

(MR. DOERN cont'd)

(c) by adding thereto, at the end of subsection (2) thereof, the following clause:
(e) subsection 50(4) shall be deemed to have been in force on, from and after March 31, 1976.

and

(d) by striking out the word and figures "and 23" in subsection (3) thereof and substituting therefor the word and figures "23 and 56".

MR. CHAIRMAN: Motion as moved--pass. I think Mr. Graham has a . . . I think it was Page 10. Page 6, Section 20, same bill. Mr. Graham.

MR. GRAHAM: Mr. Chairman, I would beg to move THAT Section 20 of The Statute Law Amendment Act be amended by adding after section 6 (1.1), section 6(1.2) "where any person refuses to disclose any records or writings to a medical examiner, the medical examiner may apply to a judge of a County Court for an order granting him access to the records or writings and the judge if he is satisfied that the information contained in the records or writings may reasonably be presumed to assist the medical examiner in his investigation under the Act, may make the order."

MR. CHAIRMAN: May I have that motion please up here.

MR. GRAHAM: Mr. Chairman, in speaking to the amendment it has been a concern of many of us in the Legislature over the last several years, about securing the privacy of individuals and to grant certain safety factors in dealing with individuals and their property. This is an example here where a medical examiner can ask for any records or writings relating to the deceased and here if they are refused he would then have to go to the court and get an order from the court if the court was so satisfied. I think it provides that safety factor in that respect.

MR. CHAIRMAN: Motion as moved. Is there any discussion on the motion? Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I find this a very difficult one to deal with because on the surface it might appear to be quite harmless and may be but I'm worried to the extent that the Medical Examiner is an officer of the court as it is and it's not like the other situations which we've had, which we've dealt with and which we've been concerned about, the so-called snooper clauses. I'm just wondering if the member would agree to, whether this could be dealt with by doing some quick checks before this reaches third reading. I'm not quite sure whether we're going to get ourselves involved in some ramifications or not . . .

MR. GRAHAM: Well, Mr. Chairman, maybe it would be more appropriate to move that this section be held in Committee because the Committee will be meeting tomorrow; there are still bills to be reported to the Law Amendments are there not?

MR. CHAIRMAN: No we have cleared all the bills in the House.

MR. GRAHAM: Bill 20 has been laid over.

MR. CHAIRMAN: We're just going to deal with Bill 20 when we . . .

MR. JORGENSEN: Mr. Chairman, one suggestion would be that we report the bill and if after you have considered, that amendment could be introduced at a report stage.

MR. PAWLEY: That's right, that's right. Would that be all right - I'm just a little uneasy about . . .

MR. GRAHAM: Mr. Chairman, it's not my intention to try and prolong this at all. I'm agreeable to try and co-operate to the greatest extent with the government in this but I feel that there are certain rights of individuals that we should make every effort to protect.

MR. CHAIRMAN: I have a motion before the floor. If the member doesn't withdraw it, then I am forced to put it.

MR. GRAHAM: Mr. Chairman, I am prepared to withdraw it then and hold it till later.

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

BILL 91 - AN ACT TO AMEND THE QUEEN'S BENCH ACT AND THE
PETTY TRESPASSES ACT

MR. CHAIRMAN: Bill 91, an Act to amend The Queen's Bench Act. One page--pass?

We have an amendment. There's an amendment. Have the amendments all been distributed? Perhaps we better deal with it clause by clause. Clause 1--pass; Clause 2 - Mr. Uskiw.

MR. USKIW: I move THAT the proposed section 5 of The Petty Trespasses Act, as set out in Section 2 of Bill 91 be struck out and the following section substituted therefor:

Where no offence under Act.

5 Any person who, on any walk, driveway, roadway, square or parking area provided outdoors at the site of or in conjunction with the premises in which any business or undertaking is operated and to which the public is normally admitted without fee or charge, communicates true statements, either orally or through printed material or through any other means, is not guilty of an offence under this Act whether the walk, driveway, roadway, square or parking area is owned by the operator of that business or undertaking or by any other person or is publically owned.

MR. CHAIRMAN: The motion as moved. Mr. Graham.

MR. GRAHAM: Mr. Chairman, this amendment in fact completely alters the bill that we have in front of us. I would have to say that the debate that was held in the House on the bill was actually a debate on a completely other premise. This amendment is one that has wide-ranging changes. It is one that to me at least is . . . I think is one that I certainly would be very concerned about. I know that in some municipal jurisdictions people that want to, for instance, have a tag day must be registered, they may be transmitting printed material or other things but they have to be registered through either a charitable organization or get a licence from the municipality to do so, that has been a standing of long practice, and yet here we find that that is now going to be completely eliminated. It says any person on any walk, driveway, roadway, square or parking area can do this and it is no longer an offence whether they have a permit or not.

MR. TALLIN: Under this Act, under the Petty Trespasses Act; doesn't mean it may not be an offence under the Charities Endorsement Act.

MR. GRAHAM: Well, Mr. Chairman, then have we got a conflict between Acts?

MR. TALLIN: The Charities Endorsement Act requires anyone who conducts a tag day to get permission.

MR. GRAHAM: Well all I want to say, Mr. Chairman, is that it has a significant difference from the debate that was carried on in the House. I listened very carefully to the words of the Minister of Labour in this respect and I find that this is a completely new concept that was not there as long as sections (a) and (b) were left in that section.

MR. PAWLEY: Mr. Chairman, I wonder if I could just ask - I don't know whether the Honourable Member for Birtle-Russell was in the House when I introduced this bill by way of second reading and I wish I had Hansard printed from that speech and in front of me, but I believe it was late in the night that I indicated that in fact I was going to do this, that I was going to introduce an amendment which would take it beyond the area of strike and would attempt to make it consistent with the other legislation in the Queen's Bench Act, the legislation passed back in 1971 dealing with communication of true statements, because I don't see why we should establish this as suitable and proper insofar as picketing done by those that are on strike but not insofar as other citizens are concerned who may be involved in no labour strike at all but may simply be indicating that they have certain views on a subject and are communicating those views to the public at large regardless of the cause. Now certainly they must obey laws, they may not, for instance, act in breach of any municipal by-laws, Highway Traffic Act or the Criminal Code in the process, but under this Act, the Petty Trespasses Act they would not be considered as trespassers if all they were doing was communicating true facts, information to the public, not breaking any other laws. It's my understanding this wording is consistent with the wording in the Queen's Bench Act, the other wording which we have dealing with all the other - for instance, all we're doing here is ensuring that this can occur at, for instance, the

June 10, 1976

(MR. PAWLEY cont'd) Polo Park Shopping Centre in the same way as it could occur in front of Hudson's Bay or Eatons, so that we have consistency throughout.

MR. GRAHAM: Well, Mr. Chairman, I could say that had the Minister introduced this bill in February and March and then wanted to make an amendment now, I could maybe understand that but he only introduced the thing last week, in fact it hasn't been a week since the concept of this bill even hit the Legislature and I don't know what has made him change his mind in that time to drastically alter a bill of this nature. It would indicate that either his thinking fluctuates rapidly and I don't think that's a thing that we should not be concerned about, but we're finding an entirely different concept here to a bill that he introduced for first reading less than a week ago.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, reading this it would appear that these activities could take place on premises other than the premises at whom the activities were directed, and I was wondering if the key thing here is that first word "or" in the third line of No. 5. "Any person on any walk, driveway, roadway, square or parking as provided outdoors at the site of or in conjunction." if that "or" was an "and" in conjunction it would imply that the activities are restricted to the premises of the party at whom the demonstration was directed. If the "or" is left in there, "at the site of or in conjunction with the premises," does this not leave it wide open for the traffic to be inhibited, you know, in the general neighbourhood?

MR. PAWLEY: If traffic is being inhibited then certainly the police could lay charges under the Highway Traffic Act against those that are inhibiting the traffic.

MR. CRAIK: I was thinking more of pedestrian traffic. If you have a demonstration in front of . . .

MR. PAWLEY: Oh even if they're obstructing traffic there are certain provisions of the law by which charges can be laid, but what Mr. Craik would in fact be doing would be to say, for instance, if someone was marching back and forth in front of Dominion Stores, that if their communication related to Dominion Stores it would be okay but if their communication related to opposition to some cause, say opposition to the passage of this bill itself, then they would be trespassing. I don't think it's a question of the information that's being communicated as to whether or not it's a trespass or not, we're saying that it is not trespassing regardless of the information as long as that information contains true fact, as long as it is not in breach of any existing law.

MR. CRAIK: Well, Mr. Chairman, as I read this thing as it's written, it would be possible if someone had a grievance against the Dominion Store referred to and were doing a stakeout of the Dominion Store, this law would say there's nothing to prohibit them of also prohibiting traffic in front of the drug store and any other store that might be adjacent to it.

MR. CHAIRMAN: Is there further discussion on the motion?

MR. PAWLEY: Just to say to Mr. Craik that certainly there are laws attempting to prevent inhibiting of traffic wherever one be and if you change the wording here dealing with this then we are going to have a different situation outside Dominion Stores at Polo Park than we would have downtown on Portage Avenue or Main Street, and I would not think that would be our desire to create inconsistent legislation as from one situation to the other.

MR. CRAIK: Well I don't follow how it would be different at Polo Park than Portage Avenue.

MR. PAWLEY: Well because we passed amendments to The Queen's Bench Act (was it 1971, Mr. Tallin) which dealt with all other situations like this but were situations that did not come within areas that were privately owned but accessible to the public.

MR. CRAIK: Does it make a drastic difference, Mr. Chairman, if that "or" is changed to an "and" because it would appear that . . .

MR. TALLIN: I think not because in conjunction with the premises applies to the parking area squares, not to the activity. It's parking areas provided outdoors in conjunction with premises, at the site of or in conjunction with premises.

MR. CRAIK: The opinion of Legislative Counsel is that this would not change or wouldn't imply any restriction as far as activities in the neighbourhood are concerned?

MR. TALLIN: I might point out just this question. The purpose you'll see of the first section in this bill is to make privately-owned parking lots to which the public is

(MR. TALLIN cont'd) invited or allowed to come in without fee or charge, put those kind of parking lots in the very same position as a public thoroughfare owned by the public whether it's the province or municipal authority. The difference in The Petty Trespasses Act is that there there is always a private owner involved and what this is attempting to do is to put the person who is making a public statement of some kind on a parking lot to which the public is normally invited or allowed without fee or charge, put him in the same position as though he was making that statement in a public thoroughfare on which he cannot be a trespasser; doesn't mean that he can't be in breach of some other law but just that he cannot be a trespasser for the purpose of prosecution under this Act. If, of course, he commits some damage or injures property on the property he can be sued in trespass as a tort to recover the damage, but he can't be prosecuted under The Petty Trespasses Act for this summary conviction offence which is a special summary conviction offence in Manitoba.

MR. GRAHAM: Well what we better do is put in the legislation the intention or the indication that he cannot damage that property.

MR. TALLIN: Don't have to I don't think, because it has nothing to do with the prosecution under this Act.

MR. CHAIRMAN: Any further discussion on the motion?

MR. GRAHAM: Mr. Chairman, I don't know what the technical procedure is here but we haven't passed this amendment yet and I would like to suggest a further amendment to that. Now should that be introduced right now?

MR. PAWLEY: An amendment to the amendment?

MR. GRAHAM: Yes. I would like to suggest that . . .

MR. CHAIRMAN: As long as it's not in contradiction with the intent of the amendment.

MR. GRAHAM: No. In the seventh line thereof, after the word means "without impairing or prejudicing the normal use of the property for the purpose for which it was provided."

MR. PAWLEY: I wish the honourable member would explain just what he feels is added to this amendment with the introduction of those words.

MR. GRAHAM: That is just putting into the - exactly what legal counsel was telling us here just a few minutes ago.

MR. PAWLEY: But, Mr. Chairman, I would think that this would be poor law because it goes without saying that there is to be no breach of law, there is to be no inhibition of the normal type of enjoyment of this property, the preventing of traffic, etc., goes without saying, I think, without introducing those words to the amendment itself, and I would be concerned as to whether that would be - I would ask Legislative Counsel whether he feels those words are necessary under those circumstances.

MR. TALLIN: One of the things I think it would do is make a person who is doing this, it would almost restrict him again, because all that would have to be shown was that he interfered with one person on that lot, one car, one pedestrian or something like that and then they could prosecute him under the Act and be successful on the basis that he interfered with the proper use of that . . .

MR. GRAHAM: What's wrong with that?

MR. TALLIN: Well it seems to me that they would never use it. I don't see how you could say that it was all right in the way it was drafted first and say that this changes it to the extent that you must now require him not to interfere with the proper use.

MR. PAWLEY: I think, Mr. Chairman, what it would really mean is that by the handing out of one leaflet a person could argue that their normal process has been interrupted, their normal course of action has been required to stop in order to pick up the leaflet from the individual, that the individual has accidentally been in the road of a pedestrian.

MR. CHAIRMAN: Could I have the motion that you've moved, Mr. Graham, so I could see what it is?

MR. CRAIK: Mr. Chairman, all this amendment does is to remind you there that there are rights other than the rights of demonstration and picketing; all this does is say that there are rights to ownership and rights to the same use of property by other people and rights of entry. The amendment does not in any way inhibit a demonstration from taking place nor does it in any way inhibit the intent of this Act from being carried out.

(MR. CRAIK cont'd)

All it says is that there is also other rights there which is the rights to private property and the rights to normal use of the property.

MR. PAWLEY: But, Mr. Chairman, again it goes without saying that that is understood to be the case within the present wording, we are assured that normal use would be permitted within the present provision, but I'm afraid of all sorts of situations by which people will adduce evidence claiming that the normal use of these premises have been interfered with because they found that they were slowed down because there was a couple of people on the walkway, they had to walk around them, areas that fall short of obstruction or the impeding of traffic but still have interfered with what probably normal passage would be if that section wasn't there.

MR. TALLIN: Is what you're getting at, trying to warn the person that he might still be subject to damages, then you've put the amendment in the wrong place and that was what was worrying me, because what you've done is put an exception to the relief from the guiltiness under the section. We'd be better, I think, to add at the end "but nothing in this section relieves a person of any liability for any damage he may cause to the owner's property."

MR. F. JOHNSTON: Yes, that's okay. That's all right.

MR. TALLIN: Would that be what you're trying to get at?

MR. GRAHAM: Well Mr. Chairman, it's not just a question of damages, it's the usage too.

MR. TALLIN: That would be the damage. If his use of the property is restricted that would be a damage.

MR. PAWLEY: He can show damages.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, just very calmly; that if I own a piece of property and I want to have a driveway going into my business and somebody comes on it just because they don't like the way I part my hair or something or they don't like what happened to them the night before, they fell out of bed and they want to start demonstrating, why shouldn't I be able to say if he's restricting my living and harming my business, to get the Hell off! I'd say that that is a right of a person that owns that property if it's not a legal strike or action.

MR. PAWLEY: Mr. Chairman, the only thing I think Mr. Johnston overlooks on that score is that it's not a normal driveway, a driveway up to his house or to his garage, we're not dealing with that, we're not dealing with a private driveway, we're dealing with a driveway which Mr. Johnston is inviting the world at large to travel on to do business with him. He's not restricting that driveway to anybody, he's saying to the entire world, please come in so I can do business with you. Then when somebody enters onto that driveway and communicates true information, true facts, I see surely no reason within a free land where that ought to be considered trespassing.

MR. F. JOHNSTON: Mr. Chairman, surely when the Minister says "in a free land" if I have a driveway which I invite everybody to use to do business within my premises and somebody comes along and stops that . . .

MR. PAWLEY: Oh, then there's other laws that may enter into the picture.

MR. F. JOHNSTON: Oh God, we'd take two weeks to do it. People can demonstrate right now and if they're on his property illegally, he has the right to say, "move, you're getting in the way of me doing business" which he has every right to do. Mr. Chairman, just let me finish up. Do you realize what some people would demonstrate about? Well as I said, a true fact, you know, it's a true fact that I'm wearing a coat. Let's not be unreasonable about this to the proprietor of these places. Too late for your nonsense, I'm not really taken with this . . .

MR. CHAIRMAN: Order please.

MR. F. JOHNSTON: Well let me ask through the Chairman, the member, would you like it to happen if you were doing business? --(Interjection)-- You can't move him then, you could lose two days business.

MR. CHAIRMAN: Order please. We're not going to have discussions between members please.

MR. WALDING: Mr. Chairman, I wonder if I could ask the Minister a question.

(MR. WALDING cont'd) With the printed amendment here, that if I were to drive on to the parking lot of Polo Park with a bumper sticker on my car which communicated true information to the public, would this amendment now make that legal?

MR. PAWLEY: I would think it would not have been illegal before; I think I'd be stretching the point to suggest it was illegal prior to this amendment.

MR. WALDING: Suppose the car had a political sign on it, would that have been illegal before, communicating true information?

MR. TALLIN; I wonder what would happen if the strikers in that particular case that this stems from, instead of carrying the pickets had plastered their cars with signs on the side local so and so on strike against Dominion.

MR. WALDING: No, I'm not talking about strikers or people being locked out, the amendment doesn't make any mention of that.

MR. TALLIN: I'm just wondering whether there would have been any dissention in that case in the courts on the basis that all they've done is park their car.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Could I ask the Legal Counsel, that with this amendment, if, we'll say that Simpsons Sears owns a parking lot, could Eatons or the Hudson Bay hire some demonstrators to walk around with signs saying that bicycles are on sale for \$59.95 and parade up and down this person's business. This is true information. Could they legally get away with this demonstration, with this type of act, without creating an offence so that any competitor or anybody that wanted to do this could do it legally under this particular system?

MR. TALLIN; Simpsons Sears can walk up and down Portage Avenue in front of the Hudson Bay Company with similar signs saying that bicycles . . .

MR. MINAKER: So they can go on private property and do this now if it's used by the public, a property that they pay taxes for that necessarily the Hudson Bay and Eatons on Portage Avenue would be paying for?

MR. TALLIN: What I'm saying is it doesn't relieve them from having to pay damages in such a case if they can prove loss arising out of the trespass. All it says is you can't prosecute them under this particular section.

MR. CHAIRMAN: Any further discussion on the sub-amendment? I have a sub-amendment that Mr. Graham moved.

MR. GRAHAM: I believe on the advice of Legal Counsel that it's been changed to be a second paragraph.

MR. CHAIRMAN: You're withdrawing the first one?

MR. GRAHAM: I won't go through the numbering and all the rest of it, and it's an addition, "but nothing in this section relieves the person from liability for any damages he causes to the owner of the property."

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I don't want to be stubborn on this but again I just like to feel satisfied that this is required, because I don't know under what circumstances anything we would be doing within this legislation would in fact be relieving as against liability for damage done to the owner of the property. What are we adding to the legislation is what I would like to know?

MR. TALLIN: The only thing that I think that we were adding is to make it clear to the courts that this was not intended to relieve a person from damage.

MR. PAWLEY: Do we have a similar provision in the other legislation, the Queen's Bench Act dealing with the . . .

MR. TALLIN: No, because it deals specifically that no injunction shall be issued against a person, doesn't mention damages at all.

MR. CHAIRMAN: Any further discussion on the sub-amendment? I'll read it out then everybody realizes what it involves. At the tail end of the present amendment we add to there "but nothing in this section relieves the person from liability for any damages he causes to the owner of the property."

QUESTION put.

MOTION presented on the sub-amendment, MOTION carried.

MR. FERGUSON: Mr. Chairman, I'd like to ask who judges what is true information or a true statement?

MR. GRAHAM: The courts.

MR. PAWLEY: This would have to -- I imagine become one of issue that the courts would have to determine.

MR. TALLIN: In a prosecution.

MR. FERGUSON: Then you would have to lay charges and this would have to be proved in court whether the information is true or false.

MR. PAWLEY: Right.

MR. CHAIRMAN: Clause 2, subsection(5) as amended--pass; Clause 3--pass; Preamble--pass; Title--pass; Bill be reported.

MR. TALLIN: Could I make a statement? I would like to apologize to the members of this committee and to the members of the House, particularly to the Attorney-General, because this debate would have taken place at second reading rather than now if I had followed the instructions that were given to me, but unfortunately I didn't follow the instructions that were given to me, I overlooked some of the instructions that were given to me and the draft that came was not what I had been instructed to put before the House.

BILL 94 - AN ACT TO AMEND THE QUEEN'S BENCH ACT (2)

MR. CHAIRMAN: Bill 94. An Act to amend the Queen's Bench Act (2). Page by page? Page 1--pass; Page 2--pass, Mr. Adam, would you move the amendment on Page 1 Clause 3?

MR. ADAM: Mr. Chairman, I move that the proposed clause 110(g) of the Queen's Bench Act set out in Section 3 of Bill 94 be amended by adding thereto immediately after the word "interest" in the third line thereof the words: "are or".

MR. CHAIRMAN: It's a very minor technical amendment. The amendment as moved--pass; Page 1 as amended--pass; Page 2 as amended--pass; Page 3--pass; Page 4--pass. Page 5.

MR. USKIW: Mr. Chairman, I move that Bill 94 be amended by adding thereto immediately after the proposed section 118 of the Queen's Bench Act set out in section 3 thereof the following sections:

Proceedings in wrong court.

119(1). No proceeding which is required under Section 110 or the rules to be brought or made in the division shall be dismissed because it was not brought or made in the division.

Validity of judgments, etc., outside division.

119(2). No rule, order, verdict, judgment, decree or decision made, given, rendered or pronounced in a proceeding which is required under section 110 or the rules, to be brought or made in the division shall be set aside or quashed solely because the proceeding in which it was made, given, rendered, or pronounced was not brought or made in the division.

MR. CHAIRMAN: Motion as moved.

MR. GRAHAM: Can we have an explanation of this?

MR. PAWLEY: Mr. Chairman, it just simply means that any proceedings which are brought incorrectly and not brought within the proper jurisdiction will not be dismissed solely on that basis, that they were brought in the wrong jurisdiction. And if a verdict or judgment has been rendered or pronounced under section 110, then that judgment - Mr. Tallin can correct me - cannot be set aside simply because it was brought in the wrong jurisdiction. So it's an attempt to avoid destruction of something solely because of the technical reason, that it's been brought incorrectly in a jurisdictional way.

MR. GRAHAM: Mr. Chairman, I believe when I spoke on second reading I had suggested, perhaps in section 112 where it was in there that everything shall be transferred, I had suggested probably an option there and if that had occurred we wouldn't need this extra amendment. Had the Minister considered that at all?

MR. PAWLEY: Permitting the options of the various courts?

MR. GRAHAM: Yes.

MR. PAWLEY: Well what I'm worried about is - I don't think the member was present during my concluding remarks - that if we provide for another option that in fact we will only further fragment the pilot court project. I know that the committee that has

(MR. PAWLEY cont'd) been working on this have been working on the basis they'll be the one unified court. Now I'm fearful if we maintain the present options and then simply add one more option that we'll only create further fragmentation where they have a unified family court project, we'll have an even more fragmented situation within the County Court District which is the subject of the pilot project.

MR. CHAIRMAN: The amendment as moved--pass; Page 5 as amended--pass; Preamble--pass; Title--pass; Bill be reported. Bill 20, An Act to amend the Trade Practices Enquiry Act. Order please.

BILL 20 - AN ACT TO AMEND THE TRADE PRACTICES ENQUIRY ACT

MR. JORGENSON: Mr. Chairman, I wonder about the possibility of this particular piece of legislation being ultra vires. I wonder if the Minister has given any consideration to the possibility of seeking legal advice on that particular point and finding out whether or not it is in fact ultra vires. If it is, then what's the point of passing it?

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: Mr. Chairman, the argument as to whether it's ultra vires of course is one that can always arise, I suppose, through this kind of legislation, indeed has arisen with the anti-inflation federal legislation that's now being challenged in the courts, but the applicability of this power under the statute presumably would be the occasion on which the ultra vires challenge would be made, and until such time as the bill is applied I don't think challenge would arise in practice. I can't imagine anyone taking the Provincial Government to court, ultimately to Supreme Court, merely to satisfy their own curiosity about the constitutionality of this bill. So I think that if it's passed and if it's applied in such a way that the application is ultra vires then we have a challenge presumably. But even then we may not. So I don't think that the argument about ultra vires of the Provincial Crown is one that should delay the bill at this particular time.

MR. JORGENSON: What the Minister is saying, in effect, is that he doesn't give a damn whether it's ultra vires or not. He's going to pass it anyway.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Mr. Chairman, I need some order.

MR. CHAIRMAN: Could we have a bit of order, please?

MR. USKIW: Mr. Chairman, what the Member for Morris is doing in effect is completely disregarding the fact that the bill was drafted under legal opinion in the first place and just because we have had representation questioning the legal opinion does not mean that we should automatically decide to set aside the bill. That procedure has to be gone through with every bill before it's presented. So I think the Minister is quite correct, that if there are grey areas perhaps that is best tested through a challenge in the application of the legislation.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: . . . the Minister for information. Was any legal opinion given to the Minister with respect to the Act? Now, you see, I want to draw the distinction between the drafting of the Act which are on the instructions of the Minister which I don't consider to be the legal opinion I'm referring to. --(Interjection)--

MR. CHAIRMAN: Order please.

MR. SPIVAK: What I'm asking is whether there was in fact a legal opinion given in terms of its constitutionality, not a legal opinion as to the legislation drafted per instructions - there's a difference.

MR. TURNBULL: How are you going to ask for a constitutional opinion on this section . . .

MR. SPIVAK: No, no. I'm trying to draw a distinction. I think there is a difference. Now, the point has now been raised in the committee, and I think it's serious enough to at least put us into a position of in some way being assured that someone from the Attorney-General's office at least has looked at this and has indicated that the legislation itself is in all probability intra vires rather than ultra vires. I recognize the courts will have to make the test on this if a case comes before them, or the courts will make the determination of the test, but it would seem to me that we having put notice on this

(MR. SPIVAK cont'd) and we're in an area where the question of constitutionality will in fact be an issue to consider, surely it would be wise for us to be put into a position of at least having an opinion on it which would support the government's position.

MR. TURNBULL: Mr. Chairman, you know I questioned the delegations that came here about the ultra vires nature of this legislation which they gave their opinion on, and one of the reasons given was that in some way this bill would be ultra vires province because it was contrary to the Federal authority over trade and commerce. But the fact is, as I indicated to the delegation that appeared, that the province has in the past exercised its constitutional authority over matters of trade and commerce. In particular, the province has exercised its jurisdiction in enacting the Public Utilities Board Act and in enacting The Milk Control Board Act. There may be other Acts as well that the province has enacted in the exercise of its proper, I believe, proper constitutional authority, because these people, be they lawyers or not, appear here and say that the Act is ultra vires and cite the trade and commerce power of the Federal Government then, you know, I just don't put much stock in that kind of off-the-cuff legal opinion.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, on the same line, without raising the question of constitutionality, I would like to know if the Act itself had been assessed in relation to the Federal Combines Act, not as to whether one is constitutional or unconstitutional or ultra vires, intra vires, but the degree to which there was any conflict between the Federal Combines Investigations Acts and practices especially under the changes to that Act in Phase I and Phase II and the degree to which this Act coincides or conflicts or complements the activity of The Restricted Trade Practices Act and The Combines Investigation Act on the federal level, if that was discussed with federal authorities or the bill looked at against the practice and activity of the federal legislation?

MR. TURNBULL: The question of constitutionality I should perhaps deal with, if I may, first. I did say that I had not asked for a constitutional opinion, but that does not mean that a constitutional opinion was not obtained, and in fact one was and the legislation is considered to be intra vires the province. --(Interjection)-- I said I did not ask for one, but one has been obtained and that opinion is that it's intra vires the province.

The question as to whether or not this legislation would in some way conflict with The Combines Investigation Act, that is also not an opinion I have asked for.

MR. AXWORTHY: Mr. Chairman, it's not a question of whether the opinion was sought but whether to have any discussion with officials in the Federal Consumer and Corporate Affairs Department to administer the Restrictive Trade Practices Act and The Combines Act to determine whether in particular section 11(2)(b) really is a - there's a legal phrase for it which doesn't come really to mind - but in order for this Act to be operative it means it would be a defined monopoly or restrictive trade under the Federal Act and to what degree that that has been discussed or worked out with them.

MR. TURNBULL: I don't think that that condition is a pre-condition for making this Act operative at all. The four conditions that are set out in this bill are in a sense tests for what must exist before the Board of Inquiry can recommend that the price be controlled. Now that is not, as I understand it, the same kind of action that flows from The Combines Investigation Act; there there is powers set out for inquiry into, you know, those activities of businesses that are in restraint of trades. We are not examining businesses under this statute for practices that may be in restraint of trades. That's not the intention at all. So that the intention of this statute and the intention of The Combines Investigation Act are quite different. It follows, therefore, that the idea of conflict would not arise.

MR. AXWORTHY: Well, Mr. Chairman, to follow the Minister, it's not the way I read his Act and The Combines Act because his Act very clearly states "when there is limited competition" and the basic premise of The Combines Act is "when there is lack of competition;" under the competition that becomes a source of investigation under The Combines, because that then leads to a restraint of trade.

MR. TURNBULL: Yes, but the point is that The Combines Investigation Act is designed to get at restraint of trade, practices that are in restraint of trade. This statute,

(MR. TURNBULL cont'd) this bill has no such intention, quite the contrary; it's designed solely for the purpose of enabling the Lieutenant-Governor-in-Council to set up a board of enquiry to look at a particular trade where there are practices that have lead, insofar as the section we're dealing with here, to unwarranted, unjustifiable, apparently, increases in price.

MR. CHAIRMAN: Mr. Uskiw.

MR. USKIW: Mr. Chairman, I believe the Minister's covered some of the points that I wanted to raise.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, the fact that the department received an opinion, I think there should be some indication whether it was from the Attorney-General's office, was it a private opinion, was it in-house in the department, so we have some basis of knowing who gave the opinion, and on the basis of that if the government's satisfied. We may quarrel with it, but at least you're now putting on the record that you do have an opinion that supports the position. --(Interjection)-- No, no, the drafting of the bill itself isn't an opinion.

MR. TURNBULL: The opinion was obtained from within the government. That's as far as I'm going in saying who gave the opinion. From a lawyer within the government.

MR. SPIVAK: Within the staff of the department then?

MR. TURNBULL: Oh no. There are no lawyers in the Department of Consumer Affairs.

MR. SPIVAK: From the Attorney-General's Department?

MR. TURNBULL: Mr. Chairman, you know, I don't think it's a matter of import who rendered the legal opinion, who in the government rendered the legal opinion. I just don't see how it's important.

MR. SPIVAK: Mr. Chairman, on this, because I think there is a serious... I know it's late, but let's talk about the question who rendered the legal opinion. If the Attorney-General was to indicate that his department has reviewed this and that they've rendered an opinion that in their opinion - he doesn't have to name the law officers - I'm not in any way suggesting that but that, in effect, an opinion has been given which would indicate that it's *intra vires* and the government's position is very clear and it's been reviewed by the Attorney-General's department. But it's another thing to suggest that it's somehow in-house, may or may not have been reviewed, and no one has taken responsibility for it except the Minister. --(Interjection)-- Well, the government's taking responsibility for the bill, but there's a question of its constitutionality, and you know, if we find that the bill is passed and then there's a hassle later on involved, they can say, well the courts had to decide anyway, whereas our responsibility here is to really try and see to it that what is put into law is correct, in terms of the execution of the intent and in terms of the powers that we have within the Legislature. I don't think it's just satisfactory to suggest that it's just somebody somewhere in the government, someone has to take some responsibility. I really ...

MR. TURNBULL: Well, it wasn't Harry Graham . . .

MR. SPIVAK: Well, I assumed that the legal opinion was given by a lawyer.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, this is a one-page bill with tremendous powers in it. Neither it nor the Act make any provisions for notification to who's going to be subjected to this Act, there's no right of appeal from it, there's no right to counsel on it. In all of it it's very arbitrary and that was the case that was also made by the representation here tonight, notwithstanding The Milk Control and other areas of involvement of the Provincial Government which are specific entries by the province into those areas. Maybe they're into it by virtue of the fact that they're isolated cases, but this is an Act that provides extremely arbitrary powers to the Minister to take wide-ranging action without notification or right of appeal or on the part of anybody that's so effected. I think the government in assuming that sort of power should at least hold this thing over and look at those aspects of it to see whether that can't be improved.

The other item, I understood that there was going to be some provision or amendment by the government that was going to provide some sort of a time-frame in which action had to be taken.

MR. TURNBULL: Mr. Chairman, the bill as it's drawn certainly doesn't contain any specification as to when a decision of the board would have to be made either interim or final, and the reason for that is that the intention here really is to have what would be a short-term setting of the price of a particular commodity while the board conducted an inquiry, and for that reason it didn't seem necessary at the time of drafting it to put in specific time limits, because it was deemed to be something of a very short-term nature.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: Well, I couldn't care really. I'd like to see this bill held over because I think if the caucus Whip is on . . . all these people here have got to share the responsibility if this bill is passed tonight, because I received a lecture from the Auditor who told me that the government is responsible for this bill and I think every one of the members here in light of the presentation that was made, this is a constitutional problem, that price control is the responsibility of the Federal Government. I can't see how this Minister could present a price control bill on the basis of one lawyer, as he said, a lawyer within the government. That to me doesn't seem to be anything . . . that if I was a back-bencher in his government I would certainly be asking for a free vote on this bill.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, the constitutionality of this bill was examined by somebody within the Department of the Attorney-General and it was the opinion that it was *intra vires*. Now in every situation, of course, there is an issue constitutionally.

I can remember back in 1970 when we were dealing with the automobile insurance legislation, a lawyer from the Manitoba Bar stood in front of us and I believe spoke for some three hours trying to outline to the committee that public automobile insurance was a disaster constitutionally, trying to persuade us to drop public automobile insurance on constitutional grounds. No one has seen fit, the Insurance Bureau of Canada, Wawanesa, no one has seen fit to challenge the automobile insurance legislation that we passed in 1970 in Manitoba to the Supreme Court of Canada, nobody has seen fit, despite the fact that we had a distinguished representative of the Manitoba Bar threaten us at that time with action through the courts that such legislation was unconstitutional. Now this legislation might very well be challenged. I don't think there's any question of that. And it may very well be shown to be *ultra vires*. I don't think anybody can guarantee one way or another, it will only be the courts who make that type of determination particularly in view of the Anti-Inflation Board guidelines. But I would think similar to rent control legislation and so many other areas that deal with provincial pricing that this type of legislation would be upheld, and the Minister certainly has indicated to me the name of counsel within the department that did deal with this matter from a constitutional point of view.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, there were two points. I do want to respond to the Attorney-General's because I think that there is one point that he is missing when it comes down to the question of constitutionality as it was raised. That is that the bill is so all-encompassing and it covers a wide range of goods and services that in fact many of the companies or individuals doing business, those products and services would be across provincial lines; and that while he uses the example of rent control obviously buildings could not cross provincial lines, but many of the goods and services that we're undertaking here in fact are a matter of interprovincial trade, and that I think was the question that was being raised, that in those areas where - I guess they're talking in that case about oil products or some kind but there could be a number of other industrial services or goods - it's very difficult to divide when they are purely within a provincial jurisdiction or in a national one. I think that was the area of real questioning that was being raised, that because of the all-encompassing nature of the bill, when you have rent control it's very specifically tied to one goods and service that is geographically located very clearly within the Province of Manitoba; similarly I suppose milk production other than those that cross national boundaries and are covered by different marketing agreements. But when you have such a wide range of goods and products it's a much more difficult thing to do. That was the question that was being raised, was not for or against the bill, but whether in fact those particular questions shouldn't be examined more thoroughly so that we don't get into a position where legislation simply gets again held up in the courts for a year, God knows how long those kind of cases can take, rather than having a piece of legislation that could be applied in a more immediate term and do the job more effectively, and that's the concern I have. I think that that would be something that should be legitimately looked at by the government either in terms of defining within the bill itself that range in goods and

(MR. AXWORTHY cont'd) services which are very clearly within the provincial jurisdiction or in fact clearing it, and that's why I raise the question about the consultation with federal sources to see what the general lines of operation might be in relation to these matters.

Mr. Chairman, I also wanted to raise with the Minister the question of the board and the hearing procedure now. I was unable to get a copy of the Trade Practices Act but it is my understanding that under the Act before it is to be amended there is really no provision other than a very general one under The Inquiries Act to hold a proper set of procedures that could be very explicitly outlined as to what the steps would be by which the inquiry would be undertaken and by which representation could be made by affected parties. I'm wondering if the Minister is prepared to agree that that should be part of the attachment to the bill in terms of the operation of the board to ensure that criticism cannot be made of a bill, that in fact it is a little bit of a Draconian justice and is not subject to any form of representation, hearing, review or proper advocacy of one side or the other; I was wondering if the Minister would be prepared to concede that and see if there was some way that that could be included in the bill.

MR. TURNBULL: Mr. Chairman, the intent of this bill, as I say, is to set the price at a level that is reasonable when in fact inquiry is under way of the particular trade. The proceedings of the inquiry can be, according to section 7, conducted either in private or public. Now that's what the existing statute sets out. Perhaps Rae Tallin could outline what the Manitoba Evidence Act provides under section 6, because section 6 indicates that for the purposes of the inquiry the members of a board appointed have like protection and powers that are conferred upon commissioners appointed under Part V of the Manitoba Evidence Act. I think that's just limited to their powers, not to the method of proceeding. But section 7 does set out that proceedings can be public or private, that's all that the statute now says.

MR. AXWORTHY: Well, Mr. Chairman, that is the question, I think that's what we're saying that the Act is not sufficient simply by relying upon the conventional powers under The Evidence Act or The Inquiries Act and that if the Minister wants to carry out the form of intervention that he's prescribing in this bill then I think that it does deserve a more clearly delineated form of board or tribunal with this procedure set out so that there would not be the challenge or at least the appearance of unfairness that was raised this evening and that I think that probably a degree of equity does deserve that, at least those who are going to be under investigation or the range of goods in which the inquiry is being undertaken would have full opportunity to make their case and have it represented so that they would ensure that the full range of evidence would be brought out in a public forum. We have looked at several Acts during this session where there have been - I think the Human Rights Act was one, I can probably think of two or three others offhand - where there was certain powers being given by the government to intervene in certain areas of activity but there was very specifically set out procedures and structures by which that would take place, and it seems it's certainly required in this case.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Well first of all I'm happy the Attorney-General took responsibility for the constitutional issue. That's a matter of record now at this point.

With respect to the question of the control period, my understanding is it's only to be really during the period of time from the time of the announcement with the appointment of the inquiry and till the inquiry decision is rendered. Is that right?

MR. TURNBULL: There are two provisions in 11(2); one that the price can be recommended to be controlled in a report of the board which is of an interim nature or a report of the board which is final.

MR. SPIVAK: That's a control period afterwards, you've got a control period during the period of the time of inquiry.

MR. TURNBULL: When the inquiry is set up there can be an immediate recommendation that the price be controlled and then the Lieutenant-Governor can prescribe the price.

MR. SPIVAK: And you can have a longer control period after the board of inquiry has completed its recommendation?

MR. TURNBULL: The way it's drawn, yes.

MR. SPIVAK: Is that the intent?

MR. TURNBULL: No.

MR. SPIVAK: The intent really is the interim period. . . until . . .

MR. TURNBULL: No, I perhaps answered too quickly there. The intent is not to continue the price set by the Lieutenant-Governor forever, I mean, obviously that is not the intent.

MR. SPIVAK: But the problem at this point is the limitation, the control, this is an extraordinary power realistically, a commission of inquiry could always be appointed by the government under normal consideration, whether it was under this Act or not, the power exists under The Evidence Act and the problem at this point is that you're controlling a price during the period of review and is it really to go beyond that? In other words realistically my understanding . . .

MR. TURNBULL: There is no time limit on the period during which the price can be set. That's what I'm saying, that the board set up can make an interim report. If you read section 11(2), I don't know if you've got it in front of you, it's set out there that the board of inquiry is set up, the board can recommend that the price be set, the price is set. Subsequent to that the board can make a final report recommending a particular price.

MR. SPIVAK: What happens if the board recommends that the price is correct, is it automatic the government has to follow that recommendation?

MR. TURNBULL: It's not automatic but it would at least give the government and the public some indication that the price wanting to be charged by this particular trade or industry is in fact justified. That's the intent of the legislation.

MR. SPIVAK: Yes, but in effect after the inquiry is completed the government then under this section could continue a price freeze even if the recommendations were against it?

MR. TURNBULL: Yes, that I think would be - that even if the board recommended in its final report that the price be what it was when the inquiry was originally sparked and, yes, I think the way it's drawn that would be the case, that the Lieutenant-Governor-in-Council could then reject the opinion of the board and continue with say the interim price.

MR. CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, we seem to be going in circles on this thing and it's difficult to see why - still go back to the questions asked about what rights do the people have that are affected by this, and there's no indication in this bill that they have any rights, are going to be allowed any rights. Notification: No rights of notification. No time constraint on the period that's in the Act on time constraint on the period that they would be restricted by the arbitrary action; there's no right of appeal. You know what about the rights of the individuals affected in this thing, and the companies affected and people affected directly. You know, government's got more right, you know, the issue as to whether it's ultra vires, intra vires or whatever it is is secondary to the impact and the deprivation of rights to people that are going to be hit by the arbitrary action that the government's asking for.

I don't know why we're sitting here, we might as well stop talking about it and you might as well pass the damn thing because you are going to pass it like you've passed every other arbitrary action, that you want it, so you might as well put the thing. In putting it, let's recognize that you're passing strong-armed legislation, arbitrary legislation.

MR. CHAIRMAN: Order please. Is the honourable member putting that the bill be put or what? Order please. I want to know what the honourable member is moving. Is he moving that the bill be put, bill complete or what? Order please. Now I've let you have a damn good discussion. Now get back to the damn bill clause by clause. Those are the rules of the Legislature, those are the rules of the House.

Clause 1--pass; clause 2, subsection 5(2)--pass.

MR. CRAIK: Nay. No time fixed.

MR. CHAIRMAN: Those in favour of the motion. Want a vote on it?

A COUNTED VOTE was taken, the result being as follows: Yeas 13; Nays 10.

MR. CHAIRMAN: Declare the motion carried.

(MR. CHAIRMAN cont'd)

Clause 2--pass; clause 3, subsection 7(1)--pass; clause 3--pass; clause 4, subsection 11(2)(a). There is a correction in the first line of 11(2). Should be product instead of produce. Mr. Brown. Order please so I can hear what Mr. Brown is saying.

MR. BROWN: This is going to affect my area considerably because we have a lot of vegetable growers in my part of the country and all produce is marketed through the Vegetable Marketing Board. Now as you know when the supply is short then prices go up and this is very necessary for these people to stay in business, and I'm just wondering how the Minister is going to cope with that particular situation.

We also know that when supply is short and the demand as a rule is greater in other provinces, now how is he going to restrict these vegetables from moving into other areas where the market is going to be more lucrative than what it is in this particular province. I'm just wondering how the Minister is going to enforce this kind of thing in situations such as that?

MR. TURNBULL: Well, Mr. Chairman, as I indicated, this bill although it is broad in its drafting need not be broad in its application. Now to set out, you know, what specific articles or products would be subject to the price setting mechanism in this bill, I don't think it's particularly feasible in trying to draft it. If you're going to do it that way, setting it out in the bill, then you may as well have a bill similar to the Milk Control Act for every particular commodity and article sold in the province. That's not the intent. The intent here is to provide broad powers to deal with specific abuses in the marketplace and that does not mean that it will automatically be applied to those producers that Mr. Brown is concerned about.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: Well the term that the Minister has used, powers to control abuse, I don't buy that because it says that all articles and products - maybe the Minister could explain - is sold at a price which is increased by no more than 10 percent. So is in fact this bill besides being a price control bill actually controlling everything, may I ask the Minister is it actually controlling everything at a 10 percent figure?

MR. TURNBULL: Mr. Chairman, the original statute has to be looked at. This Act is triggered only by representation, petitioning of the Minister by people over the age of 18; I think that point was made during the debate on second reading. After that is done the Minister can order a preliminary investigation or not, he can make a decision for no inquiry as well or he can appoint an inquiry board, and all of these things certainly would be steps that would be gone through before a price would be set and an inquiry set up.

MR. WILSON: Well that's exactly what I meant. In other words, the power is with the Minister. Well my concern about this control bill is that I have a letter here dated February 4th in which the Anti-Inflation Board right here in the Lakeview Square says that they will ensure general compliance with price and income guidelines and they thanked me very much for drawing all these alleged abuses to their attention. So if what the witnesses have said here or delegations have said, what the Anti-Inflation Board has said and what we've been trying to tell you that you are in the wrong ball park here, then I can't see why you don't hold the bill over.

My other comment is basically that many of these terms are very vague. Also about setting up this board, what qualifications are these citizens going to have to have to decide and control articles and products that are going to be brought before them, what qualifications do they have to have and how many are there going to be? Well you see the Minister won't answer so I'll leave it with that. This whole bill is a bill of silence, it's a price control bill.

MR. TURNBULL: Mr. Chairman, I'm sorry, on a matter of privilege.

MR. CHAIRMAN: State your matter of privilege.

MR. TURNBULL: The Member for Wolseley indicates that because I don't interrupt your order of speakers that you have there that somehow I won't answer him, and I would just like to, as a matter of privilege, for you to indicate that apparently you do have other people on your speaking list, and that's the reason I don't respond to him immediately.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I have spoken to the Minister in connection with

(MR. PAWLEY cont'd) this and I think it would be wise if we included section 88 of The Evidence Act within the provisions by which the board must operate, and in that way then the formation of the board and the date of the first meeting of the board would be published in the Manitoba Gazette so that the public at large, the world at large would be aware of the formation of the board and also the date of its first hearing. So that on that basis I would like to move - there's no amendment before the committee now, is there, Mr. Chairman?

MR. CHAIRMAN: No.

MR. PAWLEY: That Bill 20 be amended by adding thereto after section 2 thereof the following section: 2.1 section 6 of the Act is amended by adding thereto at the end thereof the words "and the board shall comply with section 88 of that Act."

MR. CHAIRMAN: The motion as moved. Any discussion on the motion?

MR. CRAIK: . . . Mr. Chairman, that the party would be heard?

MR. PAWLEY: Well it guarantees notice to the world, to the province at large of the formation of the inquiry, the establishment of that inquiry and the date of the first hearing of that inquiry, in order that we ensure proper notice so there is no argument in the event that those affected by the legislation have not received notice. --(Interjection)--

MR. CHAIRMAN: Order please. You're not on the list. If you want on the list, I'll put you on. Order. Order please. I think that motion will have to be held until we deal with what we're dealing with here, because that follows this subsection we're dealing with now. Mr. Uskiw.

MR. USKIW: Mr. Chairman, I think we've covered that subject - Mr. Pawley introduced that amendment.

MR. CHAIRMAN: No, that amendment will be held . . .

MR. USKIW: Oh, I'm sorry, you want me to move this motion.

MR. CHAIRMAN: No I'm not wanting you to move, I had you on the list here to speak. If you don't want to speak, fine and dandy. Mr. Spivak.

MR. SPIVAK: Mr. Chairman, we're on 11(2)(a).

MR. CHAIRMAN: Right.

MR. SPIVAK: And that motion you want held then, okay?

MR. CHAIRMAN: Because it's 11(2).

MR. SPIVAK: I think we should deal with the amendment first.

MR. CHAIRMAN: But I can't deal with that until I deal with what I have here before us.

MR. SPIVAK: All right. I want to ask the Minister a couple of questions if I may on this. Unfortunately I have to go to (a), (b), (c) and (d), because it would appear to me that these sections are really superfluous, the whole thing is superfluous. In effect you're talking on yourself the authority to be able to control and you're going to make your determination as you deem advisable with or without the advice of the Inquiry Board, and in effect the restatement that is essential in the day-to-day activities of a significant number of people or that is available only from a single distributor, is not an article or a product for which a reasonable substitute can be widely obtained, it's sold at a price which has increased by more than 10 percent in the previous 12 months. That really is, you know, really not the basis upon which your judgments can be made in any case. These are not the conditions under which the government will act. Or are you saying that these are the conditions . . .

MR. TURNBULL: I said earlier that these four - in answer to the Member for Fort Rouge - that these four clauses here are really the conditions under which the price setting mechanism will be activated. Yes, that's the intent.

MR. SPIVAK: That's for the hearing or after the determination.

MR. TURNBULL: For the determination of a price that would be established, which in turn comes from a recommendation of the Board of Inquiry. What you asked me earlier was somewhat different than that. What you asked me earlier was, must the Lieutenant-Governor follow the advice of the Board, and the way it's drawn I would not think that the Lieutenant-Governor was bound. But these four clauses really are the conditions under which this price setting mechanism will be activated.

MR. SPIVAK: These four clauses are the conditions but they're not necessary conditions, that's really what you are saying.

MR. TURNBULL: They are conditions, whether they're necessary conditions or not is a moot point.

MR. SPIVAK: Well let me ask you something. In the day-to-day activities of a significant number of people in the province, there's no determination of that; that will be the Lieutenant-Governor-in-Council's determination of what that really means.

MR. TURNBULL: Yes.

MR. SPIVAK: And realistically . . .oh there's one other basic question I have to ask. The freeze that is being proposed will be for all Manitoba, not for region or not for part?

MR. TURNBULL: It would be for the commodity.

MR. SPIVAK: Yes.

MR. TURNBULL: But on the article, wherever it is marketed within Manitoba.

MR. SPIVAK: Yes, but no ability to freeze it in one region. As an example, freeze it in the north or freeze it in the south.

MR. TURNBULL: No, but I suppose the Board could recommend that. I don't think there is anything prohibiting the Board from recommending that.

MR. SPIVAK: No but if the Board recommends that on the basis of these guidelines, then I can't see the Lieutenant-Governor-in-Council having the authority to proceed. What I'm saying to you at this point is that these are not the conditions under which the government should act.

MR. TURNBULL: You want to make them necessary conditions and I'm saying that whether they are necessary conditions or not is really a moot point.

MR. SPIVAK: But you see, what you're basically saying is the Lieutenant-Governor may make regulations and controls to suit these conditions, but in addition can make regulations for any other purpose as it deems advisable.

MR. TURNBULL: Not under this Act.

MR. SPIVAK: Not under this Act?

MR. TURNBULL: No I don't see that at all.

MR. SPIVAK: No but again . . .Mr. Chairman, I'm not . . .

MR. TURNBULL: That's really a legal point and perhaps we should . . .

MR. SPIVAK: I know, but we really should understand the intent of the government, because you see, basically if you're restricting it in terms of a particular commodity, as I see it, it would have to apply to all of Manitoba. It could not apply to only a region.

MR. TURNBULL: That is the intent. It was never intended that these commodities and the prices set for them would be limited to particular regions.

MR. SPIVAK: That's right.

MR. TURNBULL: But I don't think that doing that is prohibited by the statute as it is drawn.

MR. SPIVAK: Well I know, but if that's the case, if doing that is not prohibited then I think we have to review that in relation to these conditions. Because you see when you talk in terms . . .and we get involved in (d) - and I want to come back to (d) - as to the arbitrary figure of 10 percent.

MR. CHAIRMAN: Order please, we're not on (d), we're on (a).

MR. SPIVAK: I know, but at the same time I have to understand when we're talking on (a) and asking for approval, these are essentially guidelines which the government may or may not consider, that's what you're really saying.

MR. CHAIRMAN: Mr. Jorgenson.

MR. JORGENSON: My comments were related to subsection (d), if I can ever get to that. But as they're very much related I would think . . .

MR. CHAIRMAN: You might just as well, everybody else has been talking on (a), (b), (c) and (d).

MR. JORGENSON: Mr. Chairman, the Minister purports to take action if a commodity or some produce is sold at a price which has increased more than 10 percent in the previous 12 months, but the subsection doesn't say who that's going to apply to. Now in the case of produce, is he going to apply it at the producer level if it's raised by 10 percent? And then again at the wholesale level? And then again at the retail level? What's going to happen, of course, is that if he says he's going to allow it to rise by

(MR. JORGENSON cont'd) 10 percent, that's going to be the rise, and if you're going to move it in three stages, if you're going to control all three stages, that means that you're guaranteed that the price of that commodity is going to rise by 30 percent in a year. That's sure as hell not controlling inflation, you're doing more to create it than you are to control it, if that's what your intention is.

There was one other point that I wanted to make while I now have the floor, and that's aside from the constitutional issue. There was a question of what other authority was going to supersede this one. The AIB is exercising authority in this field. Now if the AIB comes along and suggests that a price of a commodity should be at a certain level and your organization has come along and said it's going to be at a different level, who is going to have the authority? Who is going to determine who has the authority in that particular area? You haven't dealt with that question and it was raised during the course of the discussions earlier.

MR. TURNBULL: Mr. Chairman, if I may. Mr. Jorgenson is right, it was raised during the representations that were made and I did not deal with it then; the second point that he makes, namely which authority would prevail in determining a price, I did indicate to the representatives that were here from the oil companies that the AIB really is a mechanism to determine profits and profit margins and this is more specifically a statute to deal with specific prices. However, where the AIB did rule on a price for a particular commodity, then clearly this statute would not be invoked. That would certainly be my intention, not to invoke it where the AIB had already ruled or where the Public Utilities Board in Manitoba had already made a determination. Clearly this statute would not be invoked. So I think that is the declaration of intent and that answers the question put by Mr. Jorgenson.

The other point that he makes is this 10 percent amount to be applied at all levels of distribution. Of course the answer to that is no. This 10 percent amount will be again one of the conditions under which the statute will be invoked but only where that amount has been exceeded at the retail level.

MR. SPIVAK: I would say to the Legislative Counsel if that's the intent, we'll have to redraft this legislation to say that.

MR. CHAIRMAN: 11(a) . . .

MR. SPIVAK: Well, Mr. Chairman, if . . .

MR. TURNBULL: Well, Mr. Chairman, you know, the spelling it out creates a great number of problems, because Mr. Jorgenson - and I respond to him - is talking about produce. There are other commodities that are marketed that may not go to a consumer but they are the final use to which the commodity is going to be put. Now how you deal with those two and many other aspects of marketing specifically, I don't know.

MR. SPIVAK: Can I ask - and the Legislative Counsel is here - whether if on line three it was to say "the retail sale or distribution of any article or product."

MR. TURNBULL: Well I think I just dealt with that . . .

MR. SPIVAK: No, you confirmed that in the committee but that doesn't . . .

MR. TURNBULL: No I - oh I see what you mean.

MR. SPIVAK: But that doesn't make it law.

MR. TURNBULL: But how do you apply the statute then to those commodities whose final use . . . you know, they have a final end use but the final end use is not a sale to a consumer, that is, it is not a retail sale.

MR. SPIVAK: Then I think this is a question of drafting though. Because I think that the fact that you've given the explanation in the committee is not law and therefore what we have to do is proclaim it in law; and if that's the intent then I think the Legislative Counsel possibly can redraft it to do that, because I think that makes a very big difference because that covers the point that the Member for Morris mentioned.

MR. TURNBULL: Well I think that the Member for Morris was trying to indicate that the 10 percent level would be applied to all levels of distribution of a commodity.

MR. CHAIRMAN: Order please. We're getting into a round table discussion here. I ask the honourable members to address their remarks to the Chair please.

11(2)(a)--pass; (b)--pass. Ayes and nays or . . .

MR. SPIVAK: Mr. Chairman, I've spoken to the Legislative Counsel. If you're talking final sale, which is really what you're saying, the final sale or distribution, he said "retail" would be the right word. Correct?

MR. TURNBULL: Mr. Chairman, I've attempted to deal twice now with this particular point, and this legislation is designed to deal with what I have called really emergency situations, and to try and put on the kind of crimps that the Member for River Heights is talking about, is just not acceptable.

MR. CHAIRMAN: (b)--pass; (c)--pass; (d)--pass.

MR. SPIVAK: Can the Minister indicate why 10 percent is shown there?

MR. TURNBULL: The figure of 10 percent, Mr. Chairman, is a figure that was deemed to be appropriate because it conformed with increases that were acceptable in some of the AIB preliminary discussions and because it has been used, for example, in rent control legislation as well. The effort here really is to find some figure that seems to be a reasonable increase but . . .

MR. SPIVAK: The problem here with 10 percent is that for this purpose we've declared 10 percent, there's an impression here of 10 percent, but if one was to examine government services there isn't anything that I know of that isn't higher than 10 percent. --(Interjection)-- No, no, I understand that, but there isn't anything higher than 10 percent, and while rent control is 10 percent the reality is that there will be a cost pass-through allowed this year, so in effect it may very well be 12 percent or 14 percent.

MR. TURNBULL: Don't forget that the rent control legislation sets the rent at 10 percent and no more and then allows a cost pass-through. This clause (d) here does not set prices at an increased rate of 10 percent, that is not the intent. This legislation says that if it goes beyond 10 percent there may be a Board of Inquiry established and the Board of Inquiry may recommend that prices be controlled and then the Lieutenant-Governor-in-Council may pass the regulation. This is all permissive in this section, really it is more permissive legislation than the Rent Stabilization bill.

MR. CHAIRMAN: 11(2)--pass; 11(3)--pass. Mr. Uskiw.

MR. USKIW: I move THAT the proposed subsection in 11(3) of The Trade Practices Inquiry Act as set out in Section 4 of Bill 20, be amended by striking out the words "article, product, goods, material, service, right, licence, privilege or benefit" in the 4th and 5th lines thereof and substituting therefor the words "article or product".

MR. CHAIRMAN: The Legislative Counsel.

MR. TALLIN: The second and third should be fourth and fifth.

MR. CHAIRMAN: The second and third should be fourth and fifth?

MR. TALLIN: Yes.

MR. CHAIRMAN: With that correction to the amendment, amendment as moved--pass; 11(4)--pass; 11--pass; clause (4)--pass; clause (5)--pass - Mr. Craik.

MR. CRAIK: Mr. Chairman, I just wondered whether the Attorney-General might want to give some further consideration to the rights that are going to be aborted to the individuals affected by this Act, and suggest that he could give some consideration just to holding it at least overnight, think it over and see if the government can't provide some more spelling out in here apart from writing in that Section 88 of the Evidence Act to the individual's rights that's in here. It strikes me that even common criminals have a right of a hearing, and here we're going to take the grocery store man and he isn't even going to know what his rights are if the Minister decides to hit him with this bill. I suggest he hang onto it until tomorrow and give him some more time to . . .

MR. TURNBULL: Well, Mr. Chairman, I am assuming that the bill will be reported out of committee, and that the changes that Mr. Craik is suggesting we take into review will be taken into review, and if deemed appropriate be introduced for third reading in the House.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, can the Attorney-General tell the committee at this stage whether under the Act as he is reading it whether the hearings he is talking about in fact are public hearings where there is the right of representation, or is there just a hearing being held that anyone can attend but no one has a right to . . . and if so, does he not think that changes should be introduced to ensure that the hearings that are prescribed would be not only public and open but also available for representation and that

(MR. AXWORTHY cont'd) there would be some proper procedure for appeal out of that hearing if or on the decision of that hearing. I wonder if the Attorney-General could clarify that point for us under the existing Act.

MR. PAWLEY: First, Mr. Chairman, I am advised that insofar as the history is, as we can recall it, insofar as Part V of The Evidence Act, there has never been a hearing called that has not been of a public nature under Part V of The Evidence Act. Now there is within The Evidence Act deliberately a great deal of flexibility because of the need possibly for a private hearing. It might be a private meeting, there may be in fact need for privacy in completing the report by the Inquiry Board. I've been concerned about the aspect of submissions, and in checking through the Public Utilities Board Act there seems to be no provision which gives of necessity the right for any and all to appear before the Public Utilities Board insofar as a price setting factor is concerned. To that extent this measure which we have before us is a price-controlled measure which goes beyond a price setting area, an inquiry which is set up to receive submissions that will be pertinent to that inquiry. So to that extent it's different from other aspects, it's a deliberate inquiry into the method of retailing or prices, the element that goes into pricing, and to that extent being an inquiry there isn't a right to follow immediately that any and all from the public have the right to make representations. I think the Public Utilities Board avoid that very deliberately, for instance, in the gas price application, they could very well be flooded with 2,000, 3,000 consumers making submissions as against the gas price increase.

Now in the specific amendment that we had proposed here, we had indicated, and I think the present drafting certainly did not include this, that there must be notification given to the province as a whole through appropriate mechanism that the inquiry has been formed, and also information must be given as to that first hearing. Now information I've received is that under the Manitoba Evidence Act there has never been to our knowledge any hearing that has not been of a public nature, and then the inquiry of course would be charged with obtaining appropriate evidence after.

MR. AXWORTHY: Mr. Chairman, I understand that there would be a public hearing, but being public does not necessarily give the ones the right to speak to the point that's under investigation. It simply means that it's an open hearing and that there is no requirement under Part V, that the Board must in fact hear somebody who is affected by the case. And what I've been requesting is, can that not be amended or redrawn as part of the amendment the Attorney-General proposed so that there is a clearer definition that those who are affected by the inquiry, or whose good services and activities are under investigation, have the right to appear and present evidence on that inquiry.

MR. TURNBULL: Mr. Chairman, that really gets around the intent of the bill, which is to get at those situations where the price has risen dramatically and apparently without any cause and there is an intent to set the price at a lower level than has been charged in order to save consumers paying out-of-pocket. Now if there's to be a prolonged series of hearings on this, then the high price that is being charged will continue to be charged and consumers will continue to pay, and that's not the intent.

MR. AXWORTHY: Mr. Chairman, I think in the Minister's case, first, it's a basic fallacy, prices just don't rise without a cause. What would concern me, Mr. Chairman, in this case, is not that hearings would go on forever, because any Board can control its own proceedings and decide when it's heard evidence, but it does mean that if there are causes that are external to those which may be under the petition so that if someone comes along and says the price of bananas has gone up 400 percent and we think that the supermarkets are getting together to sell bananas, where in fact it may be that there's been a heavy frost in the Honduras or something, then that's the kind of thing that should be able to be brought forward. I think that what we're saying is, that within the definition of the right of appearance there is not enough direction in the bill, and I am simply going to ask the Attorney-General to find a way of drafting that.

MR. CHAIRMAN: Order please. You are now starting another debate. We have passed the bill, we are now in the preamble and we had this motion or amendment that the Attorney-General was going to move. I would ask him now to move that, then you could speak to it. If you want to speak on the general principles of the bill you can do that when we report the bill.

MR. PAWLEY: I move that Bill 20 be amended by adding thereto after Section 2 thereof the following section: 2(1) Section 6(1) of the Act is amended by adding thereto at the end thereof the words "and the Board shall comply with Section 88 of that Act." Section 88 of the Act provided for - I think we read it before, that . . .

MR. CHAIRMAN: The motion as moved, agreed? (Agreed) Preamble--pass.

MR. JORGENSEN: Mr. Chairman, I'm not sure that I understood the Attorney-General right when he was speaking a moment ago. Was he saying, that when a hearing is going to be held now that those who want to be heard will be guaranteed the right to be heard? And that when prices are set the person who is affected by that is not going to be given an opportunity to . . . ?

MR. PAWLEY: No, it's like the Public Utilities Act. There is no provision as I can see it; Mr. Tallin looked through it with me and there is no provision which gives automatic rights to any and all to appear before . . .

MR. JORGENSEN: I just can't see how this can possibly work. I recall a situation, I believe it was in 1972, the price of wheat for example jumped from about a dollar and a half a bushel to about \$5.00 a bushel. Now is the Minister going to say that if a situation like that occurs - and that was forces that were far beyond anything that happened here in Canada - is he going to suggest that in the Province of Manitoba, Manitoba farmers are only going to be allowed their prices to rise by 10 percent, where if farmers in other provinces, their prices of wheat will be allowed to rise to the full \$5.00 a bushel, we're going to make exceptions in this case? How are you going to control that? I don't think the Minister knows. I don't think the Minister knows what the hell he's doing really.

MR. PAWLEY: Just on a point of order if I could, the example that the honourable member just gave would be a poor example, maybe he could find another one, because . . .

MR. JORGENSEN: I thought it was a pretty good one myself.

MR. PAWLEY: . . . it would be ultra vires dealing with the Wheat Board Act.

MR. JORGENSEN: Well that was an example, I could have used any other commodity. I was using that because that was a practical one, that was one that actually happened. Now it could happen to potatoes, it could happen to anything else; just because I used wheat doesn't mean you can seek the excuse that it comes under the Wheat Board, therefore you have nothing to do with it.

Take another one. Take your pick. Pick any commodity.

MR. TURNBULL: Mr. Chairman, you know if I may . . .

MR. JORGENSEN: Well honey is an example.

MR. TURNBULL: Mr. Jorgenson in his usual abusive way is now making remarks, I don't think he knows his ass from a hole in the ground - if he wants to use that kind of language, and he's indicated here tonight now twice, once with the Minister of Agriculture and once with me and that kind of language I don't think is becoming of him. I don't like to hear it in this committee, I don't like to hear it in the legislature, and I wish either he could get control of his own language or his leader . . .

MR. JORGENSEN: Well answer the question.

MR. CHAIRMAN: Order please.

MR. TURNBULL: . . . would indicate some discipline over this unruly, unregenerate individual that seems to think the language of the barnyard is appropriate to a Legislative Assembly.

Mr. Chairman, I indicated at the beginning of the debate on this bill that the applicability of the bill, although it's drawn in general terms, would be limited clearly to those situations that were of an emergency kind, would be limited to and selective in regard to the kinds of commodities that seem to rise without any really apparent clear cause, and that's the intent here.

MR. JORGENSEN: That's what Adolf Hitler said too when he introduced The Enabling Act, you sound just like him.

MR. CHAIRMAN: Preamble--pass.

MR. SPIVAK: Mr. Chairman, to the Minister, the point here that has to be made, and it's not covered . . .

MR. CHAIRMAN: Order please. Now there's not going to be all this yakking going on when someone is trying to make a point here.

MR. SPIVAK: Mr. Chairman, it's not covered in the public utility example because that's really a regulation of a sector or an industry where in effect the applicant must appear, or a decision to be made in which the applicant is affected and the industry is affected. The point here is that those who are affected by the price regulation should have an automatic right to appear before the Commission of Inquiry. They should have the right to be able to present their case, they're directly affected, and what I think we have here is - we're ready to pass the Act, and really that provision doesn't exist, that there is nothing here that indicates the Commission of Inquiry has an obligation to deal with it. They may very well, but the point is there's no obligation, and it would seem to me that you can correct this by indicating that those who are directly affected as a result of the price freeze should have the automatic right to be heard by the Commission of Inquiry. And if you do that, then their rights are protected - and that doesn't take away from an immediate action that may affect them without even the possibility of notice because of some extraordinary situation that could arise. But having said that, they still should have the right to be able to be heard, and that should be protected in here. I mean, I think that's almost axiomatic in any case, and if it's not contained within these sections then there maybe should be some consideration to providing that kind of an amendment that would satisfy us.

MR. TURNBULL: Mr. Chairman, I've already said that in relationship to that point. I think the Member for Riel made it earlier that that kind of provision can be considered and if it's deemed appropriate would be introduced at third reading or on report stage in the House. I've already said that, and indeed that's what will happen.

MR. CHAIRMAN: Preamble--pass; Title--pass.

MR. SPIVAK: Mr. Chairman, before the bill's reported I want to make another point to the Minister. The power to the government here is severe in its widest application even though the Minister has indicated it will be applied judiciously- but other governments may apply it a little differently - should there not be a provision which would say that if the Board of Inquiry makes a recommendation for a price less than the freeze or to revert back to the original price - that if the government makes a decision not to adhere to the Board's judgment, and they have a right to do that, that within a period of time they must have legislative approval for the continuation of that particular freeze? My point being, that there should be a period of time if there's a refusal to accept the Board of Inquiry's judgment for the government to continue it, but the legislative authority still should have to be obtained and the provision could be a month, two months, what have you, but if the government's prepared to go against a judgment given by a Board of Inquiry, that it has to justify to the Legislature where in effect its legislative power comes. And I'm again trying to talk in terms of a limit which is reasonable, taking into consideration everything, but certainly not allow it to continue without that legislative authority coming forth.

MR. CHAIRMAN: Shall the bill be reported?

MR. JORGENSEN: No, Mr. Chairman, I don't believe that this bill should be reported; in the hands of this Minister he should not have that power. Take the yeas and nays on it.

MOTION presented and carried.

MR. JORGENSEN: Yeas and nays.

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

Yeas 15, Nays 11.

MR. CHAIRMAN: I declare the motion carried. The bill shall be reported.
Committee rise.